

EXAMINING THE FUNDAMENTALS OF IDENTIFICATION PARADE IN THE NIGERIAN CRIMINAL PROCESS

IJALANA, EMMANUEL FOLAYAN*

ABSTRACT

The paper examined the fundamentals of identification parade against the various existing legal frameworks regulating the practice of criminal investigation in Nigeria. This was with a view to undertaking holistic analysis and appraisal of judicial principles formulated to enhance fairness in the exercise of police investigatory and prosecutorial powers in Nigeria. Adopting a doctrinal approach, the paper employed both primary and secondary sources in its methodology. The primary source comprised international treaties and conventions, domestic substantive and procedural laws and judicial precedents. The secondary source included scholarly text, journal articles, newspapers, and the internet. Data collected were subjected to content analysis. The study found that though victims of crime with their witnesses are at liberty to effectively identify the offender who they allegedly claimed they saw among those who perpetrated the crime during the commission of the offence, they must however do so without external prompting. The study insisted that since miscarriage of justice had consequential impact on both the complainant and defendant alike, it therefore recommended that investigators should maintain neutrality in the course of crime investigation and allow cases to be proved on credible evidence.

Keywords: Identification Parade, Recognition, Witnesses, Suspects, and Criminal Investigation

1.0 INTRODUCTION

Criminal investigation is an all-important duty imposed, among others, on the police in Nigeria.¹ An ancillary phenomenon incidental to this duty is identifying the suspect. However, in arriving at a just determination of the identity of the offender allegedly seen, at the crime scene, during the commission of the offence which has become subject of the criminal investigation, a legal mechanism put in place to test the veracity of the witness's claim is identification parade. Identification parade assists police investigation to ensure that the person charged with an offence is the same person who was seen committing the offence. It, amongst others mode of identifying the identity of the suspects, happens to be the most frequently used mechanism, commonly favoured for establishing the true identity of accused in police investigation.

Generally, identification procedure, in itself, would not render admissible evidence, inadmissible. However, where evidence of identification will be the sole ground for

* LLB HONS, BL (HONS), LLM, M.Phil (Law), Ph.D (Law), Dept. of Jurisprudence and Private Law, Faculty of Law, Obafemi Awolowo University, Ile-Ife, Osun State, Email: efijalanaef@oauife.edu.ng, +234811476867.

¹ See the Nigeria Police Act, 2020 [NPA 2020] s 4.

conviction, improper identification of the accused might diminish the weight to be attached to such evidence. Proper identification of the accused person establishes a bonding link between the crime and the accused person which is tangential to subsequent prosecutorial processes. Crossing this major hurdle, in the course of police criminal investigation, demands some measures of adherence to rules guiding its conduct. For this reason, over the years, through cases, judicial rules have been formulated as guiding principles for ensuring fairness in the witness's identification.

The burden of this paper therefore, is to evaluate, in any occasions where the identity of persons may be in doubt, the acceptable mode of identifying suspects in criminal investigation, in the light of rules and procedures formulated by courts with other issues ancillary to. It examines the rules, forms and issues involved in identification parade under the Nigerian criminal law.

2.0 IDENTIFICATION EVIDENCE

What is Identification?

The Supreme Court in *the State v Aibangbee*,² defined identification to mean, "A whole series of facts and circumstances for which a witness or witnesses associate a defendant with the commission of the offence charged. Defining identification, in *the State v Aibangbee*,³ the Supreme Court, delineated it to mean "a whole series of facts and circumstances for which a witness or witnesses associate a defendant with the commission of the offence charged." Plethora of cases noted that identification evidence consists of evidence derivable from fingerprints, handwriting, palmprints, voice, identification parade, photographs or the recollection of the features of the culprit by witnesses who claimed to have had contact with the perpetrator of crime during the criminal acts.⁴ Precisely, Nnaemeka-Agu, JSC, in *Ibe v the State*,⁵ defined identification to mean:

A whole series of facts and circumstances for which a witness or witnesses associates a defendant with the commission of the offence charged. It may consist or include evidence in form of finger prints, hand-writing, palm prints, voice, identification parade, photographs, or the recollection of features of the culprit by a witness who saw him in the act of commission which is called in question or a combination of two or more of these.⁶

It may consist of or include evidence in form of finger prints, handwriting, palm prints, voice, identification parade, photographs or the recollection of the features of the culprit by a witness who saw him in the act of commission which is called in question or a combination of two or more of these".⁷ An aspect that needs to be considered in a proper criminal investigation is the process of identifying the suspect. It involves all lawful means used in

² *The State v Aibangbee* (1988) 3 NWLR (pt. 84) 548.

³ Ibid.

⁴ See also, *Anyawnu v The State* (1986) 5 NWLR (pt. 43) 512; see also, *Eyisa v The State* (2001) 15 NWLR (pt. 691) 555; *Olufemi Babatunde v The State* (2018) 7 SCM 1.

⁵ *Ibe v the State* (1992) 5 NWLR (Pt. 244) 548 at 642.

⁶ Ibid at 649.

⁷ See also *Anyawnu v The State* (n 4) at 512; see also *Eyisa v The State* (n 4) at 555; *Olufemi Babatunde v The State* (n 4) 7 SCM 1.

identifying the author of a crime, excluding mere argument, the truth of which is submitted to a judicial inquiry. A suspect in a criminal investigation may be identified in diverse ways which could either be by way of scientific or by direct evidence. This may also be predicated on circumstantial evidence arising from presumption evidence of the doctrines, either of recent possession⁸ or with whom was last seen.⁹ The scientific identification linking the suspect with the crime are traces of evidence left behind, at the crime scene, by the suspect including transactional communications and exchanges while the direct identification is done by both human and animated evidence.¹⁰

Identification parade is otherwise defined, in the *Black's Law Dictionary*,¹¹ to mean line-up. Line-up is defined by the same dictionary as a police identification procedure in which a criminal suspect and other physically similar persons are shown to the victim or a witness to determine whether the suspect can be identified as the perpetrator of the crime.¹² Identification parade is different from a showup which is defined by same dictionary as a pre-trial identification procedure in which a suspect is confronted with a witness to or the victim of a crime.¹³ Unlike a line-up, a showup is one-on-one confrontation. A showup is only appropriate in circumstances where recognition by a witness, to whom the alleged suspect is known before hand, is in issue but definitely not where issue relating to the identity of suspect not earlier known is involved. Identification parade has a dual purpose of testing the veracity of the victim or witness' claim as well as indicting or exculpating the accused with great quotient of probability.

