On the face of it:
CCTV images, recognition evidence and criminal prosecutions in New South Wales

by

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CERTIFICATE OF ORIGINAL AUTHORSHIP

I certify that the work in this thesis has not previously been submitted for a degree nor has it been submitted as part of requirements for a degree except as fully acknowledged within the text.

I also certify that the thesis has been written by me. Any help that I have received in my research work and the preparation of the thesis itself has been acknowledged. In addition, I certify that all information sources and literature used are indicated in the thesis.

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ABSTRACT

Since 2002, the use of closed-circuit television (CCTV) has increased significantly in all states and territories in Australia. CCTV surveillance systems (both public and private) now regularly record images of offenders before, during or after the commission of an offence. Increasingly, these images are disseminated among law enforcement officers and members of the public, at which point in time offenders may be recognised by friends, family members or acquaintances. On the face of it, this type of evidence is of great utility. As the act of recognition can occur at any time after the offence has been committed, evidence of identification can be acquired in cases where eyewitness evidence is weak or lacking altogether, or where eyewitnesses or victims are reluctant or unable to testify in criminal proceedings. However, the use of this type of evidence in criminal prosecutions has not been the subject of any detailed scholarly analysis, and it is unclear to what extent it is effective facilitating the administration of justice.

This thesis examines the admissibility and use of recognition evidence based on CCTV images in criminal prosecutions in New South Wales. It draws on a detailed analysis of case law and insights gained during observation fieldwork to analyse whether the provisions of the Evidence Act 1995 (NSW) are appropriate and adapted to this type of evidence. It concludes that there is judicial confusion about the application of the relevance and opinion provisions of the Act to this type of evidence, and that the unsettled and inconsistent nature of the jurisprudence in this area reduces the accessibility of the law, increases the costs of litigation, and undermines the purposes of the Act. Further, there are inadequate safeguards to ensure that recognition evidence based on CCTV images is reliable, a matter which is troubling given the Act’s focus on preventing wrongful convictions. Finally, the practice of permitting the fact-finder to compare images of an offender with the accused in order to determine the issue of identity is potentially fraught and in need of further academic and judicial scrutiny.
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