



Neutral Citation No. [2024] EWHC 1316 (SCCO)

Case No: 01XB0462921

SCCO Reference: SC-2023-CRI-000106

IN THE HIGH COURT OF JUSTICE
SENIOR COURTS COSTS OFFICE

Thomas More Building
Royal Courts of Justice
London, WC2A 2LL

Date: 28 May 2024

Before:

COSTS JUDGE LEONARD

R

v

KAPOOR

**Judgment on Appeal under Regulation 29 of the Criminal Legal Aid (Remuneration)
Regulations 2013**

Appellant: David Lyons (Counsel)

This Appeal has been dismissed for the reasons set out below.

COSTS JUDGE LEONARD

1. The Appellant represented Jasvin Kapoor (“the Defendant”) in the Crown Court at Isleworth. The indictment against the Defendant comprised one count of conspiracy to rob (with two named co-defendants and others unknown), between 15 September 2021 and 18 November 2021.

2. This appeal is brought under the Criminal Legal Aid (Remuneration) Regulations 2013 (the “2013 Regulations”). The Graduated Fee scheme at Schedule 1 to the 2013 regulations provides for payment to be made to the advocate representing a legally aided defendant by reference to a number of criteria, including the classification of the offence concerned in the “AGFS Banding Document”. This appeal is concerned with the appropriate classification for the offence with which the Defendant was charged.
3. The Defendant was granted legal aid by a Representation Order dated 1 July 2022, and Schedule 1 applies as in force at that date.

4. Paragraphs 1(7) and 1(8) of Schedule 1, as amended, read:

“(7) A reference in this Schedule to a “band” is to the band of the offence concerned set out in Table B in the AGFS Banding Document, as read in conjunction with Table A in that document.

(8) Where the band within which an offence described in Table B in the AGFS Banding Document falls depends on the facts of the case, the band within which the offence falls is to be determined by reference to Table A in that document.”

5. Paragraph 3 reads, in so far as material:

“(1) For the purposes of this Schedule—

(a) every indictable offence falls within the band of that offence set out in the AGFS Banding Document...

(b) conspiracy to commit an indictable offence contrary to section 1 of the Criminal Law Act 1977 (the offence of conspiracy), incitement to commit an indictable offence and attempts to commit an indictable offence contrary to section 1 of the Criminal Attempts Act 1981 (attempting to commit an offence) fall within the same band as the substantive offence to which they relate...”

6. The introduction to the AGFS Banding Document explains:

“The bands are set out in Table B of this document, which should be read in conjunction with Table A. Where the band within which an offence described in Table B in this document falls depends on the facts of the case, the band within which the offence falls is to be determined by reference to Table A.”

7. In Table B of the AGFS Banding Document, burglary and robbery fall into category 11. Armed robbery, contrary to section 8(1) of the Theft Act 1968, falls into category 11.1. Robbery other than armed robbery, again contrary to section 8(1) of the Theft Act 1968, falls into category 11.2.

8. Table A provides in this way for offences of burglary and robbery:

“**Band 11.1:** Aggravated burglary, burglary with intent to GBH or rape, and armed robbery.

Band 11.2: Indictable only burglary; other robberies.”

9. The matter in issue on this appeal is whether the offence with which the Defendant was charged can properly be described as an offence of armed robbery, so that the Graduated Fee payable to the Appellant is that appropriate to a band 11.1 offence rather than a band 11.2 offence.

10. As Table B indicates, section 8(1) of the Theft Act 1968 does not distinguish between armed robbery and other robberies. It says:

“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.”

11. A statutory definition of armed robbery can however be found at paragraph 5 of Schedule 1 to the Serious Crime Act 2007. It includes, at paragraphs 5(1) and 5(3):

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

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

12. To define an “offensive weapon” for the purposes of section 141 of the 1988 Act, one must look to Schedule 1 to the Criminal Justice Act 1988 (Offensive Weapons) Order 1988, which defines the term by reference to a list of specified weapons.

The Offences

13. A statement of agreed facts, produced for the purposes of the Defendant’s trial, sets out a series of seventeen robberies, one attempted robbery and seven thefts in which people advertising goods for sale on the Internet were met by purported buyers, only to have the goods stolen from them. Force, threatened violence and actual violence, variously, were features of the robbery offences. Some of the victims feared or suspected that one or more of the robbers were carrying weapons. On at least two occasions, one of the robbers indicated to a victim that he was carrying a knife, but no weapons were ever produced.
14. As to actual involvement in the thefts and robberies, the statement confirms that the evidence against the Defendant was limited in only one offence, on 1 November 2021, in which the element of violence was minimal and no reference was made to any weapon of any kind, suspected or otherwise.