The identity of an accused becomes relevant only where same is an issue before the trial court. The burden of establishing the identity of the accused, as the person who committed the offence in question, is on the prosecution and failure to have it established, is fatal and it disentitles the trial court from convicting the accused.¹⁴ Where however the identity of the accused is not an issue before the court, the question of identity ceases to be relevant and the court is not expected to deal with it.

Evidence of a witness concerning his identification of the person known to him, before the incident giving vent to the investigation, is known as evidence of recognition which needs no

⁸ The doctrine of recent possession presumes a man who is in possession of stolen goods soon after the theft as either the thief or as having received them knowing them to be stolen unless he can give account for his possession. See sec 167 (a) of the Evidence Act Cap E14 Laws of the Federation of Nigeria 2011. In *Okiemetu v The State* (2016) 12 SCM 81 at 113. The supreme court has said that identification of an accused can also be done under section 167 (a) of the Evidence Act- i.e. if found to be in possession of stolen items.

⁹ The doctrine of last seen presumes a person last seen in the company of a deceased to bear full responsibility for the death of the deceased. See *Oketaolegun v The State* (2015) 9 SCM 196 at 215; see also *Ogedengbe v The State* (2014) 12 SCM (pt. 2) 500 at 517. Though it has no statutory foundation in Nigeria, the doctrine is a development of case law- *Kolade v The State* (2017) 4 SCM 46 at 82.

¹⁰ This is accomplished through recording devices planted on crime scene in the form of close circuit recording appliances.

¹¹ Bryan A. Garner: *Black's Law Dictionary*, 8th Edn, Minnesota: West Publishing Co, P. 761.

¹² Ibid at p. 949.

¹³ Ibid, P. 1413.

¹⁴ See *Fabiya v The State* (2016) 9 SCM 51 at 62.

identification parade.¹⁵ Such evidence should be given at the earliest opportunity, to the police who would ensure that the witness power of observation to identify the suspect, as claimed in his statement, is fully tested as soon as the suspect is arrested or by ancillary mode¹⁶ earlier than his arrest. A witness who on the ground that he forgot, though claimed to have known the accused before the commission of the crime, fails to inform the police, that such person was the person he saw committing the offence, may be treated as unreliable if such evidence is furnished years later.¹⁷ The court must be careful in accepting the evidence given later and yet implicating the person charged, unless a satisfactory explanation is given.¹⁸ Such a later identification would cast a doubt on the evidence of the witness.¹⁹ Thus, the Supreme Court in *Idemudia v The State*,²⁰ affirmed that:

...where an eyewitness omits to mention at the earliest opportunity the name or names of the person or persons seen committing an offence, a court must be cautious in accepting his evidence later, implicating the person or persons charged, unless a satisfactory explanation is given. The reason is obvious because such delay is likely to expose to question, the evidence of identity and thereby raising uncertainty as to its acceptability and probative value.²¹

The fact that a witness' evidence relating to the identity of the suspect was not admissible does not, in any way, affect the admissibility of other modes of identification, particularly the forensic aid or scientific evidence, which may, however, fix the suspect with proximate exactitude to the crime.

3.0 TYPES AND RULES GUIDING THE CONDUCT OF IDENTIFICATION PARADE

There are three types of Identification parade: identification by photographs, identification by voice also known as identification touching the voice, and line-up identification parade, otherwise known as identification touching the body.

3.1 Identification by Photographs

Identification by photographs is an identification procedure in which the picture of a person alleged by the witness to have been involved in a crime under investigation by the police is used to form a photograph parade while he is yet to be arrested. His photograph is put amidst twelve or more photographs of persons having similar resemblance with the description given by the witness in order that the witness's ability to recognise him may be fully tested. The essence of this procedure is to discover whether the witness will be able to identify the suspect's photograph among other persons'. This procedure is used in situations where the

¹⁵ *Omotola & Ors v the State* vol. 5 CAC 290 at 315.

¹⁶ This may be by way of preliminary identification through photographs.

¹⁷ *Igbikis v The State* (2017) 5 SCM 140 at 154.

¹⁸ *Okietetu v The State* (n 8) at 113

¹⁹ *Ani & Anor. v The State*, Vol. 5 1 at 9- 10 where the Supreme Court held that "where an eye witness omits to mention at the earliest opportunity the name(s) of the person(s) seen committing an offence, a court must be careful in accepting his evidence implicating the person(s) charged unless satisfactory evidence is given".

²⁰ *Idemudia v The State* (2015) 8 SCM 55.

²¹ *Ibid* at 69-70; see also *Abudu v The State* (1995) 1 NWLR 55; *Abdullahi v The State* (2008) 8 SCM 1

suspect is yet to be apprehended. It should rarely be used where the suspect is already in custody.

Identification by photographs serves a dual purpose of preliminary identification and information. First, the preliminary identification by witness through photographs allows police investigation to zero in the search for the author of crime on the suspect identified by the witness. Again, where photograph of the suspect is identified correctly by the witness, it will help the police to have a source of information that would assist in tracking down the suspect. This is because the photograph can be published in the official police gazette of lists of wanted persons after obtaining warrant of arrest validly issued against the suspect.²²

The problem associated with identification by photographs is that photographs of the supposed suspect at police disposal might no longer sustain the resemblance of the actual real look of the suspect at the time of the identification, due to possible development of varying features, over time. For instance, photograph of a suspect kept in the police criminal album or obtained from the high school where the supposed suspect schooled thirty years ago may wear a different look from the suspect's current body build.²³ Identification of a person does not hang on vague features of the person. It is derivable from a combination of features which include the height, the build, the weight, the shape of the head, nose, eyes, lip, mouth, ear lobes, and chins; colour of the eyes and complexion, current deformity, nature and style of hair, nature of speech with means of communication, and the current gait. These features vary in persons depending on the stage of their bio-physiological formation.

