18/75

QUEEN'S BENCH DIVISION — DIVISIONAL COURT (ENGLAND)

HYLTON v OHLSON

Lord Widgery LCJ, Ashworth and May JJ

17 April 1975

[1975] 2 All ER 490; (1975) 1 WLR 724; New Law Journal 15 May 1975; *The Times* 18 April 1975

SUMMARY OFFENCES – USE OF A CLAW HAMMER – WHETHER AN OFFENSIVE WEAPON – SEIZED FOR INSTANT USE – WHETHER ARMED WITH AN OFFENSIVE WEAPON.

H. a carpenter, was trying to board a crowded train. M. was standing near the doors and protested. H. and M. both finished up on the platform. H. took out a clawhammer, which was one of the tools of his trade, from his briefcase, and struck M. on the head with it. H. was charged with having with him in a public place an offensive weapon, i.e. a claw hammer, without lawful authority or reasonable excuse, contrary to the *Prevention of Crimes Act* 1953, sl. (which by subs. 4 provided: ... "offensive weapon" means any article made or adapted for use for causing injury to the person or intended by the person having it with him for such use by him'). H. was convicted by the justices, but their decision was quashed by the Crown Court at the Central Criminal Court. The prosecution appealed, but the appeal was subsequently dismissed by the Divisional Court of the Queen's Bench Division. The prosecutor now applied for leave to appeal to the House of Lords.

HELD: Leave to appeal Granted.
No offence is committed under the Act of 1953 where an assailant seizes a weapon for instant use on his victim. Here the seizure and use of the weapon were all part and parcel of the assault or attempted assault. To support a conviction under the Act the prosecution must show that the defendant was carrying or otherwise equipped with the weapon, and had the intent to use it offensively before any occasion for its actual use had arisen.

LORD WIDGERY LCJ: ... "The defendant's argument, both in this court and the court below, was that the section did not extend to the seizing and use of a weapon for the purpose of causing injury if the weapon was seized only at the moment when the intention to assault arose, and that the type of activity contemplated by the section is not the use of a weapon for offensive purposes but the premeditated carrying of a weapon for those purposes. Upon this approach it is argued that the weapon was never carried with the necessary intent, and that the fact that the intent must have been formed at a brief moment before the blow was struck is not enough to satisfy the terms of the Act."

... (p728): "In the absence of authority I would hold that an offence under section 1 is not committed where a person arms himself with a weapon for instant attack on his victim. It seems to me that the section is concerned only with a man who, possessed of a weapon, forms the necessary intent before an occasion to use actual violence has arisen. In other words, it is not the actual use of the weapon with which the section is concerned, but the carrying of a weapon with intent to use it if occasion arises."

[The learned Lord Chief Justice went on to refer to the case of R v Jura (1954) 1 QB 503 and the judgment in that case of Lord Goddard CJ, which he said seemed to support that view. Having cited a passage from p505 of Lord Goddard's judgment, he continued:]

"Lord Goddard's reference to a person 'going out' with a weapon might have been taken to mean that the matter had to be judged as at the moment when the defendant set out from home, but this point is dealt with in the next authority, namely, *Woodward v Koessler* [1958] 3 All ER 557; (1958) 1 WLR 1255. In that case a boy had gone out armed with a sheath knife intending to use the knife to break into a cinema. Surprised by the approach of the caretaker, he then threatened the latter with the knife. Donovan J said, at p1257:

"'Mr McCowan founds himself on the words 'having it with him', and says that it must be found that the boy took the knife out with him with the intention of causing injury, and Mr McCowan says that in the present case he took it out for the purpose of breaking into the cinema. I do not agree with that narrow interpretation of the words 'having it with him'. I think all one has to do is to look and see, for the purpose of ascertaining what the intention is, what use, in fact, was made of it. If it is found that the person did, in fact, make use of it for the purpose of causing injury, he had it with him for that purpose, and I think that is good enough and, to reinforce to what my Lord has said, the evidence shows that he did have it with him for the purpose of causing injury.'

"I accept that it is unnecessary for the prosecution to prove that the relevant intent was formed from the moment when the defendant set out on his expedition. An innocent carrying of, say, a hammer can be converted into an unlawful carrying when the defendant forms the guilty intent, provided, in my view, that the intent is formed before the actual occasion to use violence has arisen."

[Lord Widgery went on to say that Donovan J's words had been too widely interpreted and referred, with approval, to the judgment of this court in R v Dayle [1973] 3 All ER 1151; (1974) 1 WLR 181 and again to Lord Goddard's judgment in Jura. Having done so, he stated the principle in the following terms on p730:]

"Accordingly, no offence is committed under the Act of 1953 where an assailant seizes a weapon for instant use on his victim. Here the seizure and use of the weapon are all part and parcel of the assault or attempted assault. To support a conviction under the Act the prosecution must show that the defendant was carrying or otherwise equipped with the weapon, and had the intent to use it offensively before any occasion for its actual use had arisen."
From *R v Veasey* [1998] EWCA Crim 1773 (4th June 1998)
