

**RELEVANCE**

***Smith v The Queen*** – Identification Evidence

Facts:

- Smith was accused of taking part in a bank robbery
- CCTV recorded the men, and shows 2 people keeping a lookout – one was believed to be Smith
- Police gave evidence that they recognised Smith in the video. Prosecution argued that this was relevant under the lay opinion exception as the police were acquainted with Smith and thus in a better position than the jury to identify Smith
- Defence argues this was irrelevant because the police were not eye-witnesses

Issue:

- Could the evidence of the police officers rationally affect the jury's assessment of the probability that it was Smith in the video?

Held:

- Nothing about the police evidence could have rationally helped the jury to make their own assessment about whether it was Smith in the video
- Gleeson CJ, Gummow, Gaudron, Hayne – 'the process of reasoning from one fact taken with another fact is neither assisted, nor hindered, by knowing that some other person has, or has not, arrived at that conclusion'

***R v Marsh*** – Identification Evidence

Facts:

- Marsh convicted of armed robbery
- CCTV footage recorded the event
- Trial judge admitted identification evidence given by Marsh's sister that she'd known Marsh all his life and recognised him by his stance, facial features and clothes he was wearing that he was the person in CCTV footage

Held:

- Judges found that her evidence was direct evidence as she identified her brother by being shown photographs in court
- Exception to the lay opinion rule

***Papakosmas v The Queen*** – Multiple Relevance

Facts:

- Papakosmas was convicted of sexually assaulting a work colleague at an office event in a bathroom
- He argued that she consented
- When the victim left the bathroom, she immediately saw a friend who says she was crying because Papakosmas assaulted her. She took the victim outside to a table where the victim repeated the same thing to another woman. Shortly later, she again repeated her complaint to another woman

|  |
|--|
| Issue: <ul style="list-style-type: none"><li>- Whether evidence given by the friends that the victim had complained of being assaulted by Papakosmas was relevant</li></ul>  |
| Held: <ul style="list-style-type: none"><li>- Evidence was relevant to the probability of her saying those words (credibility purpose) and for a hearsay purpose of whether he assaulted her</li><li>- S 55 is to be interpreted widely as relating equally to out-of-court statements</li></ul> |

### HEARSAY EVIDENCE

|  |
|--|
| <i>R v Rose</i> – ‘Representation’ = Silence or Inactivity   |
| Facts: <ul style="list-style-type: none"><li>- Police surveyed 300 university students and asked whether they had seen the victim in the company of a person who drove a white ford</li><li>- There were no positive responses</li><li>- At trial, the defence tried to lead this evidence as an asserted fact that no one had seen the victim</li></ul> |
| Issue: <ul style="list-style-type: none"><li>- Whether inactivity amounts to a representation</li></ul>  |
| Held: <ul style="list-style-type: none"><li>- Evidence of the lack of positive response was held to be hearsay evidence as it purported to be adduced for a hearsay purpose</li><li>- Inactivity amounts to a representation</li></ul>   |