



SENIOR COURTS  
COSTS OFFICE

SCCO Ref: 146/18

Dated: 24 April 2019

**ON APPEAL FROM REDETERMINATION**

**REGINA v PAGE**

COURT OF CRIMINAL APPEAL

APPEAL PURSUANT TO ARTICLE 30 OF THE CRIMINAL DEFENCE SERVICE  
(FUNDING) ORDER 2007 / REGULATION 29 OF THE CRIMINAL LEGAL AID  
(REMUNERATION) REGULATIONS 2013

CASE NO: T20187046

LEGAL AID AGENCY CASE

DATE OF REASONS: 1 November 2018

DATE OF NOTICE OF APPEAL: 22 November 2018

APPELLANT: Mr Shufqat Mahmood Khan

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

**MASTER NAGALINGAM  
COSTS JUDGE**

## REASONS FOR DECISION

### Introduction

1. This is an appeal by Counsel Mr Shufqat Mahmood Khan against the calculation of an advocate graduated fee by the Legal Aid Agency.

### Background

2. The Appellant was instructed to represent Mr Jack Page, the Defendant, who was charged with two counts of robbery and one count of assault occasioning actual bodily harm.
3. Following conclusion of the proceedings the Appellant claimed an advocate graduated fee based on offence class B and submitted a copy of the victim's statement in support of their contention that the offence charged was armed robbery. The Legal Aid Agency determined the fee on the basis of offence class C.
4. The victim made a statement on the day he was attacked and robbed in which he described being approached by the defendants, one of which assaulted him by punching him in the face, causing the victim to fall to the ground following which he was kicked and punched whilst on the floor. The victim was robbed of his shoulder bag and the defendants began to leave the scene.
5. The victim's statement goes on to record that:

“Once the males had left me I took my phone out of my pocket to phone the police. The male that asked me if I smoked then ran back towards me and punched me in the face again. He then pulled out an object and brandished it towards me. As he did this he said “I AM GOING TO STAB YOU”. I could not really see what the object was as it was dark, and I could not describe it. I immediately became very quiet, stopped moving and put my hands open next to my head as if I was surrendering. The male then took my phone from me and searched through my other pockets and took my keys and my other smaller black

Nokia phone. Once he had these objects he made off towards the other males.”

“The whole incident occurred over approximately 20 minutes, and they were in my vision for the whole time.”

“The male who asked me if I smoked was only 2 feet away from me when he threatened to stab me.”

“The area that the incident occurred in was well lit and the weather was clear and not raining.”

“When I was threatened to be stabbed I believed that to be a credible threat and feared for my life.”

#### The Regulations

6. The Representation Order is dated 12 February 2018 and so the applicable regulations are The Criminal Legal Aid (Remuneration) Regulations 2013 (‘the 2013 Regulations’).

#### The submissions

7. In its written reasons the Legal Aid Agency explained its view that because the object was not identified and no supporting documentation was provided to identify the object the case could not be treated as armed robbery.
8. 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. 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.

9. 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 this 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.
10. The weapons specified in the Order (as amended) are largely swords and knives, knuckledusters and the like – weapons which are offensive *per se*. Only certain types of knives are listed: for example belt buckle knives, push daggers, stealth knives, disguised knives.
11. Paragraphs 10 and 11 of section 2.3 of the Crown Court fee guidance (graduated fees) (version for claims with a representation order dated earlier than 1 April 2018) provides:

For a robbery to be treated as 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, the case should not be classified as an armed robbery.

