

A No. 5086/A/75
No. 5777/B/75
No. 5260/R/74
No. 845/B/76

IN THE COURT OF APPEAL

CRIMINAL DIVISION

Royal Courts of Justice,

Friday, 9th July, 1976.

C Before:

THE LORD CHIEF JUSTICE OF ENGLAND
(Lord Widgery)

LORD JUSTICE ROSKILL

LORD JUSTICE LAWTON

MR. JUSTICE CUSACK

and

MR. JUSTICE MAY

- - - - -

R E G I N A

-v-

RAYMOND TURNBULL

and

JOSEPH NICHOLAS DAVID CAMELO

R E G I N A

-v-

CHRISTOPHER JOHN WHITBY

and

R E G I N A

-v-

GRAHAM FRANCIS ROBERTS

- - - - -

(From the Shorthand Notes of Cherer & Co. (incorporated with Walsh & Sons) 55-57 Clifford's Inn, Fetter Lane, London, EC4A 1BU. Telephone Number: 01-242 7057. Shorthand Writers to the Court.)

MR. G.F.R. HARKINS appeared on behalf of the Appellant Turnbull.

B MR. D.A. ORDE appeared on behalf of the Appellant Camelo.

MR. J.C. MATHEW and MR. M.R. BELL appeared on behalf of the Crown.

MR. R. GREY and MR. H.W. ALLARDYCE appeared on behalf of the
Appellant Whitby.

C MR. J.C. MATHEW and MR. R.G. HAWKINS appeared on behalf of the Crown.

MR. M.R. SELFE appeared on behalf of the Appellant Roberts.

D MR. J.C. MATHEW and MR. A. DONNE appeared on behalf of the Crown.

E J U D G M E N T

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A THE LORD CHIEF JUSTICE: On the 13th October, 1975 at Newcastle-
upon-Tyne Crown Court the Appellants Turnbull and Camelo were
convicted of conspiracy to burgle. They were each sentenced
to three years' imprisonment. They both appeal against con-
B viction by leave of the single Judge. On the 13th November,
1974 at the Central Criminal Court the Appellant Whitby was con-
victed of robbery and sentenced to six years' imprisonment. He
appeals against his conviction by leave of this Court. On the
C 11th February, 1976 at Plymouth Crown Court the Appellant
Roberts was convicted of unlawful wounding and sentenced to
three months' detention which he has served. He appeals against
his conviction by leave of the single Judge.

D Each of these appeals raises problems relating to evidence
of visual identification in criminal cases. Such evidence can
bring about miscarriages of justice and has done so in a few
cases in recent years. The number of such cases, although
E small compared with the number in which evidence of visual iden-
tification is known to be satisfactory, necessitates steps
being taken by the Courts, including this Court, to reduce that
number as far as is possible. In our judgment the danger of
F miscarriages of justice occurring can be much reduced if trial
Judges sum up to juries in the way indicated in this judgment.

G First, whenever the case against an accused depends wholly
or substantially on the correctness of one or more identifica-
tions of the accused which the defence alleges to be mistaken,
the Judge should warn the jury of the special need for caution
before convicting the accused in reliance on the correctness of
the identification or identifications. In addition he should
H instruct them as to the reason for the need for such a warning
and should make some reference to the possibility that a

A mistaken witness can be a convincing one and that a number of such witnesses can all be mistaken. Provided this is done in clear terms the Judge need not use any particular form of words.

B Secondly, the Judge should direct the jury to examine closely the circumstances in which the identification by each witness came to be made. How long did the witness have the accused under observation? At what distance? In what light? Was the observation impeded in any way, as for example, by passing traffic or a press of people? Had the witness ever seen the accused before? How often? If only occasionally, had he any special reason for remembering the accused? How long elapsed between the original observation and the subsequent identification to the police? Was there any material discrepancy between the description of the accused given to the police by the witness when first seen by them and his actual appearance? If in any case, whether it is being dealt with summarily or on indictment, the prosecution have reason to believe that there is such a material discrepancy they should supply the accused or his legal advisers with particulars of the description the police were first given. In all cases if the accused asks to be given particulars of such descriptions, the prosecution should supply them. Finally, he should remind the jury of any specific weaknesses which had appeared in the identification evidence.

