

Neutral Citation Number: [2001] EWCA Crim 973

No: 200001893/Y2, No: 200002086/Y2, No: 200002012/Y2

IN THE COURT OF APPEAL
CRIMINAL DIVISION

Royal Courts of Justice The Strand
London
WC2A 2LL

Date: Wednesday 11th April 2001

B E F O R E :
LORD CHIEF JUSTICE OF ENGLAND & WALES
MR JUSTICE DOUGLAS BROWN
and
MR JUSTICE ASTILL

R E G I N A

- v -

William LOVERIDGE
Christine LOVERIDGE
Charles Sonny LEE

Computer Aided Transcript of the Stenograph Notes of
Smith Bernal Reporting Limited
190 Fleet Street, London EC4A 2AG
Tel No: 020 7421 4040 Fax No: 020 7831 8838
(Official Shorthand Writers to the Court)

Mr Martyn Levett (appeared for) William Loveridge.
Mr Roderick Hunt (appeared for) Charles Sonny Lee.
Mr Colin Aylott (appeared for) Christine Loveridge.
Mr P Johnson (appeared for) the Respondent.

JUDGMENT
(As approved by the Court)
CROWN COPYRIGHT

LORD WOOLF CJ :

1. On 9 March 2000 at the Crown Court at Teesside before His Hon. Judge Briggs, William Loveridge, Charles Sonny Lee and Christine Loveridge were convicted of robbery and taking a motor vehicle without consent. They were sentenced in the case of William Loveridge and Charles Lee to 12 years imprisonment for robbery and 3 months imprisonment concurrent for taking a motor vehicle and in the case of Christine Loveridge to 8 years imprisonment for robbery and 4 months imprisonment for taking a motor vehicle. Those sentences were to be concurrent.

2. They each applied for leave to appeal against their convictions. The single judge (Wright J) referred their applications to the full court in relation to some but not all their grounds of application for leave to appeal. In addition, both William Loveridge and Christine Loveridge renew their application for leave to appeal against sentence which was refused by the single judge. Lee was also refused leave to appeal against sentence but that application was not renewed and has now lapsed.

3. The principal issue raised by the applications for leave to appeal against conviction arises out of the fact that the police arranged for the Loveridge applicants to be filmed by a video camera, without their knowledge, while they were at a magistrates court. The purpose of this was to be able to compare those pictures with pictures which had been taken earlier by CCTV cameras, so as to connect the applicants with the robbery. The film which was taken at the court was admitted in evidence and it was used by an expert called by the Crown to establish that the Loveridge applicants are pictured on the video film taken by the CCTV cameras. In support of their contention that the evidence should not have been admitted the applicants rely upon their right to respect for their private life under Article 8 of the European Convention of Human Rights (ECHR). They also rely on the fact that they were filmed at the court contrary to s41 of the Criminal Justice Act 1925 and Code D4.1 and D4.2 and s78 of the Police and Criminal Evidence Act 1984 . Although Charles Lee was not alleged to be shown on the footage taken from the CCTV cameras, he contends that if either of the Loveridge's convictions are set aside, his conviction should also be set aside because of his association at the trial by the prosecution with both of the Loveridge's.

The Facts

4. The robbery was carried out at around 2pm on 3 June 1999 at a sub-post office in the village of Kirklington, a small village approximately one mile to the west of the A1 between Masham and Thirsk. It was the prosecution's case that the two men concerned in the robbery were Lee and William Loveridge and they were assisted by Christine Loveridge, who is no relation to William Loveridge. A sub-post mistress, Mrs Miller, was working inside the shop when she heard the bell and saw two men wearing balaclavas pointing a gun at her. She was told to get on the floor and she felt what she thought was a gun pressing on her back. She was asked if there was anyone else there and she told them that her husband was upstairs. She gave one of the men the keys to the safe and the post office. Her husband was also confronted by a man who appeared to be carrying a sawn-off double-barrelled shotgun upstairs. The two men left the post office with just over £9,300.

5. Parked outside the sub-post office, while this was happening, was the motorcar of Mr and Mrs Pearson. They were waiting outside while their daughter went in to buy sweets. They noticed a parked Sierra motor car. The Pearson's saw two men come out of the sub-post office, with one of the men carrying a carrier bag. Notwithstanding that a gun was pointed at her by one of the men, Mrs Pearson ran inside the sub-post office to get her daughter. Mr Pearson was told "not to be a hero" but memorised part of the registration number of the Sierra as H816.

