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IN THE COURT OF APPEAL

CRIMINAL DIVISION



Neutral Citation Number [2021] EWCA Crim 223

CASE NO 202002644/B5

Royal Courts of Justice
Strand
London
WC2A 2LL

Thursday 18 February 2021

LORD JUSTICE HOLROYDE
MR JUSTICE LAVENDER
MR JUSTICE CAVANAGH

REGINA

v

JOSEPH MARTINS

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MISS L BALD appeared on behalf of the Appellant

MR B MARTIN appeared on behalf of the Crown

J U D G M E N T
(Approved)

1. LORD JUSTICE HOLROYDE: Joseph Martins was convicted by a jury of offences of robbery, contrary to section 8 of the Theft Act 1968, and inflicting grievous bodily harm, contrary to section 20 of the Offences Against the Person Act 1861. He was sentenced to a total term of 27 months' imprisonment. He now appeals, by leave of the single judge, against his conviction for robbery.
2. The events giving rise to the charges occurred on 1 October 2018. The appellant was then aged 21. His friend Christian Thembo was vacating a room which he had been renting from Rokibul Dewan. Mr Thembo and Mr Dewan had arranged to meet in order to sort out sums payable in respect of rent and deposit. When they left the building at the conclusion of that meeting, the appellant was outside. Mr Dewan was holding a mobile phone and a bunch of keys. Those items were taken from him, he said by the appellant. Mr Dewan moved to block a nearby gate through which the appellant and Mr Thembo would have to pass. His evidence was that he was first pushed by Mr Thembo and then held in a bear hug and spun aside by the appellant, causing him to fall and break his leg.
3. When arrested and interviewed under caution, the appellant made no comment, but put forward a prepared statement in which he described Mr Thembo taking Mr Dewan's phone and keys. He made a similar allegation in his defence statement.
4. The appellant and Mr Thembo were charged on an indictment containing three counts: a joint charge of robbery (count 1); a joint charge of inflicting grievous bodily harm (count 2); and a charge against the appellant alone of theft (count 3), as an alternative to count 1. They stood trial in the Crown Court at Aylesbury before Mr Recorder Guest and a jury.
5. Mr Martin, then as now appearing for the prosecution, opened count 1 to the jury on the basis that both defendants had used force in order to escape with the keys and the phone. As we understand it, the prosecution case was that the act of appropriating the phone and keys was still continuing at the time of the encounter at the gate, and that it was that encounter which constituted the robbery. No doubt for that reason, Mr Martin did not go into any detail when examining Mr Dewan in chief about the circumstances of the initial taking outside the building. In describing that taking, Mr Dewan (who gave his evidence through an interpreter) said that he had "a bunch of keys and my iPhone in my hand" but also spoke of those items being "in two hands". He said that the appellant "grabbed" those items and walked towards the gate. In cross-examination, in response to the suggestion that the appellant had not taken anything from him, Mr Dewan repeated that he did and added: "He just snatched those items."
6. At the conclusion of the prosecution evidence, both defendants made submissions of no case to answer. The recorder indicated that he would not allow count 1 to continue against Mr Thembo, and would not allow the prosecution to pursue that charge against the appellant on the basis of a continuing act of appropriation coupled with violence at the gate. Mr Martin responded that he would instead put count 1 against the appellant "on the basis that that did constitute some sort of force by taking it from his hands."
7. Miss Bald, representing the appellant at trial as she does in this court, understandably objected to that change of course. She pointed out that she had conducted the defence case, and her cross-examination of Mr Dewan, on the basis of the way the prosecution had thus far chosen to advance count 1. The recorder did not accept that there was any unfairness, or none that could not be cured by recalling Mr Dewan to face further

cross-examination.

8. Miss Bald went on to submit that in any event there was no case to answer on the revised basis of count 1, because there was insufficient evidence for the jury properly to find that force was used on Mr Dewan to steal his property. She referred to case law, to which we shall return shortly.
9. The recorder ruled against her. He concluded his ruling at page 24 of the transcript with these words:

"It seems to me, here, that it would be open to the jury to find that the use of the word 'snatch', bearing in mind the items involved are a mobile phone and a set of keys, each being held in one or other of the hands of the victim – it would be open to the jury to find on the evidence that force was used to the person, and I decline the submission."

10. Both defendants then gave evidence. Each asserted that it was the other who had taken Mr Dewan's items. The jury, as we have said, convicted the appellant of counts 1 and 2. They acquitted Mr Thembo.
11. The ground of appeal is that the recorder was wrong to refuse the submission of no case to answer. Miss Bald invites our attention to DPP v RP, GP and RW [2012] EWHC 1657 Admin and the earlier case of R v Dawson and James (1977) 64 Cr.App.R 170. She accepts that robbery may be committed by the indirect rather than direct application of force to the person of the victim. She argues, however, that even though it may in principle be sufficient for the force to be applied indirectly to the victim, there was in this case no evidence that the appellant had done that to Mr Dewan. A reference by Mr Dewan to the appellant "snatching" the items was not sufficient to convert the theft into robbery. Miss Bald points out that because of the way the prosecution case had initially been conducted, there had been no investigation with Mr Dewan of how he was holding the items, or of what exactly happened when they were taken from him. She argues that the jury should not have been left to speculate and to fill in gaps in the evidence, particularly when the prosecution had put forward their case on a basis which was then shown to have been fundamentally flawed.
12. Mr Martin resists the appeal. He submits that on a charge of robbery it is not necessary for the prosecution to prove direct physical contact between robber and victim. He relies on R v Clouden [1987] Crim.L.R 56. He submits that as a matter of logic and common-sense, and having regard to the nature, size and shape of the mobile phone and a bunch of keys, the jury were entitled to conclude that the "grabbing" of those items amounted to force used upon the person. The fact that two items were taken, and not merely one, was another relevant consideration. The recorder was therefore correct to reject the submission of no case to answer and to let the case go to the jury for their determination as to whether the charge of robbery had been proved.
13. We are grateful to both counsel for their written and oral submissions, and in particular for the clarity and focus of their oral submissions to us this morning.
14. Section 8(1) of the Theft Act 1968 provides:

"(1) 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."

