

IN THE COURT OF APPEAL  
CRIMINAL DIVISION  
[2023] EWCA CRIM 1183



No. 202202110 B5

Royal Courts of Justice

Wednesday, 13 September 2023

Before:

LADY JUSTICE SIMLER  
MRS JUSTICE MAY  
MR JUSTICE CHAMBERLAIN

REX  
V  
SAMUEL CHANNELL

---

Computer-aided Transcript prepared from the Stenographic Notes of  
Opus 2 International Ltd.

Official Court Reporters and Audio Transcribers  
5 New Street Square, London, EC4A 3BF  
Tel: 020 7831 5627 Fax: 020 7831 7737  
CACD.ACO@opus2.digital

---

MR N. J. GAMMON appeared on behalf of the Appellant.

---

**J U D G M E N T**

## **LADY JUSTICE SIMLER:**

### Introduction

1 The applicant seeks to renew his application for leave to appeal against conviction following refusal by the single judge. He was convicted on 8 June 2022 in the Crown Court at Southampton (sitting at Winchester) before Mr Recorder Sawyer and a jury, of an offence of robbery contrary to section 8(1) of the Theft Act 1968. He was sentenced on 22 July 2022 for that offence to an immediate sentence of imprisonment of three years. There was a co-accused who had pleaded guilty to the same robbery offence and was sentenced to 27 months' imprisonment for that offence.

2 The renewed application is based on the principal ground that the trial judge was wrong to refuse to adjourn the trial in order to enable him to adduce expert facial mapping evidence in order to challenge the visual identification evidence placing him at the scene of the robbery. In addition, the applicant seeks to adduce fresh evidence said to consist of close-up photographs of the perpetrator's hand produced from CCTV footage at the scene of the robbery. It is said that this does not depict the applicant's own hand and, in particular, the applicant has said:

"You can see the perpetrator's veins very clearly. I have consulted various doctors who say a person's veins are unique to them only. I wouldn't be appealing if I had done this, let alone trying again. Our hands and veins are clearly different."

### The facts

3 The robbery occurred on 20 December 2021 at around 9.30 in the evening at a shop called One Stop on Peartree Avenue in Southampton. There were two members of staff, Ms Renshaw and Mr Coleman, who were working behind the till at a time when two men entered the shop using the main customer entrance. The first man (male one) instructed Mr Coleman to lock the shop door if he did not want anything to happen. Mr Coleman

initially thought this was a security check, but realising it was a robbery, locked the door as instructed. Ms Renshaw tried to activate the alarm, but was unable to do so. Male two started to shout and tried to climb on some of the products that were next to the tills. Mr Coleman then opened the door to the till area in order to let male two gain entry. Male two then asked both shop assistants to come out from behind the till so that he could go behind it and access cigarettes, which he did. He placed the cigarettes into a basket. Male one instructed Mr Coleman to open the till. This was done and male one removed the cash and change from inside that till. In addition to the cigarettes and the cash from the till, both men took bottles of alcohol from behind the till area and then asked to be let out and Mr Coleman unlocked the door and they left.

4 That having been done, Mr Coleman activated the alarm and contacted his manager. It is thought that the men took over £1,000 worth of cigarettes and around £50 worth alcohol.

5 Both witnesses described male two as wearing tights on his head. He was described by Mr Coleman as taller than male one, white, in his 30s and younger than male one. He was wearing a bright red matte-coloured Nike tracksuit with a white Nike tick on the back. He had tights covering his face and was wearing a glove on one hand.

6 By virtue of his guilty plea, there was no dispute that male one was David Michael Ralph.

7 Later on 20 December, police officers who attended the shop seized closed circuit television which covered both parts of the inside and outside areas of the premises. The officers, Charman and Kemp, later identified the applicant from still images taken from the CCTV footage and the applicant was arrested on 26 December 2021, on suspicion of having taken part in that robbery. He was taken to Southampton Central Police Station where he was photographed. Attempts were made to interview him, but his disruptive behaviour meant that the interview was terminated.

- 8 The prosecution case was that male two was the applicant and that he together with David Michael Ralph committed the robbery.
- 9 Both members of staff, Mr Coleman and Ms Renshaw, gave evidence about what they saw on 20 December 2021. There was also evidence from PC Charman confirming his 17 years' experience of policing in Southampton and, more particularly, the fact that on 21 December 2021, when in the office, he was looking at files for the jobs that had come in overnight and saw a number of images. He recognised these as the applicant and David Michael Ralph. He described the circumstances in which and for how long he had known the applicant and he also confirmed that he did not identify Aaron Folan, the man suggested by the applicant to have been responsible for the robbery from the images, explaining how Mr Follan's appearance differed from the applicant's.
- 10 There was evidence from the Police Community Support Officer Jack Kemp who also saw the still photograph from the CCTV, referred to as HAOSO2 at trial, and recognised the applicant from the local homeless community. He too described the circumstances and the period of time in which he had known the applicant.
- 11 The officer in the case, Trainee Detective Constable Rachel Evans, gave evidence. She described the fact that there had been delays in setting up an identification parade as a result of Covid together with various other difficulties and that by the time a parade could be set up, Mr Coleman was unsure if he could remember the robber and it was decided not to hold an ID parade after all.
- 12 Apart from the identification evidence to which we have just referred, there was no other evidence linking the applicant to the robbery and although there was the recovery of one fingerprint from the shop suitable for comparison with the police database, that fingerprint did not match either the applicant or David Michael Ralph.