G Recognition may be more reliable than identification of a stranger; but even when the witness is purporting to recognise someone whom he knows, the jury should be reminded that mistakes in recognition of close relatives and friends are sometimes made.

H All these matters go to the quality of the identification evidence. If the quality is good and remains good at the close of the accused's case, the danger of a mistaken identification is lessened; but the poorer the quality, the greater the danger.

A In our judgment when the quality is good as for example
when the identification is made after a long period of obser-
vation, or in satisfactory conditions by a relative, a neigh-
bour, a close friend, a workmate and the like, the jury can
B safely be left to assess the value of the identifying evidence
even though there is no other evidence to support it: provided
always, however, that an adequate warning has been given about
the special need for caution. Were the Courts to adjudge other-
C wise, affronts to justice would frequently occur. A few
examples, taken over the whole spectrum of criminal activity,
will illustrate what the effects upon the maintenance of law and
order would be if any law were enacted that no person could be
D convicted on evidence of visual identification alone.

Here are the examples. A had been kidnapped and held to
ransom over many days. His captor stayed with him all the time.
At last he was released but he did not know the identity of his
kidnapper nor where he had been kept. Months later the police
E arrested X for robbery and as a result of what they had been told
by an informer they suspected him of the kidnapping. They had
no other evidence. They arranged for A to attend an identity
parade. He picked out X without hesitation. At X's trial, is
F the trial Judge to rule at the end of the prosecution's case
that X must be acquitted?

This is another example. Over a period of a week two
G police officers, B and C, kept observation in turn on a house
which was suspected of being a distribution centre for drugs.
A suspected supplier, Y, visited it from time to time. On the
last day of the observation B saw Y enter the house. He at
once signalled to other waiting police officers, who had a
H search warrant to enter. They did so; but by the time they

A got in, Y had escaped by a back window. Six months later C
B saw Y in the street and arrested him. Y at once alleged that
C had mistaken him for someone else. At an identity parade he
was picked out by B. Would it really be right and in the
interests of justice for a Judge to direct Y's acquittal at the
end of the prosecution's case?

C A rule such as the one under consideration would gravely
impede the police in their work and would make the conviction
of street offenders such as pickpockets, car thieves and the
disorderly very difficult. But it would not only be the police
D who might be aggrieved by such a rule. Take the case of a
factory worker, D who during the course of his work went to the
locker room to get something from his jacket which he had for-
gotten. As he went in he saw a workmate, Z, whom he had known
E for years and who worked nearby him in the same shop, standing
by D's open locker with his hand inside. He hailed the thief
by name. Z turned round and faced D; he dropped D's wallet on
the floor and ran out of the locker room by another door. D
F reported what he had seen to his chargehand. When the charge-
hand went to find Z, he saw him walking towards his machine.
Z alleged that D had been mistaken. A directed acquittal might
well be greatly resented not only by D but by many others in the
same shop.

G When, in the judgment of the trial Judge, the quality of the
identifying evidence is poor, as for example when it depends
solely on a fleeting glance or on a longer observation made in
difficult conditions, the situation is very different. The
H Judge should then withdraw the case from the jury and direct an
acquittal unless there is other evidence which goes to support
the correctness of the identification. This may be corroboration

A in the sense lawyers use that word; but it need not be so if
its effect is to make the jury sure that there has been no mis-
taken identification: for example, X sees the accused snatch a
B woman's handbag; he gets only a fleeting glance of the thief's
face as he runs off but he does see him entering a nearby house.
Later he picks out the accused on an identity parade. If there
was no more evidence than this, the poor quality of the identifi-
C cation would require the Judge to withdraw the case from the jury;
but this would not be so if there was evidence that the house into
which the accused was alleged by X to have run was his father's.
Another example of supporting evidence not amounting to corrobo-
ration in a technical sense is to be found in R. v. Long (1973)
D 57 Criminal Appeal Reports 871. The accused, who was charged
with robbery, had been identified by three witnesses in different
places on different occasions but each had only a momentary
opportunity for observation. Immediately after the robbery the
E accused had left his home and could not be found by the police.
When later he was seen by them he claimed to know who had done
the robbery and offered to help to find the robbers. At his
trial he put forward an alibi which the jury rejected. It was
F an odd coincidence that the witnesses should have identified a
man who had behaved in this way. In our judgment odd coin-
cidences can, if unexplained, be supporting evidence.

