Case No: 200204149W5

Neutral Citation No: [2003] EWCA Crim 2753

IN THE SUPREME COURT OF JUDICATURE

COURT OF APPEAL (CRIMINAL DIVISION)

ON APPEAL FROM HIS HONOUR JUDGE MOLE

HARROW CROWN COURT

Royal Courts of Justice

Strand, London, WC2A 2LL

Date: 20th October 2003

Before :

LORD JUSTICE MANTELL

MR JUSTICE ELIAS

and

MR JUSTICE JACK

- -

Between :

REGINA

- v -

LEROY LLOYD ROBERTS

- -

- -

Mr A Ventham (instructed by **Registrar**) for the Appellant

Mr A Smith (instructed by **CPS**) for the Crown

Hearing dates: 01/09/03

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JUDGMENT

Lord Justice Mantell:

1. On 17 June 2002 in the Crown Court at Harrow Leroy Roberts was convicted of two offences, affray (Count 1) and having a bladed article in a public place (Count 2). On 15 July 2002 he was sentenced to a Community Punishment Order of 40 hours concurrent for each offence. He now appeals against conviction by leave of the single judge.

2. The facts were as follows. On Sunday 24 June 2001 at 9.30 p.m. the police came to the appellant's home after receiving an emergency call from a distressed child at that address complaining that her parents were fighting. The police were met with abuse. They withdrew. More police arrived. Sergeant Rutherford went up to the house to be told in no uncertain terms by the appellant, to go back. The police officer then tried to enter the property but was pushed away. He began struggling with the appellant and both men fell over a wall separating the front garden from the one next door.

3. The appellant was next seen in his neighbour's front garden holding a car tyre which he swung at P.C. Lawrence who told him to put it down. When the appellant failed to do as he was told, P.C. Lawrence hit him with his baton. The appellant then was brought to the ground, pulled over the garden wall, handcuffed and taken to Kilburn Police Station. There he was searched and found to have a lock knife in his trouser pocket.

4. At the end of the prosecution case a submission was made by the defence inviting the learned judge to withdraw count 2 from the jury on the ground that the appellant's front garden was not a public place within the meaning of Section 139(7) of the Criminal Justice Act 1988 which, as material, provides as follows:

> "In this section "public place" includes any place to which at the material time the public have or are permitted access whether on payment or otherwise"

The judge accepted that the front garden was not a place where the public was permitted access. In our view that was plainly right and is consistent with the decision of the Court of Appeal in *R v Edwards and Roberts* [1978] 67 Crim App Rep 228, which concerned a similarly worded provision. As Diplock LJ pointed out (p.231), persons such as the postman or milkman who have an implied licence to enter the garden do so not as members of the public but rather as lawful visitors. Nonetheless, the learned judge held that the front garden of this particular property, a Victorian terraced house, was a public place. The garden was no more than a metre wide: it was possible for the appellant to sit on the windowsill of the front room and put his feet on the top of the garden wall. The judge held that having regard to the purpose of this particular legislation, a public place was not merely land to which the public was permitted access but might also include land adjacent to areas where the public had access, provided that the harm against which the section was designed to provide protection could still be inflicted from such a place, and here it was perfectly possible for the appellant standing in his own garden to use the knife against a passing pedestrian.

5. In our judgment the learned judge was in error to construe ‘public place’ in this way. It seems to us there are considerable difficulties in such a construction. For example, as the learned judge recognised, it would mean that if there were a fence of sufficient height to prevent the householder from reaching from his garden into the road, then the whole of his garden would be private and none of it would constitute a public place. If, however, the fence were removed, and replaced by a low wall, such as there was in this case, then the garden would become a public place. Again, if a house abuts the street, it is difficult on the judge’s analysis to see why part of a room in the house itself would not be a public place if the occupier could lean through a window and use the bladed weapon to cause harm to passers-by. In our view such a construction could not possibly be correct.

6. Accordingly, we consider the judge was not entitled to direct the jury that the front garden was a public place; on the contrary, he ought to have upheld the submission of the defence that in the circumstances there was no case to answer on the second count.

7. That ruling did not of course impact directly upon the charge of affray. However, the appellant submits that the defective ruling in relation to the second count affects that charge also. Essentially the argument is as follows: the judge in his summing up explained to the jury that there were two potential defences to the charge of affray. One was that the defendant was using no more than reasonable force to evict somebody trespassing on his property. It is submitted that notwithstanding that the direction in relation to that defence was satisfactory in itself, nonetheless a jury may have been confused in that the garden was to be regarded as private property in relation to Count 1 and as a place to which the public had access when they were considering Count 2.

8. We reject the submission. The judge dealt with the two counts separately and emphasised at the end of his summing up that the jury must consider the evidence in relation to each count quite separately. We are quite satisfied that on a fair reading of the summing up there would be no possibility of confusion in the minds of the jury as to the potential applicability of the defence to the affray charge of using reasonable force to remove a trespasser notwithstanding that the garden was treated as a public place in the context of the second count.

9. Accordingly, we quash the conviction in relation to the second count, but allow the conviction on the count of affray to stand. It follows that the sentence is unaffected.