



SENIOR COURTS
COSTS OFFICE

SCCO Ref: 141/15

21 January 2019

ON APPEAL FROM REDETERMINATION

REGINA v ST MARTIN

CROWN COURT AT BIRMINGHAM

APPEAL PURSUANT TO REGULATION 29 OF THE CRIMINAL LEGAL AID
(REMUNERATION) REGULATIONS 2013

CASE NO: T20157098

LEGAL AID AGENCY CASE

DATE OF REASONS: 16 JULY 2015

DATE OF NOTICE OF APPEAL: 30 JULY 2015

APPLICANT: COUNSEL NICHOLAS BERRY

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

The appropriate additional payment, to which should be added the sum of £450 (exclusive of VAT) for costs and the £100 paid on appeal, should accordingly be made to the Applicant.

**JASON ROWLEY
COSTS JUDGE**

REASONS FOR DECISION

1. This is an appeal by Nicholas Berry of counsel against the decision of the determining officer to calculate his graduated fee based on a class C offence under the Advocates Graduated Fee Scheme.
2. Counsel was instructed on behalf of Alex St Martin in respect of a single count indictment containing a charge of robbery contrary to section 8(1) of the Theft Act 1968. The circumstances of the offence were that the victim was attacked by St Martin and up to 3 others at a hostel where the victim was living. He was punched repeatedly by St Martin and at least one of the others until he fell to the ground whereupon he was then kicked repeatedly by his assailants. The victim then states in his witness statement:

“The kicking went on for so long that I became used to the level of force they were using. I began to receive sharp blows from a solid object on my back and side, when I looked I could see that “Alex” had picked up my wooden chair, he was holding the legs and hitting me with it. This happened several times until I heard the chair strike the floor and break splitting into several pieces.”

Eventually the assailants left taking the victim’s mobile phone with them.

3. Based upon this description of events, counsel submitted a claim for payment based on an armed robbery which is a category B offence under the 2013 Regulations. The determining officer considered that it was only a simple robbery and as such remunerated counsel by reference to a class C offence under those Regulations.
4. At the appeal hearing before me, Mr Binks appeared on behalf of counsel. He also appeared in the case of R v Day (141/15) involving William Dudley who is another barrister at Citadel Chambers. Indeed, the listing of the appeal in Day provoked the relisting of this case which had been adjourned in 2016 and appeared to be overlooked thereafter. The arguments put forward by Mr Binks in relation to both cases were essentially the same in respect of the challenge to the respective determining officers’ classifications of the offences. They were both robberies and the issue in each appeal was whether or not they should be categorised as armed robbery or simple robbery.
5. For the reasons that I have given in the case of Day, I accept counsel’s challenge to the determining officer’s reliance upon the case of R v Kendrick and its reference to the Serious Crime Act 2007 and definitions in the Criminal Justice Act 1988 and in particular the secondary legislation to that Act.
6. In my view the definition in the long-standing case of R v Staples is to be preferred. In that case armed robbery was defined as follows:
 - 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, the case should not be classified as an armed robbery.
7. The determining officer, having accepted that weapons outside those defined by the Criminal Justice Act 1988 might be offensive, relies on other matters to decide that this particular case does not amount to armed robbery. In particular, he points out that the chair was clearly not carried to the scene of the offence with the intention of it being used to carry out the robbery. He then goes on to say that the defendant, having already committed the robbery, cannot have had the intention to use the chair as a weapon in order to instigate and commit the robbery. Instead it was simply an additional act of violence.
 8. Mr Binks disputed the suggestion that the robbery had already taken place when the chair was used. I have to say that I cannot see anything in the determining officer's written reasons to indicate why he reaches the conclusion that he does. The quotation that I have set out above suggests that the use of the chair occurred during the robbery.
 9. There is also nothing in the definition set out in *Stables* which indicates that the weapon has to be carried to the scene of the crime. As Mr Binks fairly pointed out, if the weapon had not been used then it might well be relevant to consider the intention of carrying a particular implement to the scene of the crime. However where, as here, it had actually been used on the victim, there could not be any real argument regarding the intention to use it. It seems to me that the determining officer's conclusion that the use of the chair was simply an additional act of violence is based purely on supposition. On the face of it, St Martin used the chair for the purpose of causing injury or incapacitating the victim in the act of robbery.
 10. I do not accept therefore that the description of events does not come within any common understanding of what an armed robbery would be. In any event, the only purpose of distinguishing whether a robbery is armed or not is for the purposes of the graduated fee scheme. Where, as here, the facts fall within the *Stables* definition, the claim should simply be categorised as an armed robbery. Additional hurdles seemingly placed in counsel's path as in this case ought not to be erected.
 11. Accordingly, this appeal succeeds.

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