The Determining Officer’s Findings and The Appellant’s Case

15. The Determining Officer referred to a number of Costs Judge decisions, of which the most pertinent are to my mind *R v Stables* [2000] 1 WLUK 6 and *R v Kendrick* (SCCO 259/10, 5th January 2011). I do not have a full copy of *R v Stables*, but it is referred to extensively in the LAA’s “Crown Court Fee Guidance” from 2022. *R v Kendrick* is a decision of Master-Gordon-Saker, now the Senior Costs Judge.
16. Both *R v Stables* and *R v Kendrick* were concerned with whether an offence could be categorised as armed robbery under classification provisions similar to those now in effect under the 2013 Regulations. The essential difference is that *R v Stables* was decided before any statutory definition of armed robbery existed, so that the term “offensive weapon” stood to be interpreted by reference to the authorities on the term for the purposes of the Prevention of Crime Act 1953, which (see *Archbold* at 24-175) fell into three categories:

“... those made for use for causing injury to the person, i.e. offensive per se; those adapted for such a purpose; and those not so made or adapted, but carried with the intention of causing injury to the person.”

17. In that context, according to the Crown Court Fee Guidance, the Costs Judge in *R v Stables* found that:

“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, the case should not be classified as an armed robbery.”

18. In *R v Kendrick* the Senior Costs Judge, by reference the statutory provisions to which I have referred, found that robbery with a weapon which is not a firearm, an imitation firearm or an offensive weapon as defined in the Criminal Justice Act 1988 (Offensive Weapons) Order 1988 is not armed robbery for the purposes of offence classification under the Graduated Fee Scheme.
19. In this case the Determining Officer, not being satisfied that there was any evidence that a defendant, or a co-defendant, was armed with a firearm or imitation firearm, or that any victim thought he was so armed or even that an offensive weapon, either as now defined by statute or under the 1953 Act definition, was present at any of the robberies, or that there was any conspiracy to use any offensive weapon during the robberies, categorised the offence with which the Defendant was charged as a band 11.2 offence.
20. The Appellant says that the charge against the Defendant was conspiracy to rob, not substantive offences of robbery. The Crown’s case, as opened to the jury, put to the Defendant in cross-examination and put to the jury in closing, was that the conspiracy was to carry out a series of robberies using violence and carrying offensive weapons on occasion. The criminality in a conspiracy lies, he argues, in the agreement reached, not in the events that follow from that agreement. The offence of conspiracy is complete when the agreement is reached. No overt acts are required. Here, the offence that the Defendants allegedly agreed to commit was armed robbery.

Conclusions

21. It is evident that even by the *R v Stables* test (and putting aside for a moment *R v Kendrick*), none of the offences actually committed by the various defendants to this charge of conspiracy could have been defined as armed robbery. I accept, nonetheless, that if the Prosecution case against the Defendant was that he had conspired to commit armed robbery, then this would be a band 11.1 case. Whether or not armed robbery was ever actually committed would not be to the point.
22. What I have seen is, however, inadequate to establish that the case against the Defendant was of conspiracy to commit armed robbery.
23. The Appellant cannot produce a copy of the Crown’s opening. He advises me that no written copy was ever made available. Nor, understandably, has he gone to the expense of producing transcripts, reasonably enough taking the view that the court ought to accept his account of events.

24. What I understand to have happened, on that account, is that the Prosecution chose to put to the court, the Defendant and the jury an allegation that the Defendant conspired with others to bring unspecified weapons to some of a series of robberies. I also understand that the Defendant denied any conspiracy or for that matter any knowledge of his alleged co-conspirators, and was acquitted.
25. I am not aware that the allegation with regard to the proposed use of weapons was supported by any kind of evidence. As I have mentioned, the Prosecution accepted that there was evidence of the Defendant's actual involvement in only one robbery in which weapons were not in any way a feature. The proposition that the Defendant faced a charge of armed robbery seems to be based entirely on statements made by Prosecuting counsel.
26. More to the point, I agree with the conclusions reached by the Senior Costs Judge in *R v Kendrick*. There is a statutory definition of armed robbery, which in so far as it involves offensive weapons is limited to offensive weapons of a particular kind. It is not the Appellant's case that the Defendant was alleged to have conspired with others to the effect that such weapons would be used.
27. For those reasons, I cannot be satisfied that the Defendant was accused of a conspiracy to commit armed robbery, and the appeal must be dismissed.