

This judgment was given on 28 July 2021 and was subject to reporting restrictions by statute. The defendants subsequently entered guilty pleas in the Crown Court and the judgment may now be reported.

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IN THE COURT OF APPEAL

CRIMINAL DIVISION

CASE NO 202101767/B5-202101955/B5-202101956/B5

[2021] EWCA Crim 1237

Royal Courts of Justice
Strand
London
WC2A 2LL
Wednesday 28 July 2021

Before:

LORD JUSTICE EDIS

MRS JUSTICE THORNTON DBE

HER HONOUR JUDGE DHIR QC

(Sitting as a Judge of the CACD)

**INTERLOCUTORY APPLICATION/APPEAL UNDER S.35/36 CRIMINAL PROCEDURE AND
INVESTIGATIONS ACT 1996**

REGINA

V

STC LIMITED

"R" (an individual)

"G" (an individual)

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MR G GILBERT appeared on behalf of the Applicants.

MR R HELLER appeared on behalf of the Respondent.

J U D G M E N T

Lord Justice Edis :

1. This is an appeal against a decision of HHJ Donne QC sitting at Inner London Crown Court which he handed down on 4 June 2021. Given the decision that he reached, the trial remained pending with the result that the reporting restriction, imposed by s. 37 of the Criminal Procedure and Investigations Act 1996, applied. It continues to apply to these proceedings and this judgment may not be published until the conclusion of the proceedings in the Crown Court. The judge had directed a preparatory hearing under s.29 of the Criminal Procedure and Investigations Act 1996, and cited *I(C)* [2009] EWCA Crim 1793 in support of that decision. In *Quillan and others* [2015] EWCA Crim 538, the Lord Chief Justice cited the and said this:-

“9. This court has given guidance in a number of cases, particularly in *R. v I(C)* [2010] 1 Cr. App. R. 10 (p.138); [2010] 1 W.L.R. 1125 as to the circumstances in which a preparatory hearing under Pt III of the 1996 Act should be conducted. In giving the judgment of the court in *I(C)*, the Vice President, Hughes LJ, said at [21]:

‘Virtually the only reason for directing such a hearing nowadays is if the judge is going to