The trial Judge should identify to the jury the evidence
G which he adjudges is capable of supporting the evidence of iden-
tification. If there is any evidence or circumstances which the
jury might think was supporting when it did not have this quality,
the Judge should say so. A jury, for example, might think that
H support for identification evidence could be found in the fact
that the accused had not given evidence before them. An

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accused's absence from the witness box cannot provide evidence of anything and the Judge should tell the jury so. But he would be entitled to tell them that when assessing the quality of the identification evidence they could take into consideration the fact that it was uncontradicted by any evidence coming from the accused himself.

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Care should be taken by the Judge when directing the jury about the support for an identification which may be derived from the fact that they have rejected an alibi. False alibis may be put forward for many reasons: an accused, for example, who has only his own truthful evidence to rely on may stupidly fabricate an alibi and get lying witnesses to support it out of fear that his own evidence will not be enough. Further, alibi witnesses can make genuine mistakes about dates and occasions like any other witnesses can. It is only when the jury is satisfied that the sole reason for the fabrication was to deceive them and there is no other explanation for its being put forward can fabrication provide any support for identification evidence. The jury should be reminded that proving the accused has told lies about where he was at the material time does not by itself prove that he was where the identifying witness says he was.

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In setting out these guidelines for trial Judges, which involve only changes of practice, not law, we have tried to follow the recommendations set out in the Report which Lord Devlin's Committee made to the Secretary of State for the Home Department in April 1976. We have not followed that Report in using the phrase "exceptional circumstances" to describe situations in which the risk of mistaken identification is reduced. In our judgment the use of such a phrase is likely to result in the build up of case law as to what circumstances can properly be

A described as exceptional and what cannot. Case law of this
kind is likely to be a fetter on the administration of justice
when so much depends upon the quality of the evidence in each
B case. Quality is what matters in the end. In many cases the
exceptional circumstances to which the Report refers will pro-
vide evidence of good quality but they may not: the converse is
also true.

C A failure to follow these guidelines is likely to result in
a conviction being quashed and will do so if in the judgment of
this Court on all the evidence the verdict is either unsatis-
factory or unsafe.

D Having regard to public disquiet about the possibility of
miscarriages of justice in this class of case, some explanation
of the jurisdiction of this Court may be opportune. That
jurisdiction is statutory: we can do no more than the Criminal
Appeal Act, 1968, authorises us to do. It does not authorise
E us to re-try cases. It is for the jury in each case to decide
which witnesses should be believed. On matters of credibility
this Court will only interfere in three circumstances: first,
if the jury has been misdirected as to how to assess the evidence;
F secondly, if there has been no direction at all when there should
have been one; and thirdly, if on the whole of the evidence the
jury must have taken a perverse view of a witness but this is
rare.

G The limitations, such as they are, upon our jurisdiction do
not mean that we cannot interfere to prevent miscarriages of
justice. In 1966 Parliament released appellate jurisdiction
in criminal cases tried on indictment from the limitations which
H the Criminal Appeal Act, 1907, and the case law based upon it had
put upon the old Court of Criminal Appeal. The jurisdiction of

A this Court is wider. We do not hesitate to use our extended
jurisdiction whenever the evidence in a case justifies our
doing so. In assessing a case, however, it is our duty to use
our experience of the administration of justice. In every
B division of this Court that experience is likely to be extensive
and helps us to detect the specious, the irrelevant and what is
intended to deceive.

We turn now to consider the facts of these appeals in the
light of those observations.

C First, the Turnbull and Camelo appeal: These two Appellants
were convicted on a re-trial. The case for the Crown in short
was that the two Appellants had devised a scheme whereby they
could induce shopkeepers, customers of the Gosforth Branch of
D Lloyds Bank Ltd., to post their Night Safe wallets containing
their day's takings through the ordinary letter box in the main
front door of the Bank instead of into the Night Safe. The
Appellants then intended that in the course of the following
E night or weekend they would break into the Bank through a window
at the rear of the Branch, which was unprotected by any burglar
alarm, and remove the wallets which would be conveniently lying
on the floor just within the Bank's front door.

