Neutral Citation Number: [2020] EWCA Crim 901

Case No: 201901185 C3

IN THE COURT OF APPEAL (CRIMINAL DIVISION)
ON APPEAL FROM THE CROWN COURT AT WARRINGTON
His Honour Judge Berkson
T20167301

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 15 July 2020

Before:

THE LORD CHIEF JUSTICE OF ENGLAND AND WALES
THE RT HON. LORD BURNETT OF MALDON

THE HON. MR JUSTICE SPENCER
and
THE HON. MR JUSTICE MURRAY

- -

Between:

MARK BRADDOCK	**Appellant**
- and -	
THE QUEEN	**Respondent**

- -
- -

Mr John Lucas (instructed by **Caveat Solicitors**) for the **Appellant**
Mr James Coutts (instructed by the **Crown Prosecution Service**) for the **Respondent**

Hearing date: 24 June 2020

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Approved Judgment

The Lord Burnett of Maldon CJ:

1. The issue in this appeal is whether the conviction of Mark Braddock at the Crown Court at Warrington on 15 September 2017 for causing grievous bodily harm with intent, contrary to section 18 Offences Against the Person Act 1861, is unsafe as a result of evidence wrongly admitted at his trial. He appeals with leave of the full court with the necessary extension of time.

2. The appellant was acquitted of theft arising out of the same circumstances as the section 18 count. He was sentenced to twelve years' imprisonment.

3. The principal issue at trial was identification or, more accurately, recognition.

4. Evidence was adduced in error at the trial as part of the agreed facts. The evidence was that a green combat jacket with a lock knife in one of its pockets, and a grey coat with orange trim, had been found by the police at the appellant's home address. These clothes fitted the description by the victim of the attack, Richard Chadwick, of what his two assailants were wearing. This was wrong because those items had been found at the address of a different person who was not charged. The evidence was used by the prosecution to support the identification of the appellant as one of two assailants. The appellant was cross-examined on the evidence, it was relied on by the prosecution in its closing speech as supporting the identification and the judge referred to it in his summing up as capable of supporting the identification.

The circumstances of the offence

5. On the night of 17/18 September 2016 about 01:30 Mr Chadwick was asleep at home in the living room of his flat, having dropped off whilst watching the television. Two men entered through a bedroom window, one armed with a baseball bat and the other with a "knuckleduster type" knife. The men set about Mr Chadwick, the attack lasting about two minutes. He collapsed on his doorstep. A neighbour heard noise and investigated; he alerted the emergency services. When the police arrived, Mr Chadwick told them that two men had attacked him and that he had recognised one of them as the appellant, albeit that he was wearing a ski mask or hood and scarf to conceal his face. He also told them that, before leaving, the intruders took approximately £620 in cash that had been lying on the breakfast bar in his flat with the appellant saying, "grab the cash". That was the count of theft, on which the appellant was acquitted by the jury.

6. Mr Chadwick was taken to Macclesfield District General Hospital, where he was found to have suffered serious injuries, including multiple deep lacerations to his head, a fractured skull and a fractured finger. He was later found to have a ruptured spleen.

7. The prosecution alleged that the appellant was the man with the baseball bat. We will refer to him as the "first assailant". He inflicted serious injuries on Mr Chadwick as part of a joint enterprise with the other male, the "second assailant", who was not subsequently identified. The use of weapons showed their intent to cause the really serious harm. The motive for the offence was said to be a disagreement between the

appellant and Mr Chadwick regarding the harassment by the appellant of Kim Holloway, who was an ex-girlfriend of the appellant's but currently in a relationship with Mr Chadwick. There had been a meeting between Mr Chadwick and the appellant earlier in the year (although the appellant denied ever having met him).

8. The prosecution relied on:

i) Mr Chadwick's evidence that (a) he recognised the appellant as the first assailant; (b) he spoke the appellant's name aloud when the attackers first entered the flat; (c) he named the appellant as one of his attackers to the police officers who attended at his flat in the immediate aftermath of the attack; (d) the appellant knew where he lived; and (e) the appellant had a motive for the attack and his description of what his assailants were wearing;

ii) Ms Holloway's evidence of the appellant's motive for the attack and a previous meeting between the appellant and Mr Chadwick that was close in time to this attack and said to be the catalyst;

iii) Mr Chadwick's subsequent identification of the appellant as the first assailant at a police VIPER procedure on 4 October 2016, the procedure having been conducted with the participants' faces partially covered;

iv) the evidence of Mr David Trembath (the neighbour, who had found Mr Chadwick collapsed on his doorstep and had alerted the emergency services) that he had seen two men exiting through a rear window of the flat;

v) the evidence that is now accepted to have been false, namely, that a green combat jacket, lock knife and grey coat with orange trim had been found at the appellant's home address;

vi) evidence that the appellant had an injury to his hand on the date of his arrest and interview on 19 September, demonstrating that he had been involved in the attack; and

vii) the fact that the appellant had failed to give full details of his alibi evidence to the police, which was said to demonstrate his guilt and support Mr Chadwick's identification evidence.

