IN THE SUPREME COURT OF THE UNITED KINGDOM

ON APPEAL FROM THE COURT OF APPEAL (CRIMINAL DIVISION)

B E T W E E N : –

MS ALEX JONES

Appellant

-and-

THE QUEEN

Respondent

SKELETON ARGUMENT OF THE RESPONDENT

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1. This is the skeleton argument of the Respondent, the Crown, in the Appellant's appeal against conviction following her trial for murder.

2. The Appellant was accosted by a security guard, Simon Daly, after robbing the shop where he worked. She knocked him to the ground and fled. He was knocked unconscious in the fall and brought to hospital by ambulance, arriving about half an hour after the incident. While in hospital, he was given medication to which he had a rare allergy and died the next day.

3. The Appellant appealed on the grounds that, when summing up, the trial judge misdirected the jury both as to causation and as to the possibility that her use of force might have been lawful. Both contentions were rejected by the Court of Appeal (Criminal Division), and both are renewed before the Supreme Court.

Issue I – Causation.

4. The judge's direction on causation was in the following terms:

> Ladies and Gentlemen of the jury, if you find so that you are sure, that once the defendant's initial blow to the body of the deceased man started a chain of events which ultimately culminated in his death, then you must find that she killed the deceased.

5. The complaint made is that this overlooked what are said to be significant causal factors which broke the chain of causation between the Appellant's blow and Mr Daly's death, and that consequently the Appellant's conviction is unsafe.

Events between the fall and the death.

6. The arrival of the ambulance was delayed. It is well established that non-receipt of treatment does not break the chain of causation, and the same must apply *a fortiori* to delay: *R v Blaue* [1975] 1 WLR 1411.

7. While Mr Daly was being treated, he was given medication to which he had a rare allergy. In all the circumstances of this case, it would be impossible to conclude that this broke the chain of causation. That is mandated both by general principle and by the case law on medical intervention specifically. Consequently:

    i. It was not a misdirection to omit any reference to such a possibility: *R v Blaue* [1975] 1 WLR 1411, 1416B; and

    ii. In any case, since no properly directed jury could have found that the chain of causation had been broken, the conviction is not unsafe.

Breaking the chain of causation.

8. The chain of causation is not easily broken, even by the actions of third parties. An action which does have that effect is known as a *novus actus interveniens*, and must be substantially independent of the original "but for" or "*sine qua non*" cause if it is to have the effect of exonerating the original actor: *R v Pagett* (1983) 76 Cr App R 279, 288.

9. An action will not generally constitute a *novus actus interveniens* unless it is voluntary, in the sense of being free, deliberate and informed: *R v Pagett* (1983) 76 Cr App R 279, 289. Actions which are not voluntary in this sense include those taken in self-preservation and in the exercise of a legal duty: 76 Cr App R 279, 289, 290.

10. The same applies as a matter of principle to actions taken in pursuance of a moral or ethical duty, such as defending another or administering medical treatment: they are not independent or voluntary. The consequences of all such actions, therefore, in law are the consequences of the original act, certainly so long as they are appropriate and proper.

11. This principle does not only apply where the intervening act prevents or hinders the victim's recovery from the original assault. It is equally applicable where the intervening act itself is the direct cause of the consequence and the only effect of the original act was to occasion the intervening one: *R v Pagett* (1983) 76 Cr App R 279.

Medical treatment.

12. The only case in which medical treatment broke the chain of causation is *R v Jordan* (1956) 40 Cr App R 152, in which new evidence was admitted to the effect that the treatment administered was "wholly abnormal" and "palpably wrong": 40 Cr App R 152, 157. *Jordan* is readily distinguishable on its facts from the present case, and is quite clear that the general rule in medical cases is as set out above: proper and appropriate medical treatment will never exculpate the original actor: 40 Cr App R 152, 157.

The present case.

13. Mr Daly was unconscious for at least half an hour. There can be no doubt that medical attention was necessary, and there is absolutely no evidence to suggest that the treatment he received was in any way improper.

