

R v Moss [2011] EWCA Crim 252

Moss was arrested for burglary and his photograph was taken. CCTV had shown two or possibly three men breaking into a shop and stealing a large quantity of cigarettes. In interview Moss made no comment. He claimed in a written statement that he had been at home all day. One of his co-accused pleaded guilty to the burglary.

The prosecution relied on the evidence of a police officer who was off duty but had gone into the police station to check his emails. Whilst doing so he saw an image from the CCTV footage relating to the burglary and had identified Moss as a person he knew. The officer reported the recognition to his supervisor and he gave a description of his previous contact with Moss. Although he did not make a record of the matter at the time, he made a note of it in his notebook when he returned to work a week later.

The defence sought to exclude the officers evidence under section 78 of the Police and Criminal Evidence Act 1984. The application was dismissed. Moss was convicted.

In his appeal, Moss claimed the judge had been wrong to admit the officers evidence, and that he should not have left the case to the jury because the identification evidence was too weak.

Held - Appeal dismissed. Conviction upheld.

The evidence from the officer was admissible to prove that the person captured on the CCTV film was Moss, provided there was evidence on which an identification by recognition could be based (ie that it was not an unsupported assertion) and provided the jury were given proper directions in the summing-up. The police should keep a good record of the procedure and the circumstances under which a recognition is made so that there is evidence to enable the jury to assess the reliability of the evidence of recognition, in whatever way it is provided,

The judge was right to allow the evidence to be given and he had directed the jury correctly in relation to it. The conviction was safe and the appeal was duly dismissed.

*The interpretation and comments made within this document are not to be considered as legal advice.
Reference should always be made to the original case.*