15. The statute itself does not contain any definition of the words "uses force on any person". They were considered in some detail by Mitting J in DPP and RP, GP and RW. The defendants in that case, who were juveniles, were charged with robbery. They had asked a woman for a cigarette. When she said she did not have a spare one, one of the defendants snatched the cigarette which she was holding between the fingers in her hand. A submission of no case to answer, on the basis that the snatching of the cigarette could not constitute the use of force on a person under section 8, was rejected by the Youth Court. The defendants were convicted and appealed by way of case stated. Mitting J in the course of his judgment referred to R v Dawson and James, in which the Court of Appeal had held that a charge of robbery had properly been left to the jury where the evidence of the victim was that two men had nudged him in the shoulder and jostled him so that he had difficulty keeping his balance, and a third man had taken his wallet from his pocket. Mitting J noted that in that case the force used, although not substantial, had been directly applied to the person of the victim.
16. Mitting J then considered Clouden, in which the appellant had been convicted of robbery after approaching a woman from behind and wrenching her shopping basket down and out of her grasp. His appeal against conviction was dismissed. The court held that "whether the defendant used force on any person in order to steal is an issue that should be left to the jury." We observe that in that case there was no direct application of force to the person of the victim. We note also that in DPP v RP, GP and RW itself at paragraph 7, counsel for the appellants had properly conceded that "the snatching of a handbag from a woman holding it on her shoulder or in her hand will ordinarily amount to robbery because by the very act of pulling on the handbag force will inevitably be applied to the person of the woman from whom the handbag is snatched."
17. Mitting J then referred with approval to a submission in Smith's Law of Theft (9th Edition) that "no jury could reasonably find that the slight physical contact that might be involved where D picks V's pocket would amount to a use of force." He noted that the case stated before him did not include any finding that force had been used upon the person of the victim "unless the mere removal of a cigarette from between her fingers itself is capable of amounting to the use of force upon the person." He continued as follows at paragraph 15:

"In my judgment, it is not. This case falls squarely on the side of pickpocketing and such like, in which there is no direct physical contact between thief and victim. It cannot be said that the minimal use of force required to remove a cigarette from between the fingers of a person suffices to amount to the use of force on that person. It cannot cause any pain unless, perhaps, the person resists strongly, in which case one would expect inevitably that there would be direct physical contact between the thief and victim as well. The unexpected removal of a cigarette from between the fingers of a person is no more the use of force on that person than would be the removal of an item from her pocket. This offence is properly

categorised as simple theft."

18. The learned judge therefore allowed the appeals against the convictions of robbery and substituted convictions of theft.
19. We think it clear that robbery does not necessarily require direct physical contact between robber and victim. Often of course it will, but it is in our view established that the indirect use of force on a person can be sufficient. For example, where a robber wrenches a bag away from the grasp of his victim it is open to the jury, for the reasons which Mitting J gave at paragraph 7 of his judgment, to find that the robber had used force on a person. We respectfully agree with the observation of the learned authors of Smith, Hogan and Ormerod's Criminal Law (5th Edition) at section 19.1.2.1 that:

"... it will be robbery where, for example, a struggle, even a fleeting one, takes place for possession of a handbag or where an earring is snatched tearing the lobe of the ear."

20. There will however sometimes be cases in which a jury could not properly find that the actions of a thief amounted to the use of force on any person: for example, if an opportunist thief intervened to snatch a bank note which one person was passing to another. On a submission of no case to answer being made in relation to a charge of robbery, it will be for the judge to decide whether the evidence taken at its highest is such that a jury could properly find that the defendant had used force on the victim.
21. In the present case, we can well understand why Miss Bald objected to the change in the prosecution case. The prosecution would have had only themselves to blame if, having conducted the case on one basis, they had found themselves lacking in a sufficient evidential foundation then to conduct it on a different basis. As it was, however, they did have a sufficient evidential foundation. On the evidence as it stood at the conclusion of the prosecution case, although not at that point a strong case of robbery, it was in our view properly open to a jury to find that Mr Dewan, when carrying his phone and keys, was gripping them so that they would not fall or slip from his hands; that his description of the appellant "grabbing" or "snatching" the items connoted that the appellant had pulled the items free from that grip; and that the action of pulling the items from his grasp amounted to the use of force on Mr Dewan. We agree with Miss Bald that the use of a word such as "snatch" or "grab" will not necessarily and in all circumstances connote the use of force of any person. We disagree with her, however, when she says it was a matter of impermissible speculation, and not a matter of legitimate inference, for the jury to be permitted to conclude that Mr Dewan would inevitably have been gripping his items of property sufficiently tightly that his grip had to be overcome by the use of force in order for the appellant to take them from him.
22. In those circumstances, the recorder was in our judgment correct to reject the submission of no case to answer and to permit the jury to determine whether this ingredient of the offence of robbery had been proved.
23. For those reasons, grateful as we are to Miss Bald for the skill with which she has presented this appeal, the appeal fails and is dismissed.

Epiq Europe Ltd hereby certify that the above is an accurate and complete record of the proceedings or part thereof.

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