9. The defence was one of alibi. When interviewed the appellant said that he was elsewhere with a married woman but would not name her or another person who he suggested could support the alibi. His defence case statement maintained the alibi but was again coy about naming those who might support it. In advance of his giving evidence, the appellant did identify the witnesses to his solicitors (their details were given to the prosecution at the last moment) and he named them in his evidence. He explained that he had not named them earlier because he did not want to cause trouble for the married woman. He hoped it would not be necessary to involve her or her friend. Both came to court but were not called to give evidence, a course agreed by the appellant and endorsed by him in writing, because they were not able to assist. The appellant's account was that he was not at Mr Chadwick's flat and had been mistakenly identified as the first assailant.

10. The appellant also relied on inconsistencies in the accounts given by Mr Chadwick about the attack, including how much light there had been and the sources of light, as well as how much of the first assailant's face he had seen and the nature of the face covering. Lighting was an important issue given that the attack occurred in the early hours. Mr Chadwick's account started with just the television giving light but expanded to including under counter lights in the kitchen part of his living room and some light coming in from streetlamps outside. There were variations in the description of the face covering worn by the first assailant. Mr Chadwick had also changed his account of having caused injury to the appellant's face (there was no injury). The appellant relied on the lack of any DNA, forensic or cell-site evidence linking him to the attack.

11. In his summing up, the judge identified the principal issues as being, in relation to the section 18 offence, whether the jury could be sure that the appellant had been correctly identified as one of the attackers and in relation to the theft, whether the appellant had been involved in stealing the money, in particular whether he had said what was attributed to the first assailant.

The false agreed facts

12. Paragraph 9 of the agreed facts put before the jury read as follows:

> "On Sunday 25th September 2016 DC Oldfield was one of a number of officers who attended at the defendant's home address. He had already been arrested. They searched the house and recovered:-
>
> a. Green combat jacket hung up in the hallway (DRO/1).
>
> b. A lock knife found in the pocket of DRO/1.
>
> c. A grey coat with orange trim found in the cupboard in the hallway (DRO/5)."

13. In preparing the agreed facts in paragraph 9, prosecuting counsel, Mr Coutts, relied on a witness statement of DC David Oldfield dated 25 September 2016. It is a short witness statement of three paragraphs. The first paragraph simply confirms the officer's name, rank, number, and then current assignment. The second paragraph confirms details of the police interview with the appellant on 20 September 2016 at the East Cheshire Custody facility, which DC Oldfield conducted with another police officer. The third paragraph, which is redacted, read as follows:

> "At 09:50hrs on Sunday 25th SEPTEMBER 2016; I attended at [address redacted] with other officers. At the address I was aware that the occupant [name redacted] had been arrested. I then conducted a search of the premises where I recovered the following property
>
> Pol ref DRO/1 – Green combat jacket – which was hung up in the hallway

> Pol ref DRO/2 – Lock knife – which was found in the right breast pocket of DRO/1
>
> Pol ref DRO/3 – 3 x Knives – Found in the lower compartment of hallway bench
>
> Pol ref DRO/4 – Knife in sheath – found in a rucksack in the hallway/ under stairs
>
> Pol ref DRO/5 – Grey coat with orange trim – found in cupboard in hallway
>
> All of the property was handed to DC … BIRCHALL who was acting as exhibits officer."

14. Because the second paragraph of DC Oldfield's witness statement referred to the appellant, Mr Coutts made the understandable assumption that the redacted address in the third paragraph was that of the appellant, when it was not. He drafted the agreed facts on that assumption. The same mistaken assumption was made by Mr White, who then appeared for the appellant. The redaction of addresses is common in documents produced in the Crown Court to protect the privacy of witnesses and third parties and because the address will not be of any relevance. That cannot be said of the results of a search, when the location of the items recovered is of obvious relevance. This mistake illustrates the care that needs to be exercised both by the maker of the statement and advocates.