F The first step in the conspiracy was to put the Night Safe
out of action by inserting a bent nail into its lock. A notice
typed on Bank notepaper and purporting to be signed by a non-
existent Area Manager was then fixed above the Night Safe.

G This notice informed customers that owing to vandalism the Night
Safe was out of order and advised them to put their deposits
through the Bank letterbox. Over the latter a card was fixed
upon which was boldly printed the message "NIGHT SAFE HERE."

H Between about 5.30 p.m. and 6.30 p.m. on the 21st December,

1974 a number of unsuspecting shopkeepers and the employees of one Security Firm, following the instructions on the two notices, posted wallets containing over £5,000 takings through the Bank's letterbox. One shopkeeper, however, became suspicious, and got in touch with the police. In the result, at 7.10 p.m. the Bank Manager, Mr. Salkeld, and his assistant, Mr. Alderson, accompanied by two police constables went to the Bank. They waited outside until the police constables were relieved by Detective Sergeant Wakenshaw, and then the two Bank officials and the detective sergeant went inside. They then set about making preparations to entrap whoever might be the intended burglars.

Mr. Alderson gave evidence that at about 8 p.m. he was by the front door substituting empty for the full Night Safe wallets, when he heard a rustling sound just outside and close to the letterbox. He opened the door and found that the Notice that had been fixed just above the letterbox had been removed. He shouted to alert Mr. Salkeld and Detective Sergeant Wakenshaw, and whilst just outside the front door saw a man walking close to the outside wall of the Bank in which the Night Safe was installed. He described this man as about 5 feet 8 inches tall, as having dark hair, and as wearing a three-quarter length coat similar to the coat which the Appellant Turnbull was subsequently shown to have been wearing that night, and which was produced as an exhibit at the trial. Mr. Alderson, however, did not see the man's face. Nevertheless, the description of the man which he did give fitted the Appellant Turnbull so far as it went.

In his turn Mr. Salkeld gave evidence that when he heard Mr. Alderson's shout he went out of the Bank's front door and walked clockwise round the Bank by way of the main road on to which it faced, a small back lane, and a side road which entered the main

A road close to the front door of the Bank. As he did this he
saw a van in that side road and took its number. There was no
dispute at the trial that that van had been hired by the
Appellant Camelo shortly before these events and that he was
driving it that night. On reaching the main road, the van
B turned left away from the Bank and in the direction of Newcastle.
Mr. Salkeld himself had been unable to recognise anyone who may
have been in the van. However, by this time Sergeant Wakenshaw
was outside the Bank's front door and he gave unchallenged
C evidence to the effect that two or three minutes after 8 p.m. he
had there seen a van with the Appellant Camelo at the wheel
drive past fairly slowly down the side road and turn left into
the main road.

D The principal witness on identity, however, for the Crown
was a Detective Constable Smith. He gave evidence that on the
relevant night he had signed off duty at Gosforth Police Station,
which was not far from the Bank, at 8 p.m. He went to the car
E park at the rear of the Police Station and drove into the main
road to which reference has been made and along it towards the
Bank. As he did so, and at a point which it was agreed was
some 62 yards from the front door of the Bank, Smith said that
F he saw a man in that doorway who seemed to be taking a Notice
from the door of the Bank. The man left the doorway and started
to walk to his left along the pavement with his shoulders hunched
to the point in the wall of the Bank where the Night Safe was.
G There he pulled another Notice quickly off it and as he did so
he glanced briefly to his right, that is to say along the main
road in the direction from which Detective Constable Smith had
been coming.