- 13 The applicant was represented at trial by solicitors Gammon Piercy and Gaiger and his advocate was Nicholas J Gammon, who appears on his behalf today.
- 14 His case was that he was not present at the robbery and that it was not him depicted on the CCTV. He described his own clothes and these were not the clothes identified on the CCTV, which he said he did not own and had never worn. He said that at the time of the robbery he would have been at his home address sleeping on the floor and disputed the evidence of PC Charman and PCSO Kemp about the level of interaction that they had with him. He suggested that Aaron Folan, a known associate of David Michael Ralph, looked like the man in the CCTV and explained that he had never met David Michael Ralph until they were at court together charged with this robbery.
- 15 Before the trial a facial recognition expert was instructed on behalf of the applicant. This was done before stage two of the directions, which concluded on 29 April 2022. However, by a week before the trial no report was forthcoming and, accordingly, Mr Gammon wrote to the court indicating that a facial mapping report was awaited. No specific application was made to adjourn the trial at that stage and the matter was left to be addressed by the trial judge.
- 16 On the first day of the trial an application to vacate was made by Mr Gammon. It was agreed that custody time limits applied and would need to be extended if the application was successful. The judge carefully considered the application. He concluded that the case involved a straightforward issue of visual identification from CCTV consisting of a number of clips of what was a three-minute incident and a still photograph from that CCTV. In addition, there was a custody photograph of the applicant taken close to the time of the robbery on 26 December 2021. The judge commented that the material all appeared to be of good quality. He observed that the complainant had attended court and was ready to give evidence and also that there was a co-defendant awaiting sentence, although that was a matter of less importance because custody was a likely sentence for him in any event.

Weighing all matters in the balance, and particularly the fact that this was a relatively straightforward issue of visual identification by a jury from CCTV and stills, he concluded that it would not be in the interests of justice to adjourn the case. The case accordingly proceeded to trial.

The application

17 The grounds of appeal contend that the judge was in error in refusing to vacate the trial and should have done so in order to enable the defence to obtain facial mapping expert evidence so that the identification evidence could be challenged. In addition, there is what purports to be fresh evidence consisting of a close-up photograph of the perpetrator's hand adduced from the CCTV footage, purporting to show distinctive characteristics of the perpetrator's hand, which it is said does not belong to the applicant.

18 A statement made by Mr Gammon is also relied on as part of the fresh evidence and it states that when the jury was in retirement Mr Gammon reviewed the CCTV with the applicant and noted that the applicant had a vein pattern and distinctive scar tissue on his hand which was not on the hand of the person shown in the CCTV committing the robbery. Mr Gammon exhibited the still image of the robber's hand taken from the CCTV, but there was, we observe, no photograph exhibited of the applicant's hand for comparison purposes. Moreover, the close examination of a hand and vein patterns or scars on a hand, as dealt with in Mr Gammon's witness statement, is opinion evidence, as he accepts. Whilst evidence from a suitably qualified expert with relevant expertise, such as a facial mapping expert, can include admissible opinion evidence, Mr Gammon is not such an expert. Furthermore, it is accepted that this was not an issue raised before or during the trial and was not even raised whilst the jury was in retirement.

19 Having considered the material, we are not satisfied that the evidence falls within the terms of section 23 of the Criminal Appeal Act 1968. The evidence would not have been

admissible evidence at trial and does not therefore afford any ground for allowing the appeal. Furthermore, we have not been provided with any reasonable explanation for the failure to adduce the evidence during the course of the trial or, at the very least, to have raised it as an issue at an appropriate point.

20 So far as the refusal to vacate is concerned, like the single judge, we are satisfied that the judge considered this application with care. He explained clearly why, on balance, the interests of justice did not require expert evidence in this case. In addition to being able to consider the identification evidence of the police witnesses and the applicant's own evidence, he was satisfied that the jury would be able to look at what was good quality CCTV evidence, as well as the custody photograph taken close to the time, and make up their own minds about whether the person in the recorded images was the applicant. This was a relatively straightforward issue of visual identification by a jury from CCTV footage. We consider the judge was both entitled and right to conclude expert evidence would add little. It was for the judge to weigh these considerations and we observe that as well as those considerations that he expressly identified, at the time of this application, there was no indication of whether a report would in fact be forthcoming or when such a report would be forthcoming. Mr Gammon frankly accepted that no report was ever forthcoming and none has even now been produced.

21 In these circumstances we are satisfied that the decision reached by the judge was well within the range of decisions properly and fairly open to him for the reasons he gave. Visual identification evidence relied on by the prosecution in this case was admissible evidence. It was properly presented to the jury and there was no arguable error in this regard. Moreover, the judge summed up the identification evidence for the jury fully, carefully and fairly. He gave the jury clear directions on how to approach that evidence. Those directions have not been challenged, nor could they be. It was for the jury to decide in accordance with those directions whether or not there was, on the evidence, any room for doubt about the

applicant's identification as the perpetrator of this robbery. From their verdict it is clear that they had no such doubts.

- 22 For all these reasons, the conviction is not arguably unsafe and we therefore refuse this application.

---



**CERTIFICATE**

Opus 2 International Limited hereby certifies that the above is an accurate and complete record of the Judgment or part thereof.

*Transcribed by **Opus 2 International Limited**  
Official Court Reporters and Audio Transcribers  
5 New Street Square, London, EC4A 3BF  
Tel: 020 7831 5627 Fax: 020 7831 7737  
CACD.ACO@opus2.digital*

This transcript is subject to the Judge's approval.