Chapter 7: Supporting Evidence

Question

Terry is facing a charge of criminal damage. The prosecution case is that he feared that a Betting Shop which had been established next to his London house would lower the value of his property and that in anger he had thrown a brick through its window. He denies the charge and told police he was in Hull for work at the time of the incident. Terry's wife Jane is preparing to testify that she saw him in London at that time of day and that he could not have been in Hull. Terry subsequently admitted he was in London on the day in question and said that he lied initially since he had in fact lost his job and had been ashamed to tell his wife. Two passers-by, Rashid and Sunita, claimed to have seen a man throw the brick and gave a description to police. They had not known Terry but they identify him from a Facebook photograph. The police arrange an identification procedure and Rashid and Sunita separately identify Terry. Terry's solicitor, Jerry, attended the procedure and states that he heard Rashid talking to Sunita on a mobile phone as he (Rashid) came away from the room where the identification procedure was taking place and before Sunita entered. Jerry could not hear what they were saying.

Advise on evidence.

Answer guidance

There are a number of instances in this question where what is sometimes known as hazardous evidence may be considered for admission, namely the defendant's lie and identification evidence. *R v Lucas* [1981] QB 720 should be applied to assess whether the lie amounts to evidence against him. Identification by Facebook was considered in *R v Alexander* [2013] 1 Cr App R 26. *Turnbull* [1987] QB 224 guidelines should be applied to the identification by Rashid and Sunita. Other issues include the possible effect of the apparent breach of Code D in that the witnesses may have communicated with one another (see Code D Annex B para 14) and the effect of the Facebook identification on the later identification. Identification evidence that has been obtained improperly may be excluded under s78 PACE.