

R -v- JOGEE

DEFEATING JOINT ENTERPRISE

A CASE STUDY

(R -v- A and others ISLEWORTH CROWN COURT JUNE 2016)

THE FACTS

1. Four young men were charged with the s.18 wounding with intent of a 15 year old youth ("W") He received four stab wounds caused by two knives. One of his wounds was life-changing. There was added to the Indictment an alternative count of s.20 wounding.
2. The prosecution case was that this was a retribution attack as a result of one of the defendant's brothers having been robbed of his mobile phone by W's older brother "X".
3. Following the robbery it was alleged that the four defendants made arrangements to meet or find X and to take two knives to the scene. They also arranged for others to attend as "back up" in case they encountered a number of X's friends or associates.
4. A location was identified for a meet. X attended and W unexpectedly accompanied him. The four defendants travelled to the scene in a mini-cab. Two were armed with knives. At the location all four got out of the cab and according to the cab driver all four ran off and a fight occurred. He was unable to give any description of the fight or who was involved. There was evidence that X had first approached the cab and that he might have been armed with a weapon; probably a baseball bat. X declined to make a statement to the police and was not a prosecution witness.
5. W alleged that he saw four males exit the cab and described how two approached him each armed with a knife and how they then inflicted four stab wounds between them. He did not know what had happened to his brother X during the attack but believed that the other two defendants had attacked him.

W ran away and hid. He was later reunited with his brother X after he had been taken to hospital by ambulance.

6. At or shortly after the arrival of the mini-cab at the scene W described seeing three other individuals on motorbikes who stopped. The prosecution case was that these individuals formed the “back up” team.
7. W knew one of the four youths who had got out of the cab. He gave a description of the other three; two of whom had stabbed him. There was forensic evidence to link those two to the knives that were recovered after the attack.
8. Those two defendants pleaded guilty shortly before the trial leaving the other two “Y” and “Z” to be tried alone as secondary parties.
9. I represented Y the only adult male within the group of four; a 21 year old. His defence was that he had accompanied the other three because he had taken on the role of looking after Z and did not want him to get into trouble. He did not know that knives had been taken to the scene and believed that any confrontation would be verbal. Z denied any involvement in the stabbing and his case was that he had had a physical encounter with X but that he had run from the scene having seen X reach for something in his wasteband.

SUBMISSION OF NO CASE TO ANSWER

10. I submitted at the close of the prosecution case, which submission was adopted on behalf of Z, that Y had no case to answer.
11. I cited **R v Jogee** and submitted that there was no evidence or none that could safely be left to the jury of a joint enterprise to attack W.
12. All of the evidence in support of an agreement to attack, contained in a number of damaging Whats App exchanges, between the four defendants was to attack X who was held responsible for robbing a brother of one of the co-defendants.

13. There was no evidence of four people participating in the attack on W and no forensic evidence linking Y or Z with the weapons used. Nor was there any evidence that Y or Z had encouraged the attack on W when at the scene.
14. In short it was submitted that the evidence pointed to the two principals having on the spur of the moment stabbed W and the absence of any evidence that the alleged secondary parties shared that common purpose or intent; the principals had embarked on a frolic of their own.
15. There was no evidence that their attack on W was the result of a mistake; all of the evidence pointed to the deliberate targeting of W and not engaging with X in any way.
16. The prosecution submitted that this was a joint enterprise to stab anyone who happened to be at the scene who was involved or sympathetic to the earlier robbery on the co-defendant's brother. It was argued that the Whats App messaging included one message ("*there's gonna be loads of them*") that could be interpreted as contemplating an attack on more than one individual. Furthermore, the defendants had recruited others to arrive and they had done so on motorbikes.

THE RULING

17. The trial judge first ruled that there was no evidence direct or inferential that the attack by the two principals on W was mistaken. He found it to have been a deliberate attack.
18. He then ruled that there was no evidence that either Y or Z had attacked W's brother X; indeed there was no evidence as to what if anything either of these two defendants did after exiting the mini-cab.
19. He accepted the defence submission that the legal principle of transferred malice had in fact been subsumed into the R v Jogee ruling and it was that ruling that was to guide the outcome of the submissions.

20. The question to be answered, as was submitted was '*Is there evidence whether direct or by inference that these two defendants expressly or tacitly agreed that someone other than the complainant's brother should be subject to deliberate unlawful violence, whether intending serious harm or not, if the need arose.*'"
21. The judge rejected that the single message (ibid) was capable of safely being given the interpretation contended for by the prosecution when set against the clear intent to be derived from the other messages that a single individual was to be targeted. As for the three individuals who arrived on motorbikes the only evidence of conduct on their part was that they had revved their engines.
22. The judge found that there was no other evidence, whether direct or inferentially, to which the prosecution could point to show a common purpose or intent to attack someone other than W.
23. He also found that there was no evidence as to what the two knives might be used for. Was it contemplated that they were to be used to attack X or only to frighten off an attack upon themselves? The absence of such evidence bore upon the mens rea required in order to convict the defendants as secondary parties.
24. The judge referred to Professor Omerod's Note to the Judicial College which had formed part of the defence submissions. Applying R v Jogee Professor Omerod concluded as did the judge that a defendant would not be liable as a secondary party for a principal's offence if they had agreed on a particular victim and the principal deliberately commits the alleged offence against a different victim.
25. The judge concluded that the first limb of **R v Galbraith** applied in that there was no evidence from which a jury could properly infer that the two defendants had a common purpose or intention to attack W. If he was wrong in that regard he was satisfied that the second limb applied, namely, that such evidence as did exist namely the single Whats App message (ibid), was of too tenuous a nature to leave to the jury. It would

require them to speculate as to the meaning of the message which in itself was inconsistent with all the other messages and in any event was capable of at least two different interpretations.

26. There was in the circumstances no case to answer.

APPEAL

27. This being a terminatory ruling the learned judge gave the prosecution time to consider whether they wished to appeal.

28. The matter was considered not only at Case Lawyer level but also at a senior level above. On the following day prosecution counsel informed the court that it would not seek leave to appeal the ruling.

29. The jury returned and on the court's direction returned not guilty verdicts on each count against both defendants.

Peter Doyle QC

25 Bedford Row.