**CHAPTER 17**

SCENARIO

Stefan was represented at the police station. However, there does not seem to be any dispute arising out of the composition of the video parade. The only concern is that the victim was shown photographs prior to the video identification procedure. If (as it seems) Stefan was a known suspect, Code D 3.3 prohibits a witness from being shown photographs where the suspect is known and available. The police may suggest that they were concerned about the victim’s condition and the delay in securing a positive identification; however, this would appear to be a prima facie breach of Code D. The defence advocate will want to make a submission under s. 78 PACE 1984 that the victim’s evidence of identification be excluded (see Chapter 8).

The CCTV footage constitutes real evidence from which the jury is able to draw its own conclusion. Is this a situation in which the jury would benefit from having expert evidence? It depends on the quality of the CCTV stills. If the footage is blurred, expert evidence may be admitted to assist the jury. Would Sergeant Taylor be deemed competent? This would be a matter for the judge. It will depend on the sergeant’s experience (see R v Clare and Peach [1995] 2 Cr App R 333). It will be a matter for the jury as to how much weight it chooses to attribute to the sergeant’s opinion evidence.

Assuming the trial judge refuses to exclude the evidence and the matter is left to the jury, a full Turnbull warning will need to be given. This is a case in which Stefan disputes the identification of him. He relies on alibi to suggest he was somewhere other than at the scene of the crime at the relevant time. If the judge concludes the evidence of identification is weak but is supported or, indeed, if the evidence is good, he can safely leave it to the jury, directing them in accordance with the Turnbull guidelines. Evidence that supports the correctness of the victim’s identification in this case could come from the evidence of Andrew, the co-accused, and from the refusal by Stefan to answer questions at the police station (s. 34 CJPOA 1994—see Chapter 5). A specific weakness with regard to the evidence in this case would include the fact that it had been obtained in breach of Code D. The judge would need to explain why this is an important factor for the jury to have regard to (see R v Forbes [2001] 1 AC 473—Chapter 7).

Is this a case which calls for a corroboration warning? Did you consider that Andrew’s evidence might be regarded as tainted? Andrew is an accomplice. He is jointly charged with the offence but has chosen to plead guilty to a less serious offence and has given evidence for the prosecution, directly implicating Stefan in the more serious offence. Stefan suggests Andrew is lying and that in addition, because of his sister’s involvement with an officer in the case, he is motivated to give false evidence against Stefan. The defence advocate will no doubt suggest to the judge that there is an evidential basis in this case, in accordance with the principles in R v Makanjuola [1995] 3 All ER 730 for a corroboration warning to be given. It is a matter for the trial judge as to whether he gives such a warning and what form that warning will take.

**R v LENNY WISE**

This is a case where a Turnbull warning would be appropriate if the matter were to be left to the jury. You will recall that we have previously considered the evidence of identification in this case (see Chapter 7).

As Lenny disputes the eye-witness identification of him, the trial judge would be required to direct the jury in accordance with R v Turnbull [1977] QB 224.

Expert evidence features in this case. Consider the statement of Sarah Hardacker (disclosed in the committal bundle) and the statement of Dr Samantha Leighton (disclosed as part of unused material under the CPIA 1996). Both of these witnesses are experts in their particular field. Ms Hardacker’s s. 9 CJA 1967 statement lists her qualifications and experience. The primary facts from which Ms Hardacker provides her opinion (the lifted set of prints) are proved by the evidence of Carol Jane Lawton, a scene of crime officer. Ms Hardacker’s evidence is required in this case as the process of comparing the print with the shoes found in Lenny Wise’s property is a matter falling outside the competency of the court. Ms Hardacker’s conclusion that the shoes are responsible for leaving the prints outside the burgled property is strongly expressed. However, the evidence of Dr Leighton must be borne in mind. Lenny Wise states he has never worn the shoes found at his flat. Dr Leighton, an expert in DNA evidence, was unable to find any of Lenny’s DNA in the shoe.