H At the time Smith's car was just passing the Bank, some 10
yards or so from the Night Safe and Detective Constable Smith's

A evidence was that as the man turned his head he (Smith) recog-
nised him and recognised him as the Appellant Turnbull. The
latter was a man whom the Officer had known for some time.
Detective Constable Smith said that it was a well lit street and
B that he had no difficulty in recognising Turnbull. Very shortly
after this, Smith saw two men run from the side road into the
main road and recognised one of them as Detective Sergeant Waken-
shaw. The other in all probability was Mr. Salkeld. Detective
C Constable Smith then drove in a wide sweep round the Bank in an
attempt to intercept Turnbull, but did not see him. He did,
however, meet another police officer and, having spoken to him,
drove home. He said that about half an hour later he spoke on
D the telephone to Detective Sergeant Wakenshaw, and that on the
following morning, as soon as he reported for duty at the police
station, he entered in his notebook that which he had seen on
the previous night. Naturally, Detective Constable Smith was
E cross-examined strongly by Counsel for each Appellant; various
criticisms and matters arising out of his evidence were put to
him, but it is not necessary for the purposes of this judgment to
go into them in detail.

F The action then moved to another part of Gosforth, about a
mile away from the Bank. A Woman Police Constable Thompson gave
evidence, which was not disputed, that at 8.05 p.m. she was on
duty in a police vehicle with a Police Constable Sewell. They
G saw a blue van with two people in it travelling at a fast speed.
Having received a wireless message they followed it and ultimately
were able to stop it. As they did so she saw the Appellant
Turnbull stepping on to the pavement from the side of some bushes
H nearby. The Appellant Camelo was in the driver's seat of the
van. She went across and searched the bushes and there she found

a number of housebreaking implements.

A In the result both Appellants were then arrested, taken to
the police station and cautioned. In the course of subsequent
questioning Camelo purported not to know Turnbull, but it was
B suggested that if Camelo had said this to the police officer it
was said in a purely flippant manner for it was admitted by the
defence at the trial that the two Appellants did in fact know
each other at all material times.

C On the facts as outlined, the case against both Appellants
of course rested principally upon Detective Constable Smith's
evidence of his identification of Turnbull. Before the jury
could convict either defendant they had to be satisfied of both
D the honesty and the correctness of this identification. Each of
these aspects was challenged not only in the Court below, but
also in this Court. The first can be disposed of shortly. The
jury saw and heard Detective Constable Smith giving evidence, and
being cross-examined, and the criticisms made of his evidence were
E fully put to them in the course of the summing-up, of which no
criticism has been or indeed could be made. By their verdict the
jury clearly indicated that they thought this police officer to
be an honest witness and there is no ground whatever upon which
F this Court could come to any contrary conclusion.

On the question of the correctness of the identification,
the learned Judge did warn the jury of the special need for
caution and also explained to them the reason for this. On the
G other hand, as the Appellants' Counsel contended before this
Court, Smith only had a brief fleeting view of the side of Turn-
bull's face at night, albeit in a well lit street, from a moving
motor car. His identification in such circumstances, it was
H submitted, could not be relied upon and consequently he contended
that the jury's verdict should be set aside as unsafe and unsatis-
factory.

A Counsel for the Crown accepted that what we have called the
quality of the identification by Detective Constable Smith could
not be said to have been good, and indicated that had there been
no other supporting evidence he would not have been disposed to
argue that the Appellants' convictions should stand. In the
B circumstances of the present case, however, and seeking to apply
the general principles to which we have referred, he contended
that there was ample other evidence which went to support the
correctness of Smith's identification.

C He pointed out that Smith already knew Turnbull and that his
was more recognition than mere identification. Both Smith and
Alderson gave a general description of the man they each saw and
of the coat which he was wearing that night which was consistent
D with the facts. A van recently hired by Camelo was in the
vicinity at the relevant time and Sergeant Wakenshaw had recog-
nised Camelo at the wheel as the van passed the Bank. A few
minutes later, when the van was stopped a mile or so away, both
E Camelo and Turnbull were in it and there was substantial evidence
that at about that time the latter at least had been in possession
of housebreaking implements.

F We agree. All this was in our judgment clearly evidence
which went to support the correctness of Smith's identification
of Turnbull, and thus the implication that both he and Camelo had
conspired as charged. Given the honesty of Smith's identifica-
tion which, as we have said, the jury must have accepted, our
G opinion is that there can be no real doubt about its accuracy.
In the result we do not think that it can be said that the ver-
dicts in this case were in any way unsafe or unsatisfactory and
these appeals against conviction are therefore dismissed.

