

Chapter 9: Visual and voice identification

Visual identification

The special need for caution

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Footnote 23

A qualified identification cannot on its own be the basis of a conviction: *R v Howe* [2017] EWCA Crim 2400 at [20], citing *R v George* [2002] EWCA Crim at [35].

The circumstances of the identification and specific weaknesses in the identification evidence

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Footnote 37

See now the Crown Court Compendium (July 2019), Part 1, 15–1, para 9.

Recognition

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Footnote 54

See now the Crown Court Compendium (July 2019), Part 1, 15-3.

Recognition by police officers

Page 269

Footnote 61

See now the Crown Court Compendium (July 2019), Part 1, 15-4, para 8

Supporting evidence

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Support may be provided by evidence of a description if the jury are sure that it comes from a witness who is honest and independent. See the Crown Court Compendium (July 2019), Part 1, 15-1, para 13

Footnote 71

See now the Crown Court Compendium (July 2019), Part 1, 15–1, para 11

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Footnote 82

See also *R v Howe* [2017] EWCA Crim 2400

Footnote 83

See now the Crown Court Compendium (July 2019), Part 1, 15-3, para 8

Footnote 84

See now the Crown Court Compendium (July 2019), Part 1, 15-3, para 8

Footnote 84

See now the Crown Court Compendium (July 2019), Part 1, 15-3, para 8

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Footnote 89

See not the Crown Court Compendium (July 2019), Part 1, 15-2, paras 6-9

Footnote 91

See now the Crown Court Compendium (July 2019), Part 1, 15-2, para 6

Footnote 92

See now the Crown Court Compendium (July 2019), Part 1, 15-2, para 7

Footnote 93

See now the Crown Court Compendium, Part 1 (July 2019), 15-2, para 7-8.

Pre-trial procedure

Code D, Para 3, Part A: eyewitnesses

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The forensic value of a formal identification following an informal identification is doubtful and arguably one should only be held if requested by the suspect: see Roberts, 'Commentary' [2017] Crim LR 801.

Concerning the principle under *R v Forbes* [2001] 1 AC 473, HL, that there is an obligation to hold identification procedure even though there has already been an informal recognition, see also *R v Byrne* [2016] EWCA Crim 2124: a procedure should have been held in circumstances where a police officer, out of curiosity, looked at an image in another officer's 'graphic pack' and recognised the accused.

Footnote 120

See also *R v Byrne* [2016] EWCA Crim 2124

Code D, Para 3, Part C: recognition by informal viewing of film, photographs and images

Footnote 123

See also *R v LT* [2019] 1 WLR 51, CA and *R v McCullough* [2011] EWCA Crim 1413.

Footnote 124

In *R v Alexander* [2013] 1 Cr App R 334 (26), CA, the court held that no remarks had been made to the identifying witness which might have contaminated the identification. See also *R v LT* [2019] 1 WLR 51, CA.

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Guidance on directing the jury now appears in the Crown Court Compendium and applies to all identifications from social media, not just Facebook. The Crown Court Compendium (July 2019), Part 1, 15-1, para 6.

Breaches of Code D and exclusion

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Footnote 140

See now the Crown Court Compendium (July 2019), Part 1, 15-1, para 11(2).

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In *R v Byrne* [2016] EWCA Crim 2124 where a police officer failed to make a record of the circumstances of his own informal recognition, it was held that although the judge did not direct the jury in express terms that there had been a breach of Code D, what was said to the jury was sufficient to convey that the accused had lost the benefit of a safeguard which enabled him to put the reliability of the police officer's recognition to the test. (See [39]; see also Code D, para 3.36).

Voice identification

The warning to be given

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Footnote 151

See now the Crown Court Compendium (July 2019), Part 1, 15–7.

Footnote 153

See now the Crown Court Compendium (July 2019), Part 1, 15-7, paras 3 and 8.

See also the Crown Court Compendium (July 2019), Part 1, 15-7, para 11.

Footnote 156

See now the Crown Court Compendium (July 2019), Part 1, 15-7, para 4.

Pre trial procedure

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For an article which argues in favour of voice identification procedures, see, Robson, 'A fair hearing? The use of voice identification parades in criminal investigations in England and Wales' [2017] Crim LR 36.

Additional reading

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Robson and Smith, 'Can we have faith jurors listen without prejudice?; Likely sources of inaccuracy in voice-comparison exercises' [2019] Crim LR 115.

An examination of the question whether juries should be permitted to make their own identifications based on listening to evidence of audio recordings. The current law in England and Wales and other jurisdictions (Northern Ireland, Australia and the United States) is reviewed. Factors which may affect the reliability of voice identification are considered (estimator and system variables). An approach to voice identification, which takes these factors into account, is suggested for the courts.