



SENIOR COURTS
COSTS OFFICE

SCCO Ref: 259/10

Dated: 5th January 2011

ON APPEAL FROM REDETERMINATION

REGINA v KENDRICK

CROWN COURT AT CROYDON

APPEAL PURSUANT TO PARAGRAPH 21 OF SCHEDULE 1 OF THE
CRIMINAL DEFENCE SERVICE (FUNDING) ORDER 2001 / ARTICLE 30 OF
THE CRIMINAL DEFENCE SERVICE (FUNDING) ORDER 2007

CASE NO: T2010 7397

LEGAL SERVICES COMMISSION CASE

DATE OF REASONS: 20th September 2010

DATE OF NOTICE OF APPEAL: 12th October 2010

APPLICANT: SOLICITORS Bagshaws
DX 34150 Norwood North
Ref: MB DC Kendrick

The appeal has been dismissed for the reasons set out below.

**ANDREW GORDON-SAKER
COSTS JUDGE**

REASONS FOR DECISION

1. This is an appeal by Bagshaws, a firm of solicitors in south London, against the calculation of a litigator graduated fee by the Legal Services Commission.
2. The solicitors represented Jamie Kendrick who was charged with one count of robbery for which he was sentenced to 2½ years' imprisonment.
3. The prosecution arose out of an incident on a train between Selhurst and East Croydon. It is clear from the description of the CCTV footage in the record of Kendrick's interview that he approached the victim with an empty wine bottle in his hand, told the victim to hand over his mobile 'phone and then said to the victim:
"I'll count to five. If you don't give me your 'phone I'll bottle you."
4. He grabbed the victim and there was a struggle. The victim then handed over his 'phone and a ring.
5. The solicitors claimed a graduated fee on the basis that the offence charged was armed robbery. The Commission disagreed and calculated the fee on the basis that the offence charged was robbery.
6. In its written reasons the Commission referred to paragraph 3.23 of its Litigator Graduated Fee Scheme Guidance (September 2010):

For a robbery to be treated as an armed robbery (offence group B), one of the following two examples must apply.

- A robbery where a defendant or co-defendant to the offence was armed with a firearm or imitation firearm, or the victim thought that they were so armed, e.g. the Defendant purported to be armed with a gun and the victim believed him to be so armed – although it subsequently turned out that he was not – should be classified as an armed robbery.
- A robbery where the defendant or co-defendant to the offence was in possession of an offensive weapon, namely a weapon that had been made or adapted for use for causing injury to or incapacitating a person, or intended by the person having it with him for such use, should also be classified as an armed robbery. However, where the

defendant, or co-defendant, only intimate that they are so armed, they (sic) should not be classified as an armed robbery.

7. The Commission placed reliance on the words “made or adapted” in the second example and concluded that “a bottle does not fit this description as in its whole state it is neither made nor adapted”.
8. On the hearing of the appeal Mr Bagshaw told me that the Crown Court had paid him for advocacy on the basis that this was an armed robbery. He referred me to the passages in Archbold which describe the three categories of offensive weapon (24-115): “those made for use for causing injury to the person, i.e. offensive *per se*; those adapted for such purpose; and those not so made or adapted, but carried with the intention of causing injury to the person”. He submitted that the bottle in this case fell in the third category. He pointed to the fact that the Commission’s Guidance appeared to adopt the headings used in Archbold (at 24-117 to 24-119): “adapted for use” “for causing injury to the person” or “intended by the person having it with him for use for causing injury to the person”. The bottle in this case would again fall within that latter category.
9. Mr Bagshaw explained that the prosecution had relied on the use of the bottle as an aggravating feature for the purpose of sentencing.
10. The table of offences in the 2007 Funding Order puts armed robbery, contrary to section 8(1) of the Theft Act 1968, in class B; and robbery (other than armed robbery), contrary to the same provision, in class C.
11. Section 8(1) provides:

A person is guilty of robbery if he steals, and immediately before or at the time of doing so, and in order to do so, he uses force on any person or puts or seeks to put any person in fear of being then and there subjected to force.
12. There is no specific statutory offence of armed robbery, which is a term more relevant to sentencing. Where the use or threat of force involves a firearm, an imitation firearm or an offensive weapon, offences under section 8(1) are specified serious offences within schedule 1 of the Serious Crime Act 2007. In that context “offensive weapon” means any weapon to which section 141 of the Criminal Justice Act 1988 applies and the weapons to which the section applies are those specified in the Criminal Justice Act 1988 (Offensive Weapons) Order 1988.
13. The weapons specified in the Order (as amended) are largely swords and knives, knuckledusters and the like – weapons which are offensive *per se*.

14. I accept that a bottle may be an offensive weapon if it is intended by the person having it with him for use for causing injury. The fact that a weapon such as a bottle is used in a robbery may be an aggravating feature for the purpose of sentencing, but that does not make the offence one of armed robbery. As far as I am aware the only statutory definition of armed robbery is that in sub-paragraph 5(1) of Schedule 1 to the Serious Crimes Act 2007, namely:

an offence under section 8(1) of the Theft Act 1968 (c. 60) (robbery) where the use or threat of force involves a firearm, an imitation firearm or an offensive weapon

and where

“offensive weapon” means any weapon to which section 141 of the Criminal Justice Act 1988 (c. 33) (offensive weapons) applies.

15. A bottle, while potentially being an offensive weapon for the purpose of the offence of possessing an offensive weapon in a public place (contrary to s.1 Prevention of Crime Act 1953), is not an offensive weapon to which s.141 of the Criminal Justice Act 1988 applies.
16. It seems to me, *pace* the Commission’s Guidance (which is not binding on me), that robbery with a weapon which is not a firearm, an imitation firearm or an offensive weapon as defined in the 1988 Order is not armed robbery for the purpose of the table of offences in the 2007 Funding Order. This would seem to accord with common sense and usage. In certain circumstances a plank of wood could be an offensive weapon (for the purpose of the 1953 Act) but few people would I think describe robbery with a plank of wood as armed robbery.
17. Accordingly the appeal is dismissed.

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