15. Mr White discussed paragraph 9 of the draft agreed facts with his client. His recollection was that the appellant had accepted that one coat was his and had said that the other one, said to have orange on it, might have been his mother's. In evidence the appellant would describe owning a green Lambretta or Parka coat (something rather different from that described) and he may have thought that this is what was being described in the search results. The appellant also gave a reasonable excuse for having the knife. Based on those instructions, Mr White settled the agreed facts with Mr Coutts, including the mistaken facts in paragraph 9. They went before the jury. It was agreed not to refer to the other knives found in that search.

The issue in the appeal

16. The question for us is whether the conviction is unsafe (section 2(1)(a) of the Criminal Appeal Act 1968) as a result of admission and use in the trial of the false evidence which suggested that coats closely matching the description given by Mr Chadwick were found in the appellant's home, one with a knife in the pocket.

17. Mr Coutts submits that, notwithstanding the error leading to the inclusion of the inadmissible evidence, when the evidence and the case is assessed as a whole, it is clear that the conviction is safe. The main issue in the case was identification or, more accurately, recognition by Mr Chadwick of the appellant. Support for that recognition of the appellant is provided by:

    i) evidence of the appellant's motive to attack Mr Chadwick, having to do with his relationship with Ms Holloway, the appellant's former partner;

ii) Mr Chadwick's ability to recognise the appellant from having previously met him;

iii) the circumstances in which the immediate recognition occurred;

iv) the VIPER procedure during which Mr Chadwick picked out the appellant from a number of images of men whose faces were partially obscured;

v) the injury to the appellant's hand at the time of his arrest, the day after the incident; and

vi) the appellant's false alibi, on which evidence was given and tested.

Mr Coutts submits that the prosecution case was so strong that even without the evidence of the false agreed facts the jury would have been bound to convict.

18. For the appellant, Mr Lucas contends that the identification evidence of the appellant was weak and inconsistent, varying between the initial account to the police, the subsequent witness statement, and then oral evidence at trial. The only support for the identification of the appellant came from the now discredited paragraph 9 of the agreed facts. He accepts that Mr Chadwick picked out the appellant at a VIPER procedure, albeit after long deliberation. He needed to watch the video three times and then identified the appellant by saying, "the one who resembles most the person at my property was No 2". There was no other direct evidence to support the appellant's presence in the flat save that of the search. The appellant was cross-examined by Mr Coutts on this irrelevant and mistaken evidence in order to undermine the appellant's credibility. Mr Coutts relied in his closing speech on the evidence as support for the identification of the appellant. The judge referred to it in his summing up as evidence capable of supporting the identification of the appellant as the first assailant. Mr Lucas submits that the conviction is unsafe.

The potential impact of the false evidence

19. In order to assess its potential impact on the jury's deliberations, we must consider how paragraph 9 of the agreed facts was used and, on the mistaken assumption that it was true evidence, why those facts were considered relevant to the prosecution case.

20. Mr Chadwick gave his first account of what his two assailants had been wearing and the weapons they were carrying at the time of the attack to PC Ryan Ogden, who took a statement from him on the morning of 18 September 2016 at Macclesfield District General Hospital. Mr Ogden's evidence was read to the jury. He explained that Mr Chadwick described the first assailant as wearing a "green khaki bomber style jacket" and carrying a baseball bat. He described the second assailant as carrying a knife, but he could not recall what sort of coat or jacket he was wearing.

21. In his evidenceinchief at the trial, Mr Chadwick described the first assailant as wearing a "khaki-green, green-style jacket" and carrying a baseball bat. He described the second assailant as wearing "a tanny-coloured jacket with a bit of orange on it" and carrying a black "knuckleduster knife", which "wrapped over his arm". He demonstrated the length of the blade to the jury with his hands.

22. In interview the appellant told the police that he did not own or have access to any baseball bats and that he did not own and never has owned a khaki jacket. As noted at paragraph 23 of the agreed facts, no baseball bat was found during a search of the appellant's car and home.

23. During his evidenceinchief, the appellant gave the following evidence by reference to paragraph 9 of the agreed facts:

> "Q: We have heard mention in the agreed facts about a green coat that was recovered from your property; is that correct?
>
> JUDGE BERKSON: A khaki coat.
>
> MR WHITE: Sorry, yes, a khaki coat, yes.
>
> A: Yes."

