**CHAPTER 7**

OBSERVATIONS ON THE IDENTIFICATION ISSUES RAISED BY **R v LENNY WISE**

There are three eye-witnesses in Lenny’s case. We will deal with each of them in turn.

**Lillian Kennedy**

It is important to realise that Mrs Kennedy cannot assist the prosecution in providing any evidence as to the identity of the man who entered her property by the unlocked back door. She is able to provide a description of the burglar’s accomplice, but she is not able to identify him. She does identify Lenny in a street identification. This would appear to be in compliance with Code D 3.2 as the police would not have had a known suspect in mind at this point in time. Mrs Kennedy’s evidence will be that a man (whom she states was Lenny Wise) approached her some 30 to 60 minutes before the burglary and offered her assistance with her shopping bags. This evidence (assuming she correctly identifies Lenny as being that man) does no more than place Lenny in the vicinity, though crucially not at the relevant time. Her evidence is of marginal relevance. She is able to describe what the man who offered her help was wearing, and makes specific reference to the white trainers. When she points Lenny out to the police, he is not, however, wearing white training shoes. A pair of white training shoes were subsequently recovered from Lenny’s flat.

**Shirley Lewis**

Having a known suspect in mind, the police acted correctly in arresting Lenny Wise and arranging an identification procedure. It would have been wholly wrong for the police to have shown Mrs Lewis photographs of convicted offenders (including Lenny), having a known suspect in mind.

The evidence of Shirley Lewis is important. She purports to be able to identify Lenny Wise as being the man she saw in Mrs Kennedy’s back-garden at the relevant time. She provides the police with a description of which a written record is kept in accordance with Code D 3.1. She specifically mentions the white training shoes worn by the man she observed in the garden. She subsequently attends a video identification procedure which the police state was conducted in accordance with Code D Annex A. In the course of the video identification procedure, Mrs Lewis picks out Lenny Wise. He is number 7 in the video line-up. Look through the video identification parade record (and remember you would be entitled to a copy of the video images). Look at the words used by Mrs Lewis when she selects Lenny’s image: ‘I think it is number 7. I can’t be one hundred percent sure—yes 7—I recognise him now. I have seen him before.’

Was the video parade compiled in accordance with Code D Annex A? Can you point to specific breaches of Code D which could form the basis of a challenge under s. 78 PACE 1984 to the admissibility of Mrs Lewis’s identification evidence? Lenny states he did not understand what was happening as regards the video parade, and that no one explained to him why he could not have an identification parade. The most disturbing aspect of Lenny’s detention is that he did not have access to legal advice. He does not appear to have been present when the video parade was compiled and, as such, it will be extremely important for you to review the parade’s composition in an attempt to assess its fairness.

**Harold Finney**

The final eye-witness is Harold Finney. Again, he is able to provide a description of the man he observed close to the time of the burglary walking past his window and going over to a black car in the street (which the prosecution contends belongs to Lloyd Green, the suspected accomplice). Mr Finney’s description is consistent with Lenny’s appearance. He also mentions that the man was wearing distinctive white training shoes. Mr Finney also attends the video identification parade. Significantly, he is unable to identify Lenny.

The other evidence linking Lenny to the crime is of course his interview with the police which is considered in the context of Chapter 6 self-test questions and the circumstantial evidence relating to the footwear found in his flat. This constitutes expert opinion evidence, which is considered in Chapter 17.