

Neutral Citation No: [2026] NICC 22

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*Judgment: approved by the court for handing down
(subject to editorial corrections)**

ICOS No: 22/77429

Delivered: 22/10/2026

IN THE CROWN COURT OF NORTHERN IRELAND
SITTING AT DUNGANNON

THE KING

v

JOHN JOSEPH MYLES CONNORS

McGARRITY HHJ

Introduction

[1] The defendant is charged with one count of burglary contrary to section 9(1)(a) of the Theft Act (Northern Ireland) 1969. The particulars of the offence allege the burglary, with intent to steal, of Woolstore Nursery on 1 December 2024.

[2] The trial has proceeded with the prosecution adducing evidence in relation to the identification of the defendant. Reliance is placed on CCTV footage from the nursery and recognition evidence from a police officer who avers that he can identify the defendant from the CCTV footage. The prosecution case depends substantially upon the correctness of the identification. The prosecution evidence is now complete. The defendant disputes participation in the burglary. The defence contends that the quality of the identification evidence is so weak that the case ought to be withdrawn from the jury. It is also submitted that the evidence does not disclose a case to answer.

The evidence

[3] There is no issue that a burglary of the nursery occurred on 1 December 2024. A window was smashed and at least four men entered the building through the window. An office was ransacked and further property was damaged. The burglary caused considerable upset and inconvenience to those who work at and make use of the nursery.

[4] Police investigated and CCTV footage was seized. Forensic science examinations yielded nothing of value. The defendant was arrested and interviewed

by police under caution. He denied committing the offence. When charged he replied "I am not the person in the photo. I am being stitched up. No one could identify anyone from that photo."

[5] The exhibited CCTV footage shows the interior of the relevant office. It is 20 seconds long. It begins with black and white moving images lasting four seconds, during which little of value may be discerned. The remaining footage is in colour. Four persons are visible for differing periods. All persons are masked. The man who is identified as the defendant is visible for some seven seconds in total. For a period of no longer than four seconds, parts of this man's face may be observed. His eyes are partially visible but obscured as they are subject to considerable shadowing. Part of his nose, which is illuminated from a light above, is visible. Some of his cheeks and part of one ear are visible. Clothing worn by the man renders most of his head and all of his forehead, eyebrows, lips, mouth, chin and neck hidden from view.

[6] Constable Nesbitt gave oral evidence. He is an experienced police officer. The CCTV footage was made available to him and other police officers through a briefing document. He viewed the CCTV footage when in his office on 9 December 2024. He does not recall how many times he watched the CCTV footage or for how long. He recognised the defendant by his visual appearance. As part of his duties, he has attended at the defendant's home on up to 30 occasions. He did so when making enquiries about other persons but has spoken with the defendant on more than one occasion. The defendant has a large extended family.

[7] Constable Nesbitt alerted others to his identification of the defendant and was invited to participate in a controlled identification procedure on 17 December 2024. He attended the controlled identification procedure already satisfied and confident in his identification of the defendant. He named the defendant during the controlled identification procedure.

[8] It is apparent that Constable Nesbitt may have had opportunity to view the CCTV footage in a way that enhanced his viewing experience. The evidence on this matter is not clear. Not only was he able to more readily pause the video and watch it "frame by frame", but he could alter the speed at which the video was played and enlarge the picture. This facility was not made available to the participants at trial. The prosecution have simply adduced the exhibited CCTV footage by having it played at normal speed and paused where required.

[9] The CCTV footage was played during Constable Nesbitt's oral evidence. He identified the defendant as a man shown at some 12 seconds into the CCTV footage. He averred that he was able to recognise the defendant's eyes and nose. The nose was said to exhibit scarring or blemishes, potentially from acne, consistent with his recollection of the defendant's appearance. Constable Nesbitt considers himself to be "very good with faces". This is his opinion. He is not an expert. He has no concern at all about his identification of the defendant.

[10] Constable Nesbitt was briefed by the officer who oversaw the controlled identification procedure and provided with written guidance. He was required to complete a record of his observations. The guidance sought inclusion of as much detail as possible as to how he identified the suspect and recording of what it is that triggered any recognition. The information Constable Nesbitt recorded in this respect was limited to the defendant's name, a description of clothing worn by the man said to be the defendant and how long he has known the defendant.