6. A maroon Ford Sierra H816 WFG had been parked at 11.30am the same morning near Thirsk Auction Market. When the driver returned at 3.30pm it had gone. At 1.45pm the car was seen by a witness, Mr Dennis, in Kirklington containing two men who were attempting to reverse out of a field. Close by the Sierra was a Ford Fiesta (H470 DTY) containing a woman. The prosecution allege that woman was Christine Loveridge. The witness had seen the Ford Fiesta early the same day at around 12.15pm when it was carrying a woman and two men. The witness and his wife became suspicious when the men appeared to try and conceal their faces so they noted down the registration number of the Ford Fiesta.

7. The Fiesta and its three occupants were seen on CCTV film at the Busby Stoop petrol station. It was also seen on separate CCTV video footage at Thirsk at 12.26pm the same day. It was the Crown's case that the applicants had visited the petrol station to purchase diesel for the Fiesta together with sweets and a milkshake.

8. It was also the prosecution's case that having committed the robbery, the two male applicants abandoned the Sierra in a field and met up with Christine Loveridge who was waiting with the Fiesta. A metal tray from the post office safe was found on the back seat of the Sierra. Clothing used in the robbery, a raincoat and grey jacket (that belonged to the owner of the Sierra and was in the car at the time it was stolen) were found discarded nearby, as was footwear.

9. Access to the same field was provided along Stapler Lane. The witness, Dennis, again saw the Fiesta at 2.17pm at the end of Stapler Lane.
10. AT 10.20pm the Fiesta was stopped by police and found to contain the male applicants. They initially gave false names. They were arrested and taken to a nearby police station and their clothing was seized.
11. Christine Loveridge was arrested on the 11 June 1999. Records from the prison where Lee had been detained showed that he had telephoned the address at which Christine Loveridge had been staying on four occasions, including twice on the morning she was arrested.
12. There is no dispute the robbery took place and the only issues are, were the men who stole the Sierra and committed the robbery, Lee and William Loveridge and did Christine Loveridge assist them to do this.
13. Fibres which matched the fibre of the shirt seized by the police from Lee and William Loveridge were found on the front passenger and driver seat of the Sierra. Similar fibres were found inside the raincoat and jacket that had been discarded in the Sierra. The Crown therefore alleged that these items had been worn by Lee and William Loveridge to cover their shirts during the robbery.
14. The police also searched the Fiesta and recovered a Cadbury's milkshake box. On it were the fingerprints of Christine Loveridge. This was significant because the woman on the Busby Stoop video footage appeared to have such a drink in her hand. A hairbrush which contained hairs similar, in colour and microscopic appearance, to those of Christine Loveridge and an address book belonging to Lee, with fingerprints of Christine Loveridge on it, were also found. In the ashtray was a cigarette stub which DNA evidence linked with William Loveridge. Fingerprints of all three applicants were found in the Fiesta. In addition, a carrier bag identical to the one belonging to the owner of the Sierra when it was stolen, was found in the drivers door pocket of the Fiesta.
15. A video camera used at the service station at White Mare Pool showed that Christine Loveridge had called at the garage on a number of occasions one day in May including once with William Loveridge's wife. She had said that she had not spent any time in the Northeast and did not know White Mare Pool. In addition a call was made from the service station to where Christine Loveridge's mother lived. William Loveridge was also seen on the video on the same day.
16. The Crown called Mr Oxlee, an expert in facial mapping. He compared the appearance of a man on the video footage taken at Busby Stoop and White Mare Pool service stations with the footage obtained of the applicants at the magistrate's court. He said there was no significant differences and seven characteristic features of similarity between the man in the footage at both service stations and the face of William Loveridge. He also examined the same footage in respect of Christine Loveridge and concluded there was also no significant differences and nine characteristic features of similarity between the woman in the film footage at both service stations and the face of Christine Loveridge.
17. At the trial it was argued by Mr Hunt on behalf of Lee, supported by the other applicants, that the video and photographic evidence taken at the magistrates court with a view to the images being examined by the imaging expert on behalf of the Crown should not have been admitted in evidence. The applicants had expressed a willingness to stand on an identification parade but had been told there would be no identification procedures.
18. The judge overruled the applicants submissions and allowed the evidence to be given. He did, however, consider that the video pictures taken at the magistrates court did probably contravene s41 of the Criminal Justice Act 1925 . He did not consider that the taking of the photographs was conduct which should be approved of or be encouraged but he felt no unfairness was caused which operated so as to adversely affect the fairness of the proceedings.
19. There was other evidence which showed links between Charles Lee and Christine Loveridge. William Loveridge said that he had met up with Charles Lee on the afternoon of the 3 June. He had gone with him to Sunderland to buy some cannabis. He refused to name the owner of the Fiesta who had loaned it to them for the evening. He said on the day of the robbery he had been at Appleby Horse Fair, having travelled up with his uncle, arrived at around 11am and remained throughout the day.
20. Lee said that on the day of the robbery and his arrest, he had gone to Newcastle to collect a caravan with his uncle. He said that the same day, in the evening, he went with William Loveridge to Sunderland.
21. Christine Loveridge said that she hated Lee and had not seen him for 9 to 12 months.
22. In evidence, William Loveridge repeated that he had gone to Appleby Horse Fair. He said that he remained on-site, had