As a rule, the photographs forming the identification by photographs should be without description and will be turned upside down on the table before inviting in the witness who will be informed to lift the photographs one after the other, for his discrete inspection, to see whether or not the suspect, he described to the police, is in any of those photographs.²⁴ The proceeding for the identification parade by photographs should be video recorded to demonstrate transparency and fairness. Should the witness identify the suspect from the photographs, then, the investigation team would issue a be-on-the-look-out notice (BOLO).²⁵ The BOLO must as much as possible contain clear information about the suspect, full description of vehicles used, his nature of violence, dressing, direction of flight and the suspected place of refuge.²⁶

As soon as the suspect is arrested, a line-up identification parade of persons needs to be conducted unless the witness makes a spontaneous identification of the suspect.²⁷ In *Ajayi v*

²² Nmerole C. I: *Police Interrogation in Criminal Investigation* (2008), Minna: Halygraph Nig. Ltd, p. 109.

²³ It should be recalled that in a bid to track down Lawrence Annini, the formidable artful armed robber who held sway in the late eighties, the picture displayed by the police accounted for the delay in his arrest because there was no resemblant features between the picture and his real look. The picture contrast contains gross dissimilarities as a result of time lag and post formative features.

²⁴ Basil Momodu: *Laws, Rules and Procedure of Criminal Investigation in Nigeria* (2013), Ilesa: Evergreen Overseas Publications Limited, p. 350.

²⁵ Nmerole, (n 22), p.109.

²⁶ Ibid.

²⁷ *Abdulahi Ibranhim v the State* NSCQR vol. 56 (2013) 629 at pp. 651-652 .

the State,²⁸ the appellant was arraigned along with three others on charges of conspiracy to commit armed robbery as well as armed robbery contrary to section 5(b) and 1(2) of the Robbery and Firearm (Special Provision) Act.²⁹ To divert police attention immediately after the robbery, the appellant along with his other co-perpetrator of the robbery left for the police station to lay the report that they were robbed on the night of 18th - 9th May, 1999. As the complaint was being made, the 1st - 4th prosecution witnesses also came to lodge a complaint and they spontaneously identified the appellant and his father, as the robbers that carried out the operation, while still narrating their claim to the Charge Room Officer at the police station. Spontaneous identification is readily acceptable in lieu of a formal identification parade unless there is a doubt created. Thus, the Supreme Court held, in *Folorunsho Alufohai v the State*,³⁰ that:

In the case on hand, it was clear from the evidence that the victims – PW3 and her late husband did not go to Police Station for the purpose of identifying the appellant. They merely went to lodge complaint to the police of the attack on their family. In the result, the appellant was properly identified by PW1 and PW3, hence identification parade was rightly dispensed with by the police, it was not necessary any longer.³¹

Earlier in *Mathew Orimoloye v The State*,³² a case almost on all fours with the above case, it was held that:

It is necessary to point out that the spontaneous reaction towards the recognition of the appellant in respect of the offence committed 6 hours earlier is a more acceptable identification of the appellant than a programmed identification.³³

In all cases where the identity of persons is in doubt, in the course of investigation, the test for resolving this problem is the conduct of identification parade. The question whether an accused person is properly identified as one of those who committed an offence is a question of fact to be determined by the trial court.³⁴

3.2 Identification Parade by Voice

Identification parade by voice is appropriate in situations where the witness claims it was through the voice he heard during the commission of the crime that he may be able to identify the suspect. The procedure for this kind of parade is similar to the other, as relates to its combination, that is, similar number of persons with similar mode of voice would form the parade. The difference, however, lies in the inspection of the parade which may not be physical except where both line-up and voice modes of identification parade are essentially

²⁸ *Ajayi v the State* vol. 6 CAC 1 at p. 14.

²⁹ Cap 398 Laws of the Federation of Nigeria, 1990, now Cap R 19, Laws of the Federation of Nigeria, 2004,

³⁰ *Folorunsho Alufohai v the State* (2014) 12 SCM (pt. 122) 107.

³¹ *Ibid*, p. 138.

³² *Mathew Orimoloye v The State* (1984) 10 SC 138.

³³ *Ibid* at p. 146.

³⁴ *Thomas v The State* (2017) 3 SCM 161 at 185.

necessary. Where the witness claims that he was inside the house when he heard the voice of the perpetrators of the crime from outside his house, the witness would be allowed to stay behind a separated wall from the persons forming the parade while each of the persons forming the parade would be made to chant, in turn, the word allegedly spoken by the perpetrator during the commission of the crime with a similar pitch.³⁵ The witness then listens to the chant of the voices and makes his identification. The mode of identification here is not in the confinement of the body of the suspect but by a sharp loud shout of 'yeah' immediately after recognizing the voice. It may be necessary to record the photograph and video recording of the proceeding and the witness' confining the body of the suspect thereafter, having made a positive identification. The shout of identification should be loud enough and must be captured in the recording.³⁶

Where available, the advantage of the polygraphist or voice analyst should be adequately exploited. It is advisable that a video coverage for voice identification parade should be kept in addition to the record of proceedings. This becomes necessary in order to allow the judge the opportunity of reconstructing the identification proceedings to aid their opinion. To demonstrate transparency in the proceedings, it is equally advisable that after each positive identification by any witness, every person forming the parade, including the owner of the voice identified, should be asked to state their names and may write statements, at the close of the proceeding, to express their view about the fairness of the proceedings and as evidence of the conduct of the proceedings; so also would the witness and the suspect.³⁷

3.3 Line-up Identification Parade

Line-up identification parade, as the name implies, occurs when, in the process of conducting an identification parade, persons of similar age, height, sex, look, complexion, and built are physically lined-up in order to test the witness's ability to positively identify a person he claimed he saw during the commission of a crime.

a. Rules for Conducting a Line-up Identification Parade

- i. The parade should be conducted by a senior police officer or officer not below the rank of an inspector. The officer conducting the parade must be the only person to speak to the witnesses and this must be in an audible voice. Though the investigating officer, or any members of the investigating team, for the purpose of giving evidence in the court, may be present as an observer, he must not interfere with the conduct of the parade.
- ii. The parade must be conducted in a serene environment where all unauthorised persons including police officers should be excluded. Giving of instructions on the procedure to be adopted in conducting the parade shall be by the officer conducting the parade and the instructions must be in an audible voice.
- iii. No witness should be allowed to see the suspect before he is put in the parade with the other persons and no witness should be shown the suspect's photograph or be assisted by suggestions.