[11] Constable Nesbitt did not make a written record detailing what enabled him to identify the defendant. He made no recorded reference to physical description, characteristic, mark or distinguishing feature. No record was made of an ability to recognise the defendant by his eyes or nose, or as a consequence of scarring or blemishes. This information does not appear in any statement of evidence. The first time Constable Nesbitt made any reference to this as the reason that he could identify the defendant was in oral evidence. Constable Nesbitt averred that he provided sufficient detail in his record of the identification. His integrity was not impugned.

[12] There is no other prosecution evidence in the case.

Relevant legal principles

[13] Identification is a special category of evidence, and it may, in some circumstances, be unsafe to leave a case to the jury however properly they are directed.

[14] The *Turnbull* [1977] QB 224 guidelines of the English Court of Appeal have been adopted in this jurisdiction: *Maguire* [1977] 4 NIJB 1.

[15] Lord Widgery CJ laid down in *Turnbull* the principle governing the duties of the trial judge in cases where the prosecution relies on evidence of identification. At pages 228-230 it is stated:

“If the quality [of the evidence] 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. In our judgment, when the quality is good ... the jury can 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. ... 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 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.”

[16] In *Daley v R* [1993] 4 All ER 86 at 94, Lord Mustill, in delivering the judgment of the Privy Council, stated:

“[I]n the kind of identification case dealt with by *R v Turnbull* the case is withdrawn from the jury not because the judge considers that the witness is lying, but because the evidence even if taken to be honest has a base which is so slender that it is unreliable and therefore not sufficient to found a conviction: and indeed, as *R v Turnbull* itself emphasised, the fact that an honest witness may be mistaken on identification is a particular source of risk. When assessing the ‘quality’ of the evidence, under the *Turnbull* doctrine, the jury is protected from acting upon the type of evidence which, even if believed, experience has shown to be a possible source of injustice.”

[17] The editors of Blackstone’s Criminal Practice (2026) at F19.18, citing *Yasen* [2025] EWCA Crim 452, a case where there was a positive identification at VIPER procedure (which was not itself criticised) and where circumstantial evidence supported that identification, suggest that it is not in all cases that significant weaknesses in the evidence will mean that the trial should be stopped. Strengths in the case or supporting evidence may justify the issue being left to the jury with appropriate directions.

[18] The issue arises as to whether an application for a direction in an identification case should be considered under *Turnbull* guidelines, or under *R v Galbraith* (1981) 73 Cr Rep App 124, or both. In *R v Fergus* (1994) 98 Cr App Rep 313 Steyn LJ stated at page 318:

“... it is important to note that the trial judge’s duty to withdraw the case from the jury in an identification case is wider than the general duty of a trial judge in respect of a submission of no case to answer as enunciated in *Galbraith* (1981) 73 Cr App R 124.”

[19] The editors of Blackstone’s Criminal Practice (2026) at D16.59 suggest that the obligation of the trial judge to uphold a submission if the identifying evidence is poor and there is no supporting evidence may be regarded as the clearest example of the application of the second limb of the *Galbraith* test. At F19.18 it is stated that the

court must not merely apply the principles set out in *Galbraith*, but, following *Richardson* [2012] EWCA Crim 639, “an acute combination of *Galbraith* and *Turnbull*.”

Submissions of defence counsel

[20] The defence advances grounds in support of the submissions that the quality of the identification evidence is so weak that the case ought to be withdrawn from the jury and that the evidence does not disclose a case to answer that may be summarised as follows:

- (i) The ability of any person, even one who knows the defendant well, to identify him from the CCTV footage must be doubted owing to the inadequacies of the CCTV footage. The identification by Constable Nesbitt is unsatisfactory as a consequence of deficiencies in the underlying material.
- (ii) It is inexplicable that Constable Nesbitt would decline to do what was required of him and make a record of how he was able to identify the defendant. The absence of reference to what gives rise to the ability to recognise the defendant, knowledge of his eyes and nose, and scarring or blemishes thereon, in a record is inconsistent with Constable Nesbitt’s oral evidence.
- (iii) The defendant suffers disadvantage, albeit unquantifiable, in appropriately testing Constable Nesbitt’s evidence where his identification may rest on a purportedly enriched view of the CCTV footage. Any additional material relied upon by Constable Nesbitt is unavailable to the defendant. The jury is also denied this. The uncertainties in respect to this aspect of the identification undermines the reliability of the identification evidence.
- (iv) The identification evidence is unsupported.