H In so far as Turnbull's renewed application for leave to

A appeal against sentence is concerned, we have already indicated
that this too is dismissed. This was a sophisticated plan to
B burgle Bank premises, and had it succeeded the Appellants would
have stolen over £5,000. The sentences passed can be criticised
neither in principle nor extent and it was for these reasons that
Turnbull's further application was dismissed.

Then we pass to Roberts's Appeal. The offence was alleged to
have taken place on the evening of the 26th July, 1975, at a
dance hall in Plymouth in a passageway behind the stage. Accord-
C ding to the victim, a man named Taylor, somebody bumped into him
and then butted him on the nose. This led to an exchange of
blows and then Taylor's assailant hit him on the top of the head
with a pint beer glass. There is some conflict as to whether the
D glass was broken on Taylor's head or whether it was deliberately
smashed against a wall before being used on his head, but in the
result he had to have twenty stitches in his head and shoulder.
His assailant ran away.

E Nothing further material occurred until the 13th December,
1975, approximately five months later, when the Appellant was at
the dance hall where the wounding had taken place. Taylor was
there too and claimed to recognise the Appellant as the man who
F had attacked him the previous July. The Appellant at once denied
that he knew anything about it.

On the 18th December, 1975 the Appellant was put on an
identification parade. A Miss Kennedy who had witnessed the
G attack picked him out as the assailant. Her boy friend, one
Inman, who had been with her at the material time picked out some-
body quite different who certainly had nothing to do with the
matter.

H At the trial Taylor and Miss Kennedy again identified the
Appellant. At the end of the prosecution case a submission was

A made inviting the Judge to withdraw the case from the jury, but
he rejected this and in due course the jury convicted. No
criticism is made of the summing-up save that it was said there
was an error in not pointing out that Inman admitted in cross-
B examination that he had as good a view as Miss Kennedy. This
Court is, however, asked to hold that the verdict was unsafe and
unsatisfactory.

The case for the Appellant can be summarised in this way.
First, that the identifying witnesses did not claim to have known
C the assailant before the attack. Secondly, that the attack was
all over in a few moments. Thirdly, that the place where the
attack took place was dark, lit only by flashing lights of the
kind popular in dance halls. Fourthly, that the Appellant's
D conduct after he had been accused was consistent with the honesty
of his denial and that in particular he did not deny that he
might have been at the dance hall on the evening in question or
seek to set up an alibi. He simply said that it was so long ago
E that he could not remember where he was. Fifthly, it was poin-
ted out that Inman, who had as good a view as Miss Kennedy, could
not identify the Appellant. Finally, there were discrepancies
and contradictions in the descriptions of the assailant given by
F the identifying witnesses. As to this last matter Taylor's
original description of his attacker was that he had thick black
curlyish hair which was collar length, long thick sideburns which
appeared to be joined like a beard and that he was wearing a
G white lightweight jumper with a design on it. In evidence-in-
chief he described the hair as shoulder length and the clothing
as a white floppy jumper. He claimed to have seen the man for
a couple of seconds. In cross-examination he described the gar-
H ment as a white heavyweight cardigan. He did not think his
attacker had a beard, though he was not sure, but he was positive

the man had a moustache.

A Miss Kennedy described the man as having lightish bushy shoulder length hair and as wearing a white T-shirt. In cross-examination she was positive he had a beard and moustache.

B There were also discrepancies about the assailant's height. There was moreover evidence that the Appellant had never had a beard and had not grown a moustache until after the date of the attack.

C No suggestion was made that the identifying witnesses were dishonest. It is conceded that Miss Kennedy in particular was an impressive witness. But the quality of the identifications was not good, indeed there were notable weaknesses in it and there was no evidence capable of supporting the identifications made.

D We think it would have been wiser for the trial Judge to have withdrawn the case from the jury. In the circumstances the verdict was unsafe and unsatisfactory and for that reason we have allowed the appeal, applying the general principles enumerated earlier in this judgment.

E Then, finally, there is the Whitby Appeal. The case against this Appellant was based principally upon evidence of identification. A man called Lenik was indicted with Whitby: he was acquitted.