24. Paragraph 9 of the agreed facts simply says "green combat jacket". The transcript continues:

> "Q: Is that yours?
>
> A: I have a green coat, it's like, it's a big coat, it's a coat, as I don't refer [inaudible] as a jacket, I refer to it as a 'Lambretta coat.'
>
> Q: How long is it? We don't have photos of it. How long is it?
>
> A: It's probably, it's probably that long.
>
> Q: So it's almost a trench coat?
>
> A: It's what the rockers and mods used to have in the sixties.
>
> JUDGE BERKSON: Like a Parka?
>
> A: Yes.
>
> JUDGE BERKSON: I was alive in the sixties!
>
> MR WHITE: I say nothing. In relation to that jacket, we've heard about a knife being found in the pocket. What can you tell us about that?
>
> A: If there was a knife found in the pocket of that coat it would be for what I use [inaudible] I strip vehicles, I break vehicles up, and what I do, I cut seat belts out [inaudible] times, and ----
>
> Q: Sorry, you cut seat belts out?

A: Seat belts out ----

Q: Yes.

A: ---- and basically I pick the engine and gearbox up with them, so if, if it was, if that was the case ----

Q: Just slow down a little bit.

JUDGE BERKSON: I am sorry, Mr White, I do not understand this expression 'if it was.' The policeman says he found a knife in the pocket of the green, or the khaki, Parka coat, as you have now described it. Are you saying there was not a knife there, or are you saying there was a knife there ----

A: No, I'm not disagreeing at all. I'm not quite sure to say it was or it wasn't, but if it was, it would be my knife I would use for that.

MR WHITE: Is ----

JUDGE BERKSON: Mr White, it is just ----

MR WHITE: Yes, I can cover that.

JUDGE BERKSON: Please do.

MR WHITE: Do you have any recollection of putting it in the coat pocket?

A: No, I don't, but if it was in there ----

Q: Well ----

A: ---- I can explain why it was in there.

Q: But is it quite possible you might have put it in there?

A: If I have, I have.

Q: Yes; and you have explained that you would use it, effectively, for when you work on cars?

JUDGE BERKSON: Cutting seat belts.

MR WHITE: Yes, cutting seat belts, yes.

A: Yeah, I cut seat belts out whilst the engine's out because they have ----

Q: Thank you.

A: ---- they have [inaudible], basically; I'll tie it round the engine, because not always you can get in with a chain."

25. Mr Coutts then cross-examined the appellant on this evidence:

"Q: One of the features of the evidence that we heard about was the fact that the person who we say is you was wearing a particular coat, khaki-green coat; yes?

A: Okay, yeah.

Q: You were asked about that coat in your interview, weren't you?

A: Yes.

Q: The police actually specifically asked you, they put the descriptions to you, and asked you about the khaki-coloured coat.

A: Okay, yes.

Q: When you were talking .... you said you do not own a khaki jacket.

A: Yeah.

Q: That's not true, is it?

A: [Inaudible] the one I've got is a Lambretta Parka coat, not a, not, not how it's described on that [inaudible].

Q: You didn't say, 'Well, actually,' to the police officers, 'there's a coat that's quite similar that I own,' or, 'there's a coat that might be described as that.'?

A: Well, I'd describe it as a jacket [inaudible]. Yes.

Q: The police officer who searched, who recovered it, described it as a 'green combat jacket' hung up in the hallway.

A: Well, I treat mine as a, as a coat, as a big coat.

Q: But you lied to the police, didn't you?

A: No, I haven't lied to the police; I wouldn't lie to the police; I have no reason to lie to the police.

Q: So it's somewhat of a coincidence that the person was seen to be wearing a green khaki coat; there is a green combat jacket found in your address.

That's just coincidence; it's another one of these coincidences ----

A: It is, it is, yeah.

Q: Yes, okay. Interestingly, the second person, so the person we say isn't you ----

A: Okay.

Q: ---- was wearing, I think it was described as a 'tan jacket with orange bits on it;' okay? Do you remember that evidence this morning?

A: I do, yes.

Q: You will also remember that when the police went to your house they seized, I accept it's described as a 'grey coat,' but a 'grey coat with orange trim' on it. I'm simply going to suggest it, but it's quite, it's quite similar, isn't it, to the description ----

A: Is it a [inaudible] coat, is it a [inaudible]?