Submissions of prosecution counsel

[21] The prosecution have explained how and why the identification evidence could properly be left to the jury. Constable Nesbitt identified the defendant from the CCTV footage exhibited and played at trial. There is no breach of Code D in this case. There is no substance to any complaint of deficiency in the Constable’s record keeping. It is submitted that Constable Nesbitt gave a reasoned explanation for his identification of the defendant. It is conceded that someone who does not know the defendant might struggle to make an identification from the CCTV footage, but the witness, an experienced police officer, recognises the defendant. He has had extensive dealings with the defendant, knows him well and is, as a consequence, best positioned to be able to recognise him. His honesty and integrity were not challenged. Notwithstanding possible infirmities with the CCTV footage and a lack of supporting evidence, the recognition evidence has significant cogency. The prosecution case is not a weak one. With appropriate warnings, assessment of the

quality of the evidence should properly be left to the jury. The defence applications are thus, it is argued, without merit.

Consideration

[22] There are a number of features in the exhibited CCTV footage that substantially weaken its value. The relevant portion of the footage is brief in duration. The burglar's face is largely shielded from view with most of his face obscured entirely. Only a partial view of some facial features is available. Parts of the eyes, nose, cheeks and an ear are visible. The resolution of the CCTV footage and lighting conditions do not provide for detailed or sharp depictions of the facial features. Shadowing reduces visibility of the images considerably. The CCTV footage is, I consider, insufficiently clear for the jury to reliably compare it with the appearance of the defendant in the dock.

[23] The inherent weaknesses in the nature and clarity of the CCTV footage must present limitations and hamper the capacity for identification of the burglar. The shortcomings in the underlying real evidence militate against a reliable identification. Analogy might be drawn with evidence of identification where the ability of the identifier to make a proper identification in circumscribed conditions arises. There is a need for anxious examination of Constable Nesbitt's recognition evidence in the circumstances: *Black and Smyth* [2008] NICA 4.

[24] I note the opportunity, time and place for Constable Nesbitt's viewing of the CCTV footage. He identified the defendant at a controlled identification procedure. I do not consider the fact that he attended the controlled identification procedure already satisfied and confident that the defendant was responsible for the burglary to undermine the reliability of the procedure. I give weight to the appreciable knowledge Constable Nesbitt has acquired of the defendant from his previous dealings with him.

[25] I acknowledge the potentially greater reliability of identification by a police officer, who by virtue of training and experience may be more observant than other witnesses or better at noticing features or details of significance. I have considered paragraph 14-24 of Archbold, *Criminal Pleading Evidence & Practice* (2027) where the editors cite authority for this approach.

[26] I accept that Constable Nesbitt has a genuinely felt conviction in the correctness of his identification. I remind myself that particular caution is required because of the tendency of some honest witnesses to feel certain that they have correctly identified an individual. Identification based on recognition does not render the guidelines in *Turnbull* inapplicable.

[27] There is a material deficiency in Constable Nesbitt's recording of how he identified the defendant. He omitted from his record and statement of evidence any description of the defendant's person. He never recorded the distinguishing features

he avers allowed him to conclude that the defendant was depicted on the CCTV footage. I consider the explanation for this discrepancy to be inadequate and unconvincing. This is a matter of some significance because the Constable's averments were made to explain the identification in circumstances where the reliability of the CCTV footage is doubted.

[28] I give Constable Nesbitt's evidence the greatest weight that any reasonable jury could give to it. I have evaluated the cumulative effect of the inherent weaknesses in the CCTV footage and frailties in the identification evidence. I do not consider the CCTV footage to be of sufficient quality to support recognition, notwithstanding Constable Nesbitt's familiarity with the defendant through prior interactions. The combination of the factors identified causes me to conclude that the quality of the CCTV footage and visual identification evidence adduced by the prosecution is poor. I note the absence of other strands of evidence supporting the correctness of the identification evidence or pointing to the defendant's involvement in the offence.

Conclusion

[29] I am satisfied that the quality of the identification evidence is poor. There is no supporting evidence capable of justifying leaving the case to the jury. I consider the evidence to be insufficient to found a conviction. Whilst acutely conscious that it is important that the judge does not usurp the province of the jury, my analysis of the deficiencies in the evidence means that I am bound to withdraw the case from the jury and direct an acquittal.