F On the 15th March, 1975, leave to appeal against conviction and sentence was originally refused by the single Judge. G On the 24th March, 1975 these applications were renewed. For the purposes of this appeal it is sufficient to say that over the ensuing months information was received and investigated by the Metropolitan Police with the result that they were satisfied H that there had been an incorrect identification in this case and that the Appellant had not in fact committed the offence of which

he had been convicted.

A On the 11th November, 1975 the Director of Public Prosecutions informed the Registrar of this Court by letter that he had taken over the conduct of this case on behalf of the Crown. The Appellant's renewed applications ultimately came before this
B Court on the 13th May, 1976. On that occasion Counsel for the Crown indicated that those concerned with the prosecution had by then grave doubts about the justice of the conviction and that in consequence his instructions were to assist the Court in any way
C that he could rather than actively to respond to the Appellant's appeal. In those circumstances this Court granted leave to appeal and adjourned the hearing to a date to be fixed. It was in fact this particular case which led to the convening of this
D full Court to consider the various problems which have arisen relating to identification evidence in criminal cases, and which has resulted in the judgment which this Court is now delivering.

E The brief facts of the case are that on the 14th February, 1974 a number of men attempted to steal some £23,000 from the wages office of E.M.I. Ltd. in Uxbridge Road, Hayes. This was money to pay employees' wages and had been delivered to the
F premises shortly before. Two men entered the office next to that in which the money had been placed. One, and possibly both of them, were wearing balaclava helmets. One man was carrying a wooden cosh, the other a pistol. With these they
G threatened two clerks in the Wages Office, a Mr. Byrne and a Mr. Marshall, and taking the wages bags in holdalls which they were also carrying they made off down a corridor. There they were confronted by another E.M.I. employee. He managed to
H snatch the holdall from one man before he hit him with a hammer and the other robber struck at him with the wooden cosh. The

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two men then ran on towards the works entrance, and before they escaped in a stolen motor car driven by a third man they were seen in different circumstances by a number of other witnesses. In all, including Mr. Byrne and Mr. Marshall, the robbers were seen by a total of fourteen witnesses.

When Marshall was first seen by the police very shortly after the robbery he told them that he could not describe the man whom it was alleged was this Appellant, Whitby, nor assess his age. Nevertheless, he subsequently decided that he did know the man with the balaclava who had threatened him. He decided that it had been this Appellant, whom he knew as a fellow employee with E.M.I., and he consequently gave the police Whitby's name and address.

Both Whitby and Lenik were employed by E.M.I. at that time. They worked together on the night shift and had finished work that morning at about 7 a.m. The Appellant's evidence was that he took Lenik home in his car and then went on to his own home where he went to bed.

Later that day, however, having been given his name and address by Marshall, the police arrested the Appellant and took him to the local police station. He at once denied that he was in any way concerned in the robbery and maintained this denial throughout. He contended that at the time the robbery was being committed he was in bed at home. In this he was supported by his wife who gave evidence to this effect at the trial.

The Appellant's house was searched, but the only articles of relevance found were a number of toy guns which he said were his children's. One of them was a somewhat realistic imitation of a real pistol.

In the course of interrogation at the police station the

A Appellant gave two answers which at one stage at the trial it was suggested could be considered as admissions, notwithstanding that overall he was denying any complicity on his part. We were told, however, that Counsel for the Crown did not rely upon them in his final address to the jury at the Central Criminal Court.

B Forensic examination of the Appellant's clothing revealed a small fragment of glass which was similar to that of the wind-screen of the get-away car used by the robbers and which was shattered by one of the witnesses trying to prevent their escape.

C Finally, the day after his arrest, the Appellant was put on an identity parade. Of the fourteen witnesses to the robbery twelve attended, and three purported to identify the Appellant.

D This essentially was the evidence led against this Appellant at the trial and, as will be clear, it was founded upon the identification said to have been made by the three witnesses of him on the identification parade.

E In the course of his summing-up the learned Judge did warn the jury that mistakes in identification are possible, but in our opinion the warning that he gave was inadequate. Further, any effect that it might have had upon the jury was, we think, nullified by his final comment on the point: "Nevertheless," says the Judge "make no bones about it, there is a massive block of prosecution evidence implicating these two accused in this robbery, three people have identified each of them."