Q: ---- 'tan.'? Just listen; are you just saying it's another coincidence that a coat with orange trim is found in your home address?

A: Well, to be honest, is it a woman's coat [inaudible]?

Q: Just answer the question.

A: If the police say they found the coat in my address [inaudible].

Q: Well, they do, and I'm just asking you, is it a coincidence that the coat that the other person is described as wearing is described as having orange trim on?

A: You say there's a coat there, yes, [inaudible].

JUDGE BERKSON: Why do you keep saying that? Are you saying there wasn't a coat there?

A: I can't recall this other coat ----

JUDGE BERKSON: Is it like the knife? Is it the same sort of situation?

A: I can't recall ----

JUDGE BERKSON: If the police say it is there, it was there, but you do not know whether it was there or not, type thing.

A: I'm not saying it's my coat; I'm not sure about it.

JUDGE BERKSON: He is not asking you whether it is your coat.

MR COUTTS: No, I'm asking you ----

A: Yes, I'll be [inaudible].

Q: It's also, as you say, in that green coat, a coincidence that a lock knife was found.

A: [Inaudible]."

26. In re-examination, there was the following short exchange between Mr White and the appellant:

"Q: Then, just quickly, in relation to the second jacket, the grey one with the orange trim, you kept asking if it was a male or a female's jacket.

A: That's right.

Q: Why have you asked that question?

A: Because my mother was there.

Q: Have you ever seen a photograph of this jacket?

A: I haven't, no; that's why I, that why I'm enquiring about it, that's why ....

Q: So you accept that the jacket was there, but you're just not sure if it's yours or your mother's?

A: Yeah; it isn't mine."

27. In his closing speech for the prosecution, Mr Coutts reminded the jury that the main issue was identification, although he said that another important strand of the case was motive, and he spent some time reviewing the strands of evidence that supported the prosecution case on motive. Returning to the "main issue" of identification, Mr Coutts reviewed for the jury Mr Chadwick's evidence, including his opportunities to observe the appellant before the attack, the circumstances of the attack, including the mask worn by the first assailant, and Mr Chadwick's identification of the appellant at the VIPER procedure, Mr Coutts submitted to the jury that they could be sure that the appellant's identification was accurate and true.

28. Mr Coutts then made the following submissions (transcript at 7G-8D):

> "There is some supporting evidence, there is not a lot of supporting corroborative evidence to go along with this identification but there is some. Two pieces of clothing, which were recovered and there was no forensics on the clothing, there was no forensics at all but there are two distinct items. A khaki coat, which the defendant denied in interview … ever having and put that down to a misunderstanding, but he was challenged about it in interview, a khaki coat. You may think ordinarily what picture that conjures up in your mind. He denied it and then lo and behold, when the police go round to his address, there was a coat that broadly matches that. There was a knife in there a [lock] knife. We know, don't we, that a knife was used by the other person, so supporting evidence, not conclusive but supporting evidence to suggest that that was the coat being worn by the defendant.
>
> The last piece of supporting evidence is the other coat. There are no photographs, we do not have it but what we do know is the description given by the prosecution witness, Mr Chadwick. He described it as a tan coat with orange markings on it, with orange stripes or an orange trim around it. We know that a coat broadly matching that description was found at the defendant's home address. A different colour, he says it was [grey], but we do know that it had orange trim. Is that another coincidence? The Crown says not."

29. In his closing speech to the jury Mr White noted that if the jacket referred to in the agreed facts was the "infamous khaki jacket" worn by the first assailant, then the police would have been expected to have found blood, other DNA or other forensic evidence linking it to the attack, but there was none. Regarding the lock knife in paragraph 9 of the agreed facts, there was apparently no DNA on it, and it was not the knife described by the complainant, which was a "black knife in knuckleduster form, so a handle in knuckleduster". Mr White also noted that the appellant had given a detailed account of how he used the lock knife in his work. So far as the other jacket was concerned, Mr White highlighted the appellant's question during re-examination as to whether it was a man's or woman's jacket because he lived with his mother and thought it might be hers. Mr White noted that no photographs of either jacket were produced for Mr Chadwick to identify. The jackets were not supporting evidence for the identification, being no more than "someone's clothing in his house". The jackets looked similar to those worn by the assailants, but it went no further than that.