³⁵ Nmerole (n 22) p. 118.

³⁶ Momodu (n 24) p. 345

³⁷ *Thomas v The State* (n 34) at 185.

- iv. There should be enough illumination in the venue of the parade unless the suspect was seen and recognised under a special light in which case arrangement should be made for the parade to be conducted under such a similar light.
- v. There must be a different entrance and exit's way, to avoid contact between a witness who has inspected the parade and those yet to do so. Witnesses who are yet to feature on the parade should not be allowed to hear or see what is happening on the parade.
- vi. The parade must consist of at least eight or more persons who are as much as possible of similar age, general appearance and class of life with the suspect, and various physical characteristics which must be matched with those of the suspect or be concealed. For example, where the suspect has any imitable peculiarity like moustache, spectacle, bondage or plaster etc., other members of the parade must present similar appearance³⁸ and where there is any peculiarity i.e., one eye, leg, arm or bald head etc., other members of the parade must appear in such a way by wearing glasses, covering the head with cap, while sitting behind a table, hiding arms inside the sleeves or wearing a hat respectively.³⁹
- vii. A photograph of the identified person will be taken with the witness placing his hand on the suspect's shoulder.
- viii. Statements of any witness, who made positive identification and the suspect identified, will be taken immediately after the parade.⁴⁰

b. Principles relating to witnesses for the Line-up identification parade

The following principles are necessary to preserve fairness during an identification parade:

- i. No two witnesses would be introduced to the parade at the same time.
- ii. All speeches from the witnesses must be directed to the officer conducting the parade and no witness should be allowed to speak directly with any person forming part of or observing the parade. The witness must speak in an audible voice.
- iii. The instructions to the witness as to the need to confine the body of persons identified, when such positive identification is made should be audible enough. However, a timid and nervous witness may be allowed to point closely to the suspect. Where such request is made, this should be recorded as part of the proceedings.
- iv. Where any of the witnesses requests that any of the persons forming the parade should perform any act that would aid his recognition, e.g. moving, shouting, crawling, official instruction would be given by the officer conducting the parade that other members forming the parade should act the same way.
- v. At the close of inspection of the parade by the witness, the witness will be taken to a separate room to ensure he does not mingle with or have the opportunity of communicating with witnesses who are yet to inspect the parade.
- vi. Record of the proceeding, including photographs and video recording, should be kept of the witnesses' inspection and the appropriate official record should be

³⁸ Ibid.

³⁹ Momodu, (2013) (n 24), p. 349.

⁴⁰ Ibid.

completed in duplicate in respect of each witness together with requests made by them.

- vii. At the close of the identification parade, the witness(es) would need to make statement on the identification whether or not they made positive identification.⁴¹

c. Forms Used for Identification Parade

Different sets of forms are used by offices of the by the Nigeria Police as is also with other law enforcement agencies in the course of criminal investigation. Three of such forms are used during identification parade. The forms are customarily called Police forms D48, D49 and D50. Form D48 contains the rights of the suspect before, during and after the identification parade proceedings. Form D49 is the form used by the officer in-charge of the parade to make a full report of the conduct of the parade in respect of each witness. Form D50 contains reports in respect of the parade and is completed by the officer conducting the parade. A precise entry of the parade will be entered into the station's routine diary.⁴²

d. Suspects' Rights during the Parade

Form D.48 contains rights of the suspect. A copy of this form is usually handed over to the suspect by the officer conducting the parade. It informs him of the following information:

- i. notice of pendency of the identification parade and his rights to no interference; to have his friend, relations or solicitor present during the identification parade;
- ii. that the parade will consist of a number of persons of similar age, height and general appearance in a line and that the suspect will be allowed to choose his position in the line and to change his position after each witness has left. It should also contain an assurance that his identity will be treated with confidentiality;
- iii. he has a right to object to any member of the parade; and
- iv. at the close of the parade, he will be asked about his opinion on the arrangement made during the identification parade and his reply should be recorded in the identification parade proceeding which will be kept in the case file.

e. Refusal to Participate in Identification Parade by the Suspect

One major thorny issue that is known with identification parade is the refusal by the suspect to participate in the conduct of the parade. We need to emphasise that the suspect has no obligation imposed on him by law to submit himself to the conduct of the identification parade. He is at liberty to decline joining the parade and no force should be used on him to ensure compliance. Though the suspect should be encouraged to participate in the parade, his refusal to participate however, does not affect the unequivocal spontaneous positive identification made thereafter by the witness. He merely needs to make a statement that he is not inclined to be presented together with other persons of similar height, age, appearance and status forming the parade to enable the veracity of the power of witness to identify the suspect should fully tested.⁴³

⁴¹ Momodu (n 24) p. 345

⁴² Nmerole (n 22) p. 112.

⁴³ Ibid at 123.

Some authorities appear to suggest that persons forming the parade should be brought into the cell where the suspect is detained and be made to sit or stand (as the suspect may seem doing) and that the witness identifying may come in and make his inspection.⁴⁴ There exists, in such practice, an unwarranted violation of the suspect's right to freedom from self incrimination, right to silence and privacy even at police custody in this mode. The mode as it appears, contains an effrontery of coercion though, rashly mild.