12. Both the Appellant and Respondent agree that this is a question of whether the Defendant intimated he was armed or was actually armed.
13. The Respondent submits that the victim's description of events in the index case amounts to no more than the Defendant intimating he was in possession of an offensive weapon, rather than conclusively being in possession of an offensive weapon. On this basis the Respondent maintains it was appropriate to remunerate the Appellant on the basis of a class C offence of robbery.
14. The Respondent cites the cases of *R v Abdi* SCCO 212/14 (15 December 2014) and *R v Bunting-Barley* SCCO 214/14 as examples of robberies when the victim either did not see the robber had a weapon or could not be sure of the type of weapon held.
15. *R v Abdi* concerned a victim who was grabbed from behind and described a sharp object being pressed into their back, accompanied by the Defendant in that case saying "It's a shank, I'll shank you if you move. Don't say anything. If you say anything I'll shank you.". The victim did not see the object that was pressed into their back. On appeal the court upheld a classification of a class C offence.
16. *R v Bunting-Barley* concerned a victim who recorded in their statement "I felt something sharp, pressure against my chest, below my left nipple. I felt it was sharp enough that if I had moved forward it would have penetrated my body. The same male also said in a mixed British/Nigerian accent "If you shout, I'll stab you.". The victim did not see the object that was pressed into their chest. On appeal the court upheld a classification of a class C offence.
17. The Appellant submits both these cases are distinguishable because in those cases a weapon was not seen but rather intimated.
18. The Appellant says that in the index case a weapon was seen by the victim. Mr Khan invites me to find that references in the victim's witness statement to "pulled out an object" and "brandished it toward me" amount to more than just an intimation and it was reasonable to infer that the object in question was a

knife or something sharp because of the words subsequently used by the Defendant "I am going to stab you".

19. The Appellant invited me to take into account the impact on sentencing where a robbery has been aggravated by the use of an offensive weapon as compared with there being no weapon, whether real or intimidated.
20. I asked the Appellant how I could conclude that the object the Defendant was holding was a weapon given the content of the victim's statement?
21. In response the Appellant invited consideration of the surrounding circumstances, the level of violence used, the use of force and the threats made. He says that infers that the object in question was intended to put the victim in fear, was intended to make the victim believe it would be used, and that the object was capable of causing harm or injury. This all meant the object was likely to be an offensive weapon of some sort.
22. As to the type of weapon, the Appellant said the fact the Defendant said "I AM GOING TO STAB YOU" whilst brandishing it towards the victim infers the object was a knife of some description. Under that threat, the victim saw an object and complied as a result. He asks me to contrast this with examples of where no object is seen at all, for example when the threat is made from behind or something is pressed against a victim's back.
23. Mr Khan made a secondary argument in relation the The Lord Chancellor's guidance as set out in *R v Stables*, in particular:

"8. On 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."
24. Mr Khan invites me to find that in the alternative, were I to conclude that that the Defendant had intimidated they were in possession of an offensive weapon,

I ought to recognise that the intimation of possession of an object with which a victim could be stabbed should now be elevated to the status of intimating possession of a firearm, such that classification of armed robbery under offence Class B would be established where certain types of offensive weapons were intimated.

#### My analysis and conclusions

25. On the balance of probabilities I am unable to conclude that the object “brandished” towards the victim was an offensive weapon. The victim said the attack took place in dry, clear and well-lit conditions with the Defendant in the victim’s vision the whole time. The victim describes being threatened with stabbing when the Defendant was “only 2 feet away”. Despite these facts the victim at no stage was able to positively identify the object in question. Not only was the object not affirmatively identified as being a knife, nor was it identified as any other form of offensive weapon, or article adapted for use for causing injury to a person or an article which may be considered offensive even if it was not made or adapted to cause injury.
26. I consider the facts and circumstances of this case fall squarely within the definition of a Defendant who intimated he was armed with an offensive weapon and no more so than that.
27. Further, I decline Mr Khan’s invitation to elevate intimation of possession of an offensive weapon to the status of intimation of possession of a firearm. The role of this court is not to re-write the guidance on the remuneration of fees and that is effectively what Mr Khan is inviting me to do. In any event, I do not consider that, given the wide range of definitions that may apply to offensive weapons, firearms (whether possessed or intimated) ought to be treated in the same way as offensive weapons.
28. The appeal is therefore dismissed.

TO:

Mr Shufqat Mahmood Khan  
Park Square Chambers  
DX 26402 Leeds Park Square

COPIES TO:

Legal Aid Agency  
DX10035 Nottingham

Mr Michael Rimer  
Legal Aid Agency  
102 Petty France  
London SW1H 9AH  
DX328 London

**The Senior Courts Costs Office**, Thomas More Building, Royal Courts of Justice, Strand, London WC2A 2LL: DX 44454 Strand, Telephone No: 020 7947 6468, Fax No: 020 7947 6247. When corresponding with the court, please address letters to the Criminal Clerk and quote the SCCO number.