30. In his summing up, the judge directed the jury that identification was the issue at the heart of the case. He gave a careful direction on the identification evidence (a *Turnbull* direction: *R v Turnbull* [1977] QB 224) reminding them of the fallibility of such evidence even when a witness appears sure and the need to consider carefully lighting, face covering and the like. He added:

> "You must look to see if there [is] any support for the identification. The fact that the defendant was identified at the procedure from that small part of the face being shown, the fact

> that the defendant has a khaki coat or jacket with a knife in it. There is also a coat with an orange trim at the address where he lives and the defendant had an injury to his hand at the time of the arrest on 19 September."

31. In summarising the appellant's evidence, the judge said:

> "He said: 'I have a green coat but I call it my 'Lambretta' coat, which goes down to my knew like a parka. If a knife was in a pocket – I am not saying the police didn't find a knife, I can't remember a knife being there – but I could have had a knife there because I use a knife in my day-to-day life because I cut up cars and I use the knife, for example, to cut the seatbelts out because of the nature of the 'fitness' of the seatbelts.
>
> …
>
> I didn't lie to the police about the jacket. It's coincidence that I had a similar jacket and that the second person had a similar orange trim on the coat."

32. In relation to the injury to the appellant's hand, the judge summarised the appellant's evidence as follows:

> "I had injured my hand and I had done that when I was taking a gearbox out of a transit van as part of the work I do in breaking up vehicles, nothing to do with anything else."

33. Finally, we note that the evidence supporting the count of theft, which came exclusively from Mr Chadwick, was summed up by the judge as follows:

> "As [the assailants] were leaving, one of them said: 'Grab that cash', which was on the breakfast bar, it was about £625. I'm sure it was Braddock who said: 'Grab the cash'."

34. The jury acquitted the appellant on the charge of theft. The judge had directed the jury that to convict him of theft the jury had to be sure that he involved himself in the theft either by taking the money himself or by suggesting to the second assailant that he should take it. Had the jury accepted the evidence of Mr Chadwick on that point as reliable a conviction would have followed.

Discussion and conclusion

35. The prosecution against this appellant, leaving aside the evidence mistakenly admitted, was far from weak. The recognition evidence, caveated as it had to be by the judge in summing up, was supported by an alleged motive for the appellant to attack Mr Chadwick. Understandably, much had been made of the motive in Mr Coutts' closing speech. The appellant's credibility was in issue generally given his denial of meeting Mr Chadwick as the prosecution suggested and his failure to provide details of his alibi. The alibi, in the end, was unsupported. The evidence of

an injury to the appellant's hand, on analysis, provided little support given what the first assailant was supposed to have been doing, but was relied upon to some extent.

36. That said, we are not satisfied that this conviction is safe having regard to the importance of the evidence of the clothing mistakenly said to have been found at the appellant's home. It was advanced by the prosecution, and understandably so, as providing direct evidential support for the presence of the appellant in Mr Chadwick's home. The jury was invited to conclude that the two coats or jackets referred to in the agreed facts were those worn by the assailants. Something was made of the knife found in the jacket pocket (perhaps more than the evidence could have borne on any view given the knife did not match the one brandished by the second assailant). Mr Coutts' point at trial was that it would be a remarkable coincidence that the appellant was found to have at his home two coats that broadly matched those described by Mr Chadwick. It was the unusual coincidental combination of a green coat and a coat with orange trim that was potentially very telling.

37. Moreover, the appellant's approach to this evidence both at the police station and during his evidence was used in support of the proposition that he was lying about it. It was used to undermine the appellant's credibility generally.

38. The judge identified for the jury the evidence which he adjudged capable of providing support for the correctness of the identification. He identified all three items in paragraph 9 of the agreed facts: the green combat jacket, the knife, and the other coat with the orange trim.

39. We cannot say with confidence what the result would have been if the trial had proceeded without the mistaken evidence. There were contradictions and inconsistencies in the evidence given at different times by Mr Chadwick, something which is not surprising given what happened to him. Yet the mistaken evidence, agreed as it was, was capable of providing something of an anchor that fixed the appellant at the scene and contributed to the prosecution case that he was completely unreliable, a liar, in everything he said. We now know that when he protested that he had not lied to the police about the clothing, he was telling the truth. The hesitation in accepting that the clothes and knife were his, picked up by counsel and the judge, was fully justified. We are not satisfied that in the absence of the wrongly adduced evidence, a conviction was inevitable on what remained. Accordingly, the conviction is unsafe, and the appeal will be allowed.

40. We will consider any ancillary matters, including any application for a retrial, on written submissions.