

Law Seminar - Identification Parade

Introductory Comments

1. In recent years there has been growing concern about the reliability of identification evidence in the criminal courts. This has reflected both in the Jamaican Bar and the English Bar. Perhaps the high point in these two jurisdictions is the case of Regina v Oliver Whyllie a judgement of the Court of Appeal in Jamaica delivered on the 13th July 1977 and the case of Regina v Turnbull a judgement of the English Court of Appeal reported in 1976 3 All E.R. 549. It cannot be said however, that the Jamaican Court of Appeal and the majority of judges at first instance fully appreciate how unreliable identification evidence can be.

The general unreliability of identification evidence is not limited only to circumstances where the witness is identifying a person who was not known before the date of the incident. There are many instances both in the courts and in ordinary everyday life where errors are made in relation to the identification of persons known before the incident.

2. The above general points should be borne in mind in dealing with the subject of identification parades.

3. Identification parades should of course only be held where the witness acknowledges that the person involved was someone that he or she had not known before the date of the incident and secondly (and just as important) the witness has declared his or her ability to identify the person if given the opportunity to do so.

4. If the above circumstances exist it is the duty of the police to arrange for an identification parade to be held. It is improper in such circumstances for the police to allow the witness to be confronted with a suspect in any circumstances other than on an identification parade. The Jamaican courts in particular in recent years have shown a disturbing hesitation to condemn identification by confrontation. The failure of the courts to condemn it is an inevitably encouragement of this improper practice.

5. Identification parades ought to be held in accordance with the Jamaica Constabulary Force Rules set out in the Jamaica Gazette Extraordinary dated the 29th July 1977 at page 1155 para. 552 as amended by the Jamaica Constabulary Force Amendment Rules 1977 published in the Jamaica Gazette Supplement dated the 23rd December 1977 at page 521 to 522. Any breach of these regulations is an appropriate

to rule that the evidence of identification should be completely disregarded.

7. Of course the identification by a witness on a fairly conducted identification parade is extremely persuasive evidence of identification. There is therefore a considerable burden on any attorney retained to act on an identification parade to ensure that nothing improper takes place either prior to or on the identification parade.

ID PARADE: LAWYER PRESENT: PRE-PARADE

1. An attorney should not attend on a parade if he is likely to represent the suspect at his trial (see the annual statement of the General Council of the Bar (England) 1932 page 6 "it is not in accordance with professional etiquette or advisable that counsel should attend an identification parade in a case in which he is or may be professionally engaged.") The attorney in such a situation should instruct another attorney to attend. He may of course carry out all the tasks listed in this sub-section.
2. See client - get instructions about the allegations being made against him - get instructions re whether any photograph of him has been taken by the police for example drivers licence, passport, or whether he has been "processed" by the police or if the police have made notes of his description.
3. Note any distinctive characteristics, this may be important for the purpose of cross-examination at the trial.
4. Note whether the suspect has any marks or distinguishing features which have come about since he has been in custody or since the incident for example an injured eye or hair shaven off to take the necessary steps, for example the purchase of dark glasses or sufficient tams to cover all the persons on the parade.
5. Ken Smith's remarks - R. O. C. Whyte's comments.
6. A suspect has a right to bring in volunteers for the line-up from outside of the police lock-ups and whenever possible this should be done.

WITNESS PRESENT: ON PARADE

1. Note as many details as possible - for instance the names of the policemen present, if names not known note description, clothing, note time, positions in the room of the various persons and particularly if they change their positions according to where the suspect is standing.
2. Note all that is said on the line-up and the names of the persons who make up the line-up, height etc.
3. Ensure that there is no communication from the identification room to outside other than for the purpose of calling witnesses.
4. Client should be advised that when witnesses come on parade he should do nothing to bring attention to himself.

When witness comes on parade he should be observed closely particularly where his eyes are focused during the preliminary remarks by the officer in charge.
6. Note particular words used when the witness is asked what he is there for and his answer.
7. Note method of pointing out for example how many times he walked along the line, where he looked, whether he went straight to the suspect or if he hesitated before one of the volunteers and in particular the words that he uses, if any, in the act of pointing out.
8. Witness is required to sign a form before leaving the parade room. This should be checked carefully to ensure that what is recorded there is in fact what the witness said and if necessary take objection at that stage. If the matter is not corrected advise client that he should not sign when invited to do so.
9. Witness should be sent into a room off the parade room, where he cannot have communication with other witnesses to come on the parade.
10. The suspect has a right to change his position and clothes before the next witness comes on to the parade.

11. At the end of the parade the officer in charge

ID PARADE: Lawyer Present: On Parade cont'd.

13. If the suspect was not pointed out the investigating officer should be contacted re release - if there is no evidence linking him to the offence. Some police officers prefer to have the man put before the court for a formal no order to be made.

ID PARADE: LAWYER NOT PRESENT

1. A thorough interview with the accused to cover all of the points mentioned in the previous sections. Get details of names of any person who was present on his behalf and if possible names and addresses of any of the volunteers in the line-up and interview them along similar lines.
2. Desirable that this should be done as soon as possible and certainly before the preliminary enquiry or trial if there is no preliminary enquiry.

7TH FEB 1978