Declining participation in the parade is a Constitutional choice which admits election. Bringing a witness to police cell to identify a suspect is tantamount to presenting the suspect as a common person of vicious character. This also is a vitiating factor. We think in the above situation, nothing more needs to be done than recording from the suspect a statement evidencing the decline. What is important is the offer of the right sufficiently presented to the suspect unequivocally. Whether or not the suspect exploits the opportunity of testing the veracity of the witness' claim, is the suspect's absolute discretion. The police have no duty to assist the suspect against his will in order to disprove the complainant or witness' claim that he can identify the perpetrator of the crime.⁴⁵

In the circumstance, the best that police could do is to attempt a spontaneous identification. What can be done in such situation is to keep the identity of the suspect away from the witness and information about his arrest. Information about the proposal for identification parade should normally be kept away from the witness until the police are assured of the willingness of the suspect to partake in the parade. Even if the suspect is unwilling, the witness(es) may be invited to the station on supposed different purposes. They may be invited to join the investigating team in an open office with their superior officer where the suspect's family are invited to discuss the possibility of the suspect's bail or other matters but the discussion on ground before the witness is allowed in must not have anything to do with the suspect or the bail; it may be a casual or topical issue that people present in that office may discuss freely. A passive observation of the countenance of the suspect at the arrival of the witness(es) into the office is necessary.⁴⁶

The tempo of the discussion should be all involving from that period and both the suspect and the witness(es) should be articulately engaged by the senior police officer who should moderate the proceedings. This could also be handled by other persons duly appointed by him. An active, open interactive discussion should be directed at both the witness(es) and the suspect to propel, undeniably, an atmosphere of consciousness, toward establishing in their mind plane, the presence of one another at regular intervals over a period of time (but the time for such open discussion should not, be more than ten minutes). The objective of this social interaction is to provoke a conscious observation which may propel possible attention to the existence of each discussant. Where in the course of such close discussion, the witness identifies the suspect then, there exists a spontaneous positive identification. Hence, no identification parade is any longer necessary.⁴⁷

⁴⁴ See Momodu (n 27), p. 352.

⁴⁵ Ibid at 355.

⁴⁶ Ibid.

⁴⁷ *Folorunsho Alufohai v The State* (n 30) at 137.

Should there be a spontaneous positive identification, the witness will have to make a statement confirming that he was able to identify the suspect and stating the circumstances under which he made the identification. He should quote the place, date and time; the date should not be earlier than the lapse of a reasonable time after the suspect's statement of decline. Further statement evidencing the spontaneous identification should be recorded from both the witness and the suspect. These facts should form part of the casefile and identification parade proceeding record. The video recording of the proceeding commencing much earlier than arrival of the suspects with his relatives and the witness, should be kept for record purposes.⁴⁸

The effect of the foregoing is that those statements and the identification parade's records of proceedings are relevant facts, under the provision of the Evidence Act,⁴⁹ as statements forming the same transaction.⁵⁰ They are admissible in evidence and could be acted or relied upon by the court as part of the facts adduced by the prosecution in proving the identity of the perpetrator. By so doing, the evidential burden on the prosecution is discharged and it shifts to the defence, to enable him controvert the prosecution's evidence. Where however, the conviction of the suspect is to be wholly grounded on such identification evidence, the court would need to caution itself before acting on it.⁵¹

The identification parade record of proceeding with the photographs and video recording covering the parade would be attached to Part C of the casefile. Police professional practice provides also for stages of recording photographs.⁵²

f. When to take Photographs in Identification Parade

Photographs would need to be taken, in a line-up identification parade proceeding, at the following stages:

- i. the formation of the parade in a line-up excluding the suspect;
- ii. the formation of the parade after the suspect takes position in the line-up;
- iii. at the suspect's change of position in the line-up after each witness' inspection;
- iv. at each positive identification made through each witness' confining the suspect's body; and
- v. at any other time when, in the opinion of the officer conducting the parade, it is necessary that photograph of the event be taken.⁵³

4.0 IDENTIFICATION PARADE EXPLAINED

Observation skill of average Nigerians, in description of person, is skewed. This is because an average description of a person among Nigerians is anchored on whether the person is

⁴⁸ Nmerole (n 22) at p. 113.

⁴⁹ Evidence Act, 2011.

⁵⁰ Ibid as s 4.

⁵¹ Momodu (n 24) p. 345

⁵² Nmerole (n 22) p. 118.

⁵³ Ibid at 134.

light complexioned or dark, whether tall or short, skinny or fat. These are general descriptions which hardly help in identification based on proper observation of specific features that are essential to an ideal description. An identification parade is imperative when the commission of crime took place at night and the victim has never seen the accused before the incidence. Identification parade has been held to be only necessary in cases where the victim did not know the accused before and his first acquaintance with him was during the commission of the crime. The victim was confronted by the offender for a short period during which he might not have had the opportunity of observing the features of the accused.⁵⁴ Identification parade may not however be necessary where:

- a. there is clear and uncontradicted eye witness's account and identification of the person who allegedly committed the crime;
- b. the witness knows the accused previously;
- c. the defendant is linked to the offences by convincing, cogent and compelling evidence;
- d. The accused in his confessional statement identified himself with the crime;⁵⁵ and
- e. Where the victim of the crime and the eye witness spontaneously make a positive identification of the suspect before there was opportunity to conduct a formal identification parade.⁵⁶

The Supreme Court, in *Okanlawon v The State*,⁵⁷ defined identification parade as a police identification procedure in which a criminal suspect and other physically similar persons are shown to a victim or a witness to determine whether the suspect can be identified as the perpetrator of the crime.⁵⁸ Put differently, it is an identification procedure in which the suspect and other physically resemblant persons are presented to the victim or a witness to determine whether the suspect can be identified as the real perpetrator of the crime.⁵⁹ Identification parade is useful when there is a doubt as to the ability of a victim to recognise the suspect who participated in carrying out the crime or where the identity of the said suspect or accused person is in dispute.⁶⁰

Since identification evidence is such that tends to stress that the person charged with an offence is the same person who was seen committing the offence,⁶¹ it is proper that the police shields the accused person from members of the public before an identification parade is commenced.⁶² To avoid cases of mistaken identity which would lead to miscarriage of justice, the parade must be conducted with strict regard to fairness. Witness' attention must not be drawn to the suspect; the witness(es) must be given full opportunity to identify the suspect in

⁵⁴ *Okiemetu v The State* (n 8) at 93-94.

⁵⁵ *Ibid* at 94.

⁵⁶ *Adeyemi v The State* (2014) 11 SCM 1 at 25.

⁵⁷ *Okanlawon v The State* (2015) 9 SCM 159.

⁵⁸ *Ibid* at 178.

⁵⁹ Basil Momodu: *Laws, Rules and Procedure of Criminal Investigation in Nigeria* (2013), Ilesa: Evergreen Overseas Publications Limited, p. 345.