G Further, the learned Judge gave the jury no help about the quality of the identification of this Appellant, which in our view was meagre in the extreme. In so far as Marshall was concerned, as we have already said, he had decided that this Appellant had been one of the robbers before he attended any

A identification parade, and some time after he had told the
B police he was unable to describe him. That in these circum-
stances Marshall picked out this Appellant on the parade, when
his mind was already made up, clearly added nothing to the case
against this Appellant. The learned Judge put this point before
the jury merely as an argument raised by the defence. In our
view this was not sufficient: the jury should have been given a
clear direction about Marshall's purported identification of the
Appellant on the parade.

C In so far as the identification of the Appellant by the
other two witnesses on the parade was concerned, one of them had
at the robbery only seen the man whom he said had been the
Appellant from the rear. The other had given to the police
D before the parade a description of a man which in no way fitted
the description of the Appellant in fact. In addition one must
remember that all these identifications were of a man wearing a
E balacava helmet who was only seen for a short time in the
hurly-burly of a robbery and subsequent chase. Clearly the
quality of the identifications in this case was very poor.

F Was there any supporting evidence? In the course of his
summing-up the learned Judge in effect put before the jury the
three matters to which we have already referred. First, what
were said to amount to admissions in the course of the question-
ing of this Appellant by the police. Counsel for the Respondent
G in this Court told us that he did not rely upon these any more
than did Counsel for the Crown at the trial when all the evidence
had been called and he was addressing the jury at the end. We
agree and in our view nothing that was said by this Appellant to
the police could in any way be said to be evidence supporting
H the identifications.

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Secondly, the toy gun. There was no real evidence that the man thought to have been this Appellant even had a gun at any time during the robbery and in any event we do not think that the discovery of an imitation pistol among his children's toys when his house was searched was in any way supporting of the poor quality of the identifications which were made.

Thirdly, the fragment of glass found on the Appellant's coat. As we have said, there was evidence that this was similar to the glass of the windscreen of the get-away car. The forensic witness giving this evidence, however, also accepted that this was a very common type of windscreen glass. Further, there was substantial evidence called on behalf of this Appellant that the windscreen of his own similar car had shattered two or three months earlier and that the small piece of glass might well have come from this. In the result the evidence on this point was entirely neutral. This was accepted by Counsel for the Crown in the course of the argument on this appeal. In these circumstances we do not think that evidence of the finding of a fragment of glass on the Appellant's coat in any way went to support the correctness of the identifications by the three witnesses.

Finally, we feel that we should refer briefly to the way in which the learned Judge dealt with the Appellant's wife's evidence at the trial. She was called to support his alibi, as such it effectively was, that at the time of the robbery he was in bed asleep at home. Of her evidence the learned Judge said: "Let me say, straight away, one hates to pry into these things as between husband and wife, it is extremely distasteful, and what can the poor wife do other than back her husband up as much as she possibly can. This is not a criticism of her evidence at all, and you must approach her evidence on the same

basis as that of all the other witnesses."

In the first place, the two sentences just quoted were mutually inconsistent. What else was the first other than a criticism of the Appellant's wife's evidence?

Secondly, we think that the comment as it was left was unfortunate in that the learned Judge did not go on to point out to the jury that as the Appellant's alibi was that he was at home with his wife, who else could he have called to support it? This is a situation which not infrequently arises. In such circumstances it will almost certainly be present in the jury's mind that the witness is the defendant's wife and they will no doubt make what they think is the proper allowance for this fact. They should, however, be warned in most, if not all, similar cases that they should not necessarily regard the fact that the witness is the defendant's wife as derogating from the worth of her evidence when the nature and content of the defence is such that anyone would expect her to be called as a witness in any event.

In the result we think that the quality of the identification evidence in this case was very poor and that there was no evidence of the nature to which we have referred put before the jury which could be said to support the correctness of the identifications. It follows, in our judgment, that the statement by the learned Judge that there was a "massive block of evidence" implicating the Appellant was factually incorrect and in consequence a serious misdirection. In these circumstances we have no doubt that this conviction was both unsafe and unsatisfactory, and it was on these grounds that we allowed this appeal.

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