lunch and fallen asleep when he had two visitors, Vera Loveridge and Ernie Lamb. He did not mention either the visit from Vera Loveridge or Mr Lamb to the police when interviewed. It is alleged that the judge's directions about this to the jury were not adequate. Charles Lee did not give evidence or call any witnesses. Christine Loveridge said that she did not know William Loveridge prior to the robbery and did not know where Charles Lee lived prior to the date of the robbery. She did however accept that she had been to White Mare Pool petrol station. She went there to buy an Orion car.

23. As to the fingerprints that were found in the Ford Fiesta, she explained that she had travelled to Appleby Fair with her parents on the day of the robbery. They arrived at around 1.30–2pm. She said she might have come across the car on the day of the robbery, at about 4 or 5pm and on the previous night. She may have handled the items in the Fiesta including the hairbrush from which hairs similar to hers was recovered. She had been driven around in the car but had not driven it herself. She also explained her fingerprints on an address book belonging to Lee by saying that this could have happened while she was in the Fiesta. Her evidence was supported by her mother who denied she could be the person in the video footage from Busby Stoop because her daughter did not wear her hair as shown in the pictures. The defence also called a facial mapping expert, namely Mr Linney. He had reservations about the methodology employed by Mr Oxlee and he considered there was no more than general resemblance's between what was shown in the films taken by the CCTV video cameras and the Loveridge's.

The Admissibility of the Video Recordings

24. The terms of s41 1925 Act are:

“41 Prohibition on taking photographs, etc, in court

(1) No person shall —

(a) take or attempt to take in any court any photograph, or with a view to publication make or attempt to make in any court any portrait or sketch, of any person, being a judge of the court or a juror or a witness in or a party to any proceedings before the court, whether civil or criminal; or

(b) publish any photograph, portrait or sketch taken or made in contravention of the foregoing provisions of this section or any reproduction thereof;

and if any person acts in contravention of this section he shall, on summary conviction, be liable in respect of each offence to a fine not exceeding [level 3 on the standard scale].

(2) For the purposes of this section—

(a) the expression “court” means any court of justice, including the court of a coroner:

(b) the expression “judge” includes ...

(c) a photograph, portrait or sketch shall be deemed to be a photograph, portrait or sketch taken or made in court if it is taken or made in the court-room or in the building or in the precincts of the building in which the court is held, or if it is a photograph, portrait or sketch taken or made of the person while he is entering or leaving the court-room or any such building or precincts as aforesaid.”

25. The language of s41 is very wide. Mr Johnson, on behalf of the prosecution, like the judge, contended that the section was not intended to apply to what occurred in this case. He would like to have argued that the language of the section should not be applied to video recordings. However, he agreed that it would be strange if the section applied to a single photograph and not to filming which would have a more serious impact on the administration of justice than the taking of a still photograph. Obviously when the Act was passed in 1925, video cameras were not in contemplation. However, we have no

doubt that the section should be applied in a way which takes into account the modern developments in photography. Accordingly we have come to the conclusion that a filming which took place at the court contravened s41. The conduct was therefore unlawful notwithstanding the consents which were obtained by the police which were the consents that they thought were necessary.

26. The applicants also relied upon the Police Act 1997 Part 3 . We do not need to deal with this submission because of our conclusion as to the 1925 Act. However, we have real reservations as to whether Part 3 has any application to a situation of this sort.

27. Reliance was also placed upon the Code of Practice for the identification of persons by police officers (Code D). Paragraph D4.1 commences by indicating that “the photograph of a person who has been arrested may be taken at a police station only with his written consent or if 4.2 applies”. No such consent was obtained here with regard to the filming at the court. D4.2 provides that:

(iv) “The photograph of a person who has been arrested may be taken without consent if:

an officer of at least the rank of superintendent authorises it, having reasonable ground for suspecting the involvement of the person in a criminal offence and where there is identification evidence in relation to that offence.