⁶⁰ *Fabiya v The State* (n 14) at 68.

⁶¹ *Thomas v The State* (n 34) at 183.

⁶² *Akpan v State* (2002) 12 NWLR (Pt. 780) 189 at 204.

a conducive atmosphere; and the ability of the witness to recognise the suspect must be fairly and adequately tested.⁶³

It is trite law, that identification parade is only necessary whenever there is doubt as to the ability of the victim to recognise the suspect who carried out or participated in carrying the crime alleged or where the identity of the said suspect or an accused person is in dispute. But where there is certainty or no dispute as to the identity of perpetrators of a crime, there will be no need for identification parade to further identify the suspect.⁶⁴ Similarly, in *Ugwu v the State*,⁶⁵ the apex Court took the same position but in different words as it affirmed that “it is settled in law that an identification parade is not necessary where there is other evidence leading conclusively to the identity of the perpetrators of the offence”.⁶⁶

The courts have consistently re-affirmed judicial approval that identification parade is not necessary in situations where victims make spontaneous identification before there is time to hold formal parade. Thus, in the more recent case of *Adegbeiro Seun v The State*,⁶⁷ the Supreme Court opined that:

There are circumstances when identification parade is not necessary. One of such circumstances is where the victim or witness recognized the offender or accused person while the matter was still fresh in his mind as a person who committed the offence.⁶⁸

Invariably, identification parade is not always necessary especially if the accused was arrested at the scene of crime of which he is accused⁶⁹ and where the identity of the suspect is not in issue. The issue of identification could arise where the identity of the person who committed the offence is unknown.⁷⁰ Therefore, whenever the trial court is confronted with evidence of identification, it is expected that it be satisfied that the evidence before it, proved beyond reasonable doubt, that the accused, standing trial in the court, was actually the person who committed the offence with which he is charged.⁷¹

In *Ikemson v State*⁷², among the circumstances laid down by the Supreme Court, under which an identification parade is essential, include:

1. where victim did not know the accused and his first acquaintance to him is during the commission of the offence.
2. where the victim was confronted by the offender for a short time.
3. where the victim, due to time and circumstance, might not have had full opportunity of observing the features of the accused.

⁶³ Momodu, (n 27), p. 346.

⁶⁴ *Folorunsho Alufohai v the State* (n 30) at 137.

⁶⁵ *Ugwu v the State* (2020) LPELR-49375 (SC).

⁶⁶ Ibid.

⁶⁷ *Adegbeiro v The State* (2019) 7 SCM (Pt. 2) 170.

⁶⁸ Ibid.

⁶⁹ *Uche v The State* (2015) 6 SCM 231 at 246.

⁷⁰ *Ore-ofe Adesina & Anor v the State* NSCQR vol. 51 (2012) 455 at 476.

⁷¹ *Odey Eseu v The People of Lagos State* ELC (2024) 7930 SC P. 1 at ; *Okanlawon v The State* (n 57) at 178

⁷² *Ikemson v the State* NSCQR (1989) 153 also reported in (1989) NWLR (pt. 110) 455; see also *Okosi v State* (1989) 1CLRN 29.

The court⁷³ however cautioned that for the identification to be proper, considerations should be given to: (i) the description of the accused given to the police shortly after the commission of the offence; (ii) the opportunity which the victim had for observing the accused; (iii) the features of the accused noted by the victim and communicated to the police which marks him out from other persons; (iv) not showing the accused beforehand, physically or by photograph or any visual means to the victim or witness; (v) the accused should be lined up amongst persons (not less than seven) of similar physical stature, before the victim or witness of the crime, is brought out to the identification parade ground; and (vi) nothing should be done to direct the attention of the victim or witness especially to the suspected (accused) person, or any other person forming the parade.

The circumstances described in the above case⁷⁴ by the Supreme Court appears to have been approved, as guiding principles, by the Supreme Court in the case of *Ore-ofe Adesina v the State*,⁷⁵ where the Supreme Court re-affirmed as follows:

In order to ascribe any value to the evidence of an eyewitness in an identification of a criminal the court, in guiding against cases of mistaken identity, must meticulously consider the following issues-

- a. circumstances in which the eyewitness saw the suspect; was it in difficult conditions?
- b. the length of the time the witness saw the suspect or defendant, at a glance or longer observation?
- c. the opportunity of close observation.
- d. the lightning conditions.⁷⁶

It should be noted that failure to strictly follow the procedure of identification parade on a suspect does not render the evidence inadmissible. It merely diminishes the weight to be attached to such identification but a conviction based on the identification of the suspect by the witness after the police had pointed him out before hand to the witness is liable to be quashed on appeal.⁷⁷ Similarly, the appellate court will also not countenance conviction based on an identification parade after the witness has been shown the photograph of the suspect to facilitate his identification. It is trite however, that where the accused person by his confession has identified himself, there will be no need for identification parade.⁷⁸

Contradictions in identification by witness(es) are fatal to the prosecution case. This constitutes a doubt which must be resolved in favour of the accused person. The court may however, still accept an identification parade even though there are minor discrepancies. For

⁷³ Ibid.

⁷⁴ *Ikemson v the State* (n 40) p. 467.

⁷⁵ *Ore-ofe Adesina & Anor v the State* (n 70).

⁷⁶ Ibid, pp. 476 – 477; See also *Thomas v The State* (n 34) at 183. 3 SCM 168 at 183; *Adekoya v The State* (2017) 1 SCM 38 at 50.

⁷⁷ *R v Dickman* (1910) 5 CAR 135; see also *R v Bundi* (1910) 10 CAR 125.

