

ENGLAND AND WALES / JUDGMENT

Dodson, R. v

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Neutral Citation Number: [2009] EWCA Crim 1830 IN THE COURT OF APPEAL CRIMINAL DIVISION Case No: 200805972/C1 Royal Courts of Justice Strand London, WC2A 2LL Date: Wednesday, 26 August 2009 B e f o r e: LADY JUSTICE HALLETT DBE MR JUSTICE TEARE HIS HONOUR JUDGE ROOK QC (Sitting as a Judge of the Court of Appeal Criminal Division)

- ----- R E G I N A v WAYNE DODSON
- ----- Computer Aided Transcript of the Stenograph Notes of WordWave International Limited A Merrill Communications Company 165 Fleet Street London EC4A 2DY Tel No: 020 7404 1400 Fax No: 020 7404 1424 (Official Shorthand Writers to the Court)
- ----- Mr D Cooke appeared on behalf of the Appellant Mr H Forgan appeared on behalf of the Crown
- ----- J U D G M E N T LADY JUSTICE HALLETT: On 7 May 2007, at around 1 o'clock in the morning, Rose and Nicholas Homewood and their four year daughter were asleep at home. They were awoken by a loud knocking at their front door. Rose Homewood went to the front door and was confronted by three men, Taylor, Lee and the appellant. They demanded to know where her son Andrew was. She told them she did not know. They became increasingly aggressive. Lee attempted to push the door open and Rose Homewood resisted. Lee, Taylor and the appellant eventually pushed past her and gained entry to her home. Nicholas Homewood had come downstairs and tried to push them out of the back door. The appellant grabbed him by the throat and Lee placed Mr Homewood in a headlock. A scuffle ensued. Rose Homewood went into the living room to telephone the police. The appellant approached her, took the phone from her and tore the power cable from the wall. Both Lee and the appellant shouted and behaved in an aggressive fashion. When Mrs Homewood saw Lee holding her husband in a headlock she noticed Taylor returning downstairs. He commented there was little girl upstairs and at that point all three accused left the premises. Some damage was caused: a mirror was broken and a flower pot overturned. On any view, therefore, this was a serious incident. Unfortunately, the Crown found certain problems in their way so far as witnesses were concerned. What happened was this. The appellant was committed to stand trial at the Lewes Crown Court by the Eastbourne Magistrates' Court on 22 August 2007 on three charges, affray, criminal damage and common assault. He was arraigned at the Lewes Crown Court on 12 October 2007. He pleaded not guilty and the matter was listed for 18 December 2007. By that time the prosecution realised that they had certain problems. They therefore accepted the offer from

the defence that the three accused should plead guilty to a summary only offence of using or threatening violence to secure entry to premises. Having agreed that the plea would be acceptable, the prosecution purported to add such an offence to the indictment. His Honour Judge Tain, the trial judge, was invited to reconstitute himself as a district judge and, as it were, amend the charges in the Magistrates' Court by adding the summary only offence of using or threatening violence. This he did. Encouraged by the parties the judge then committed the summary only offence to the Crown Court to join the other offences on the indictment as a new count 6. The accused, including this appellant, pleaded guilty to the offence of using violence alleged in count 6. The appellant pleaded not guilty to the other counts and the Crown offered no evidence on those three counts and verdicts of not guilty were entered. All parties now agree that, unfortunately, this case falls foul of a number of technical provisions relating to committals to the Crown Court. The court did not have the power to commit a summary only matter to the Crown Court under section 41 of the Criminal Justice Act 1988 in the absence of a connected either way matter committed to the Crown Court at the same time. It should be remembered that in this case the three offences of affray et cetera had been already committed to the Crown Court. Thus what happened to the appellant thereafter was unlawful when the judge sentenced him on 31 January 2008 to a community order and ordered him to pay compensation. The appellant has leave to appeal against conviction. There are a number of objections to the procedure adopted. As we have indicated, section 41 provides for committal of a summary offence but only when it is committed with an associated offence which is triable either way. The decision in *R v Avery* [1994] RTR 419 makes it plain that pursuant to section 41 only if a charge on the indictment is pursued and there is a conviction does the Crown Court have power to deal with the offence committed for trial under section 41. Thus the committal was a nullity and sentence also. As the Court of Appeal Criminal Division we have no power to hear any appeal against the decision or rulings of His Honour Judge Tain sitting as a district judge. Any complaint should have gone to the Divisional Court. Teare J and I therefore must reconstitute ourselves as a Divisional Court and we must review the procedure judicially. Having done so, we have no option but to give permission to bring judicial review. We dispense with the formalities of issue and service. We quash the committal to the Crown Court and the sentence will fall accordingly. We are informed that the matter cannot return to the Magistrates' Court because the Crown would be out of time to bring the summary only offence and on the offences, which are triable either way, verdicts of not guilty have been entered. Therefore the unfortunate result is that the appellant will not be tried for this matter. We assume that people will consider whether or not they should be charging for their part in the debacle at the Crown Court, although we do understand that these mistakes can occur when the provisions are unnecessarily complicated. SMITH BERNAL WORDWAVE

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Prepared on 29 October 2026 · Esheria