



SENIOR COURTS  
COSTS OFFICE

SCCO Ref: 4/16

8 March 2016

**ON APPEAL FROM REDETERMINATION**

**REGINA v TAI**

CROWN COURT AT WOLVERHAMPTON

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

CASE NO: T20137463

LEGAL AID AGENCY CASE

DATE OF REASONS: 1 DECEMBER 2015

DATE OF NOTICE OF APPEAL: 18 DECEMBER 2015

APPLICANT: COUNSEL DANIEL OSCROFT

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

The appropriate additional payment, to which should be added the sum of 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 Daniel Oscroft of counsel against the fees allowed to him by the determining officer under the Advocates Graduated Fees Scheme.
2. Counsel was instructed on behalf of Ammarrah Tai who, together with one other, was prosecuted for attempting to rob, contrary to section 1(1) of the Criminal Attempts Act 1981. Tai's co-defendant also faced a count of having an offensive weapon contrary to section 1(1) of the Prevention of Crime Act 1953. The weapon in question was a knuckleduster.
3. The circumstances of the offence are that Tai arranged to meet up with her former boyfriend so that he could collect some of the belongings which she had retained. Having provided him with some of his things, Tai followed him to a bus stop where the co-defendant came up behind the victim, grabbed his right arm and held it tight. The co-defendant told the victim that the latter had to remove £50 from his bank account or the co-defendant would stab him. The victim did not see a knife but decided not to take any chances. Consequently, they went to a cashpoint machine outside a bank. But the victim was able to get inside the bank and obtain assistance thereby thwarting the attempted robbery.
4. The Theft Act 1968 defines a robbery as stealing with the use or threat of force. The Serious Crime Act 2007 in schedule 1 describes an armed robbery as a robbery involving a firearm, an imitation firearm or an offensive weapon. In the Criminal Justice Act 1988 (Offensive Weapons) Order 1988 descriptions of offensive weapons are set out including knuckledusters.
5. The determining officer says that there is no evidence in any of the material supplied by counsel that either of the defendants carried a knife or used it to accomplish the robbery. Similarly, there is no evidence to suggest that the knuckleduster was used in any way or that the victim was aware of its existence.
6. The determining officer takes the view that, in these circumstances, the offence amounts to no more than a simple robbery which is classified as a category C offence in the Table of Offences under the regulations and has remunerated counsel based on that classification.
7. Counsel, who appeared before me via telephone on his appeal, says that these circumstances are sufficient to classify the offence as an armed robbery rather than a simple robbery. As such the offence ought to be classified as a category B offence within the Table of Offences.
8. As counsel pointed out, there is no definition of armed robbery as an offence. (The description of an armed robbery in the Serious Crime Act is for the purpose of clarifying Serious Crime Prevention Orders rather than setting out a substantive offence.) Indeed the phrase "armed robbery" is not usually referred to in proceedings and that includes the sentencing of a convicted

robber. Counsel took me to the Sentencing Council Guidelines 2006 which describe three categories of severity for the purposes of sentencing. Additionally, aggravating factors are referred to underneath the categories. The final one is possession of a weapon that was not used. That factor is referred to elsewhere in the guidelines as being an aggravating factor, even if the weapon is not used, because it indicates planning.

9. Counsel also referred me by analogy to the definitions of burglary and aggravated burglary in sections 9 and 10 of the Theft Act 1968. An aggravated burglary occurs where a person commits any burglary *“and at the time has with him any firearm or imitation firearm, any weapon of offence...”* The definition of a “weapon of offence” is therefore very similar to the description set out in the Serious Crime Act 2007.
10. The determining officer has referred to the definition of an offensive weapon as described by Master Rogers in R v Stables (1999). He held that for a robbery to be treated as an armed robbery, one of 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 intimates that they are so armed, the case should not be classified as an armed robbery.
11. Counsel was quite content with this definition of an armed robbery. The threat to use a knife which did not exist formed no part of his appeal. It was common ground that this threat was not sufficient to fall within the second limb of the definition. Instead, counsel relied upon the opening phrase of the second limb which merely required the possession of an offensive weapon and made no reference to its use. In short, counsel’s submission was that the possession of the knuckleduster was sufficient to satisfy the definition of an armed robbery for graduated fee purposes even if it had not actually been used in any form.
12. The first limb of the definition makes it clear that mere possession of a firearm or imitation firearm is sufficient. Whilst it may be thought that the firearm had to be brandished in some way to make use of it, it seems to me that a victim could only believe erroneously that the robber was armed if no weapon was produced at any point. It seems to me that similarly the second limb of the definition only requires possession of an offensive weapon. The difference between the two limbs is that a robber who only pretends to have an offensive weapon rather than a firearm or imitation firearm does not commit armed

robbery. Where the robber is in actual possession of a firearm or offensive weapon he is “armed” and so commits an armed robbery for the purposes of the graduated fee scheme when so doing. He is in a different position from the robber who merely intimates that he has an offensive weapon because if the situation demands it, he can produce the offensive weapon and threaten to use it or actually to do so.

13. In my opinion this is clear from the definition in Stables. But even if it were not so, the guidance given on sentencing regarding the possession but not use of an offensive weapon as being an aggravating factor confirms in my view that possession is all that is required to make a robbery into an aggravated form of robbery, namely armed robbery.
14. Accordingly this appeal succeeds and counsel is entitled to his appeal fee in addition to the reassessment of the graduated fee.

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