⁷⁸ *Ore-Ofe Adesina v the State* (n 70), at 477.

discrepancies to be discountenanced by the court, it must not be substantial. Thus, in *Ikemson v the State*⁷⁹, the Supreme Court affirmed that:

In view of the nature of the evidence particularly the testimony of PW3 and exhibit 4, 7 and 5, there was no need for an identification parade. Such discrepancies as there were in the evidence of PW1 and PW2 are only to be expected where two persons have to identify the culprit standing behind the barrels of guns. I do not consider (sic) them as amounting to substantial contradictions.⁸⁰

In *Sunday Ndidi v the State*,⁸¹ the Supreme Court, considering the twin issues of crime and perpetrators thereto against the proof of their identities, held that:

Generally, in criminal cases, the crucial issue is not ordinarily whether or not the offence was committed. More often than not, the controversy always ranges over the identification of the person(s) alleged as the actual perpetrators of the offence charged. It follows therefore that identification evidence is that evidence which tends to show that the person charged is the same as the person who was seen committing the offence.⁸²

The police must always reconcile divergent interests that may be available between the parties and ensure the correctness of the identification so that the identification would be devoid of vendetta. Thus, in *Sunday Ndidi v the State*⁸³, the Supreme Court also identified the thorny nature of identification parade when it held that:

Whenever the case of an accused person depends on the correctness of the identification of the accused which the defence alleges to be mistaken, a trial Judge must warn himself of the need to weigh such evidence with others, adduced by the prosecution, before conviction. Again, it is to be noted that PW1 denied that he hated the appellant yet she admitted in cross examination that she had a quarrel between her and the accused. Although, some grouse or settling scores on some personal interest between an accused and a witness does not generally affect the validity of evidence by that witness, the effect of such grouse or personal interest is to place the judge at his guard to warn himself as to the veracity of the evidence.⁸⁴

In a later case of *Folorunsho Alufohai v The State*⁸⁵ the Supreme Court cautiously emphasised what the court should do when confronted with identification evidence and held that:

Generally, identification evidence is evidence tending to show that the person charged with an offence is the same as the person who was seen committing the offence. Therefore, whenever the trial court is confronted with

⁷⁹ *Ikemson v the State* (n 40) p. 457.

⁸⁰ *Ibid*, p. 173.

⁸¹ *Sunday Ndidi v the State* NSCQR vol. 30 (2007) p. 395.

⁸² *Ibid*, p. 413.

⁸³ *Ibid*, p. 432.

⁸⁴ *Ogunlana & Ors v the State* (1995) SCNJ 189. See also *Sunday Ndidi v the State* (n 81) at 432; *Theophilus v the State* (1996) 1 SCNJ 79.

⁸⁵ *Folorunsho Alufohai v The State* (n 30).

identification evidence, it is expected to ensure and be satisfied that the evidence proves beyond reasonable doubt that the accused before the court was the person who actually committed the offence with which he is standing trial.⁸⁶

In a line-up (identification parade), precaution must be taken to ensure scrupulous fairness without unnecessary suggestion.⁸⁷ Determining whether or not the accused was the properly identified, the identification of an accused person is a question of fact which should be considered by court, on the evidence adduced. When an accused challenges his identification, any real weakness discovered must be resolved in favour of the accused.⁸⁸ However, where the identity of the perpetrator of a crime is certain, there will be no need for an identification parade to further identify the offender.⁸⁹

5.0 ISSUES IN IDENTIFICATION PARADE

An important issue in identification parade involves raising an objection appropriately, as occasions demand. Evidence of positive identification, unless adequately discredited, is admissible and can be acted upon by the court. Objection to admissibility of evidence of identification parade on grounds of fairness and perversion of justice could be raised at criminal trial at the point of admitting the evidence. Such objection must be positive enough to traverse its evidence. The Supreme Court, in *Christopher Okereke Ukpabi v the State*,⁹⁰ asserted that it is true that, whenever the case against an accused depends wholly or substantially on the correctness of the identification of the accused, and the defence alleges that the identification was mistaken, the Court must closely examine the evidence. In acting on it, it must view it with caution, so that any real weakness discovered about it must lead to giving the accused the benefit of the doubt.⁹¹

Although there is no law against the holding of trial-within-trial in cases where objection is raised against the admissibility of identification evidence, especially during the tendering of identification photographs and forms, in practice, however, the mode of objection supported by a horde of judicial authority is to discredit the evidence of a witness on the defendant's identification already given at evidence-in-chief through cross-examination. In *Samaila v the State*,⁹² where the PW1 who had known the appellant for a very long time testified that the appellant was recognised by his voice as he spoke during the armed robbery, the Supreme Court affirmed the validity of such identification by voice when it held that:

Where a witness who gave evidence of voice recognition of the accused was not cross-examination or remained unshaken, in spite of the cross-examination, nothing stops a trial judge from accepting his evidence.⁹³

⁸⁶ Ibid at p. 137.

⁸⁷ Nmerole (n 22), p. 118.

⁸⁸ *Adamu v The State* (2017) 1 SCM 1 at 22-23.

⁸⁹ *Fabiyi v The State* (n 14) at 62.

⁹⁰ *Christopher Okereke Ukpabi v the State* (2004) 11 NWLR, (Pt. 884) 439.

⁹¹ Ibid.

⁹² See *Samaila v The State* (2020) 8 SCM 174 at 184-185; see also Evidence Act 2011 s 4.

⁹³ Ibid at pp. 183-184; see also, *Tajudeen Adeyemi v the State* (1991) LPELR- 168; *the State v Olashehu Salawu* (2011) 12 SCM (Pt. 2) 455.

Similarly, the Supreme Court, in an earlier case, of *Tajudeen Adewale v the State*,⁹⁴ held that:

It was fallacious to think that the only identification of an accused person acceptable when an issue of identification is raised is an orchestrated identification parade. Identification depends on mental ability and perception of individual. Where a witness who gave evidence of visual identification was not cross-examined nor shaken under cross-examination, nothing stops a trial judge from accepting his evidence. Apart from the issue of street light raised during cross-examination, PW1's ability to observe what happened at the material time was not discredited. The PW1 came to the police station (unknown to him) where the appellants were detained and according to the PW4, police Sergeant Akanmu Abioye: "Immediately the accused were brought to the counter, the p. w. I shouted "these are the people who robbed me yesterday". I then asked who he was and he said he was the person robbed of his car. The accused did not say anything in answer to the p. w. 1's allegation".

