**CHAPTER 2**

CASE STUDY **R v LENNY WISE**

The prosecution will contend that Lenny is the man responsible for unlawfully entering Lillian Kennedy’s house and stealing money from her. The prosecution will allege that Lenny was assisted in the burglary by another individual—most probably Lloyd Green. The police have not charged Green. The prosecution will further contend that this person deliberately distracted Lillian Kennedy at her front door to enable the burglar to obtain access to her property in order to steal. We must speculate on the motives for the burglary. It may be the prosecution’s theory that Lloyd Green was putting Lenny Wise under pressure to pay off a debt owed to him. The person who entered Lillian Kennedy’s property through an unlocked backdoor is said to be Lenny Wise. What evidence links Lenny to the crime?

Witness—Lillian Kennedy. She states she saw Lenny in the vicinity of her home an hour or so before the burglary and that he offered to assist her with her shopping. She describes the man as wearing white training shoes. She identifies Lenny to the police when she is taken by them on a tour of the immediate vicinity. She is subsequently unable to identify Lenny at a video identification parade and she is unable to identify Lloyd Green.

Witness—Shirley Lewis. She was in the garden next to the burgled property and gives a description of the man which corresponds with Lenny’s actual appearance and mentions the white training shoes. She subsequently identifies Lenny as being that man at a video parade.

Witness—Harold Finney. This witness provides the police with a registration number of a car parked in Sunrise Road which leads to Lloyd Green being arrested. He describes a man similar to Lenny approaching the car. This witness is unable to identify Lenny at the subsequent video identification parade.

Lenny’s incriminating admissions made during the police interview satisfy the definition of a confession.

Real evidence of the white training shoes found in Lenny’s flat.

Forensic opinion evidence that shoeprints located and lifted at the rear of the burgled property can be said to match the soles of the training shoes found in Lenny’s flat.

Lenny has several previous convictions and a drug habit which places him in a category of persons more likely to have committed this crime. The prosecution will want to adduce evidence of Lenny’s past bad character, specifically in relation to his past offences of theft and burglary. Can the defence prevent this?

Lenny will plead not guilty. His defence is that it was not him. If it was not him, it must be someone else. The defence theory in this case means the following evidence will have to be challenged:

•  eye-witness identification;

•  Lenny’s confession;

•  forensic evidence.

If Lenny is able to advance an alibi, this will strengthen the challenge to the prosecution’s case if the alibi evidence is accepted. The second person alleged to have been involved has not been charged and, at this stage, Lenny is not implicated by the involvement of any co-accused which might require a corroboration warning to be given.

Having regard to this introductory chapter on criminal evidence and having identified the areas of criminal evidence involved in this scenario, consider how you might challenge the eye-witness identification in this case. There may be a possible application of s. 78 PACE 1984 in this regard, given Lenny was unrepresented at the police station. You will certainly be talking about the Turnbull guidelines, as this is a case of mistaken identity and there are several weaknesses in the eye-witness identification. You will have concerns about the manner in which Lenny’s confession was obtained and so you will want to make an application to have the confession excluded under ss. 76 and 78 PACE. Might a report from Lenny’s psychiatrist assist in this respect?

The opinion evidence of the forensic scientist will be admissible as expert evidence. You will want to undermine the weight to be attached to the opinion, given the popularity of Nike training shoes. Lenny states he has never worn the shoes. You will no doubt wish to oppose the admission in evidence of Lenny’s past bad character.

You are on your way to securing an acquittal in this case. You have identified the main points of contention. When you have worked through the later chapters on criminal evidence you will be able to fully discuss and apply the principles of evidence law that arise in this case.