28. The prosecution submits that the necessary authority was obtained to comply with this part of para D4.2. The evidence that this is the position was not entirely satisfactory but this was partly due to the way the case was conducted on behalf of the defendants. The position could have been investigated but it was not. However, if there was any defect in relation to the compliance with the Code, it would be of a technical nature, the defendants would not have been prejudiced and we agree with the judge that there was no unfairness involved. That leaves the reliance on the Human Rights Act .

29. Article 8 of the Convention provides a “right to respect for private and family life”. The terms of Article 8 are as follows:

“1. Everyone has the right to respect for his private and family life, his home and his correspondence.

2. There shall be no interference by a public authority with the exercise of this right except such as in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for protection of the rights and freedoms of others.”

30. It was argued on behalf of the applicants that to film the Loveridge applicants as happened here was an infringement of Article 8. Although the court is a public place, where these applicants were photographed was part of the building where members of the public do not have access. It has always been the position at common law, that a prisoner retains all his rights as a citizen other than those which are inconsistent with his status as a prisoner. The position is no different with regard to someone who is in custody awaiting trial. Quite apart from the provisions of the 1925 Act, we are of the opinion that it is not desirable for filming to take place within the precinct of a court for the purposes of assisting their prosecution. As was submitted on the applicant’s behalf, a court should be a building to which those who have been or may be charged can attend without concerns as to activities of this nature. Even in the absence of authority, we would therefore readily conclude that the conduct complained of infringed Article 8 (1) . And note that, in any event, secret filming in a place to which the public has free access can amount to an infringement even where there is no private element to the events filmed. Secret filming is considered objectionable, because it is not open to those who are the subject of the filming to take any action to prevent it: R v Broadcasting Standards Commission ex. p. BBC, CA, 6 April 2000 .

31. In *Murray v United Kingdom [1995] 19EHRR193* the European Court was concerned with a person who was photographed when in custody. The government did not contest that what occurred, which was not confined to the photography, interfered with the applicant’s exercise of their right to respect for their private and family life.

32. However, Article 8(2) provides an exception where the interference is for the prevention of disorder or crime. However, it is a requirement of Article 8(2) that the interference shall be “in accordance with the law”. (See *Murray* at P233 and *Khan v United Kingdom [12 May 2000]* application no. 35394/97 .) From the point of view of the prosecution the requirement that the interference shall be in accordance with the law creates difficulties. As we have already pointed out, the filming was contrary to law. We therefore have no hesitation in coming to the conclusion that in the circumstances of this case there has been a breach of Article 8.

33. However, so far as the outcome of this appeal is concerned, the breach of Article 8 is only relevant if it interferes with the

right of the applicants to a fair hearing. Giving full weight to the breach of the Convention, we are satisfied that the contravention of Article 8 did not interfere with the fairness of the hearing. The judge was entitled to rule as he did. The position is the same so far as s78 of the Police and Criminal Evidence Act 1984 is concerned. We would here refer to the judgement of Lord Justice Swinton Thomas in the case of *The Queen v Perry* [3 April 2000] no. 99/2968/Y2 (unreported) .

34. The only other arguments which it is necessary to consider are in relation to the summing up of the judge. It is submitted that this was a case where a *Turnbull* style direction was required. (See *R v Turnbull & Others* [1977] QB224 . This is not a case where *Turnbull* can be applied directly but only by analogy. The identification was being made from film with the assistance of expert evidence though it is probable that the jury would also rely on their own examination of the CCTV footage.

35. Although not precisely in *Turnbull* terms, we consider that the directions which the judge did give to the jury were perfectly satisfactory both as to the evidence of the experts and the need for warning about mistakes as to identity (see pages 48–56 of the transcript). In coming to this conclusion we have in mind judgments of this court in *R v Dodson & Williams* [1984] 79CRAPPR220 and in *Taylor v The Chief Constable of Cheshire* [1987] 1 ALL ER 225 . The judge did express a need for care as indicated in *R v Murphy & Another* [1990] NI 306 .

36. Finally, on behalf of William Loveridge, complaint is made that the judge commented on the failure of William Loveridge to tell the whole of his story to the police. The judge was permitting the jury to draw an adverse inference from a failure to mention facts under s34 Criminal Justice and Public Order Act 1994 . We have examined the summing-up to see whether what the judge said was deficient in this respect. Some judges would have given a more detailed direction as to the caution which must be exercised before taking this comment into account, however, what the judge said was perfectly adequate.

37. The position is one where collectively the evidence of the involvement of each of the applicants is overwhelming. We are satisfied the trial was perfectly fair and the convictions are not in any way unsafe. While we give leave to appeal, we dismiss all three appeals against conviction.

MR JUSTICE DOUGLAS BROWN:

I agree.

MR JUSTICE ASTILL

I also agree.