Where the case against an accused depends wholly or substantially on the correctness of the identification of the accused, which the latter alleges to be mistaken, the judge should warn himself of the special regard for caution before convicting the accused in reliance on the correctness of the identification.⁹⁵

In *David v State of Ekiti*,⁹⁶ it was held that:

Where a witness who gave evidence of visual identification was not cross-examined nor shaken under cross-examination, nothing stops a trial Judge from accepting his evidence. At any rate, the law is whether an accused person was properly identified or not is a question of fact for the trial Court. Once the evidence of the trial Court is shown to have been properly evaluated, the Appeal Court cannot interfere.⁹⁷

Objection to identification evidence given by the witness must be made timeously by controverting such evidence when made, through effective cross-examination by the defence. Objection at trial may be raised by the suspect denying a positive identification.⁹⁸ For instance, the defence may defiantly deny the truthfulness of the witness' evidence and retort as follows: "I put it to you that you received some forms of aid or assistance from the investigators to have me identified" or "I put it to you that no formal identification parade was held in the investigation you conducted" or "No witness ever identified me during the identification parade" — put across to the witness, is a positive denial and a foundation to whatever defence the defendant may want to make at his defence. The court will, at the conclusion of the trial, take a decision and make a finding as to the weight which it would put

⁹⁴ *Tajudeen Adeyemi v the State* (n 93) 168.

⁹⁵ *Ebenezer v the State* (2020) 5 SCM 100.

⁹⁶ *David v State of Ekiti* (2020) LPELR-51162(CA) (Pp. 34-35 paras. C).

⁹⁷ *Ibid* at p. 35; see also, *Bassey Akpan Archibong v State* (2006) 14 NWLR (Pt. 1000) 349 at 371.

⁹⁸ See *Ebenezer v the State* [n 96] at 168.

on such evidence.⁹⁹ Trial-within-trial may be necessary where the suspects' allegation borders on use of force, intimidation or unwholesome means to elicit a positive identification where this allegation is made and the prosecution would need to advance credible evidence to avert impugning such evidence. This becomes necessary because a trial court should be satisfied that identification evidence establishes the guilt of an accused beyond reasonable doubt when confronted with an issue of identity of a perpetrator of the crime.¹⁰⁰ Like an objection to the admissibility of a confession on ground of involuntariness, the onus of proving the voluntariness rests squarely on the prosecution.

Where the person whose identity is subject of identification parade is detained in prison custody, arrangement should be made with the prison authority, subject to leave of the court, for a possible conduct of the identification parade within the prison environment. Should this seem impracticable, arrangement should be made to have him produced at the nearest police station¹⁰¹ for the conduct of the parade, subject to leave of the court. Identification parade involving a child or juvenile should be conducted in the presence of either of the parents or guardian in addition to an independent police officer (assessor) preferably, a female who should also observe the proceedings.¹⁰²

Where there is possible threat of violence or intimidation, the witness who pre-empt the violence would need the protection of the law. A concession of protective veil becomes necessary in such circumstances. In an attempt to strike a balance between the interest of the suspect and the protection of the witness vis-a-vis the survival of the society, concealment of the witness' identity may be allowed. Where there is a credible evidence supporting threat of death, intimidation and violence, it appears the court will not hastily reject an identification parade proceeding solely on the ground that it was inspected by a screened and masked witness for purposes of witness' protection. It all depends on what weight should be attached to such evidence and the nature of the offence. This may be permissible in cases of imminent hazardous risk resulting from acts of terrorism or vicious confraternity. In such a situation, concealment of the witness' identity may include the veiling of the witness or wearing of hoods.

Does Nigerian law recognise any such protection of witnesses or victims under the Nigerian criminal justice system? The Administration of Criminal Justice Act, 2015 provides for adequate protection of witnesses or victims in certain classes of offences.¹⁰³ In providing such protection, section 232(3) states that:

⁹⁹ Ibid.

¹⁰⁰ *Maba v the State* (2020) 3 SCM 79.

¹⁰¹ See Force Directive C. I. D. No. 15 and Force Order No. 355 entitled *Power to have a Prisoner brought to a Police Station* for the guiding principle on this.

¹⁰² Momodu (n 24) p. 345

¹⁰³ These include offences listed under section 231 of the Administration of Criminal Justice Act, which are rape, defilement, indecent assault, incest, and unnatural offences; offences under section 231 of the Administration of Criminal Justice Act; offences under the Terrorism (prevention) (Amendment) Act; offences relating to Economic and Financial Crimes; Trafficking in Persons and related offences; and any other offence in respect of which an Act of the National Assembly permits the use of such protective measures or as the judge may consider appropriate in the circumstances.

Where in any proceeding the court deems it necessary to protect the identity of the victim or a witness, the court may take any or all of the following measures:

- a. receive evidence by video link;
- b. permit the witness to be screened or masked;
- c. receive written deposition of expert evidence; and
- d. any other measure that the court considers appropriate in the circumstance.

The above indicates that the police may, in appropriate cases, borrow a leaf from this judicial practice which tends to ensure a justifiable end of justice.

6.0 CONCLUSION AND RECOMMENDATIONS

Suspect's identification in Criminal investigations has been demonstrated above to be fundamental to successful criminal prosecution. The existing laws, police investigative procedures, and statutes provide adequate windows for effective usage of identification parade. What appears however to be the challenges of the conduct of identification parade, among others, are: inability to adhere strictly to guiding rules for the conduct of identification parade; inadequate funding of police operations which affect effective conduct of police investigation; uncooperative disposition of the parties; dampened image of police personnel; and corruptive tendency which makes police officers easily vulnerable to manipulation.

In order to avert miscarriage of justice, the following critical observations cum recommendation have become expedient.

1. The police should ensure that its personnel are conversant with the rules guiding the conduct of identification parade. Strict adherence thereto will ensure fairness. This demands effective and constant training and retraining of police personnel.
2. In order to improve on its image, the Nigeria Police should regulate recruitment or enlistment of people into the Force by recruiting members of the public from good parentage. Such recruits should be people of proven integrity without criminal records.
3. Besides, sensitization campaigns should be held more often to educate and enlighten the masses on the existence of their rights. Religious and traditional rulers should be encouraged to enlighten their subjects on their rights and how to seek appropriate redress when such rights are violated or in cases of police inaction.
4. If the police in Nigeria will achieve its noble objective of maintenance of law and order, there should be adequate funding of police operations and criminal investigations.

It is our belief that the above recommendations will, where prudently pursued, go a long way in ensuring a functional administration of justice by the police in Nigeria.