14. The fact that he was allergic to the medication administered is irrelevant. It is a basic principle of English criminal law that one must take one's victim as one finds him, whether that be a thin skull, a religious creed, or a rare allergy: *R v Blaue* [1975] 1 WLR 1411, 1415G.

Conclusion.

15. Mr Daly was struck by the Appellant. He fell and hit his head. He was rushed to hospital. Ordinary and proper treatment was administered. He died.

16. Those are the essential and undisputed facts. On those facts, as a matter of law, the conclusion that the Appellant's blow killed Mr Daly is inescapable.

17. The court is asked to dismiss the appeal on the first ground, on the basis that there was no misdirection and, in any case, no jury properly directed on the law could have failed to find causation established.

Issue II – The possibility of lawfulness.

The lawfulness of Mr Daly's actions.

18. It is first submitted that the actions of the guard, Mr Daly, were lawful throughout. Specifically, that punching the Appellant in the face, grabbing her roughly by the arm, pulling her inside the shop, and reaching for a cricket bat were all permitted acts according to section 3 of Criminal Law Act 1967:

> (1) A person may use such force as is reasonable in the circumstances in the prevention of crime, or in effecting or assisting in the lawful arrest of offenders or suspected offenders or of persons unlawfully at large.
>
> (2) Subsection (1) above shall replace the rules of the common law on the question when force used for a purpose mentioned in the subsection is justified by that purpose.

19. No allegation that he acted unlawfully was raised at trial. It was never suggested by the Appellant that she was responding to unlawful violence or unlawful acts.

20. Even if such an allegation is raised now, the only relevant act is threatening the Appellant with a cricket bat. It is well established that threats are a legitimate means to prevent crime, and will almost inevitably be proportionate whenever actual violence would have been proportionate: *R v Cousins* [1982] 1 QB 526, 530C.

21. It is, however, submitted that the punch and the rough grab were likewise completely reasonable means to prevent the escape of a criminal.

Should the defence of self-defence have been available?

22. It is submitted that during a lawful arrest or prevention of crime, mistake as to the level of violence to be used, or the apprehension of possible excessive violence, cannot and should not in law entitle the wrongdoer to raise the defence of self-defence. This is a departure from the ruling in *Oraki v DPP* [2018] EWHC 115 (Admin), [2018] 2 WLR 1725, that self-defence could be raised on a charge of obstructing a constable in the execution of his duty.

23. The common law regularly restricts the circumstances in which its defences can be raised when there are strong policy reasons to do so. There are strict limits imposed on the defences of duress and intoxication, for example.

24. It is submitted that there are exceptionally strong policy arguments in support of the Respondent's argument. Allowing criminals in the process of being arrested to rely on a genuine mistake as to the circumstances disincentivises the prevention of crime, exposes those acting completely lawfully to stop crime to the risks of extreme injury or death, and moreover requires the prosecution to disprove a subjective matter entirely within the Defendant's own knowledge.

25. The only possible justification for extending the defence to criminals is that, as they are under a mistake or misapprehension, they are not blameworthy, and so lack an appropriate *mens rea*.

26. However, it is submitted that the relevant blameworthiness is simply to be found earlier in the sequence of events. The limits to intoxication and duress both locate blameworthiness at an earlier voluntary act: intoxicating oneself, or associating with criminals or criminal organizations: *R v O'Grady* [1987] 1 QB 995, 1000B.

27. In committing a criminal offence, a criminal has created the circumstances of their arrest. They have exposed anyone arresting them to the risks of their beliefs and apprehensions. It is they, and not the innocent person legitimately and laudably arresting them, who should bear the risks inherent in that arrest, for all of the policy reasons discussed above.

28. Finally, to allow the defence in the present case would lead to a legal absurdity. Reaching for the cricket bat is at most a threat. The law recognizes that threats are a legitimate method of preventing crime: *R v Cousins* [1982] 1 QB 526, 530C. For threats to be effective they must, above all, be believable. But to hold that violence is justified against someone making a legitimate threat – precisely because the threat worked – would be to hold that a legitimate and lawful act justifies violence. That cannot be proper.

29. For all these reasons it is submitted that the learned judge was right to hold that the Appellant was not entitled to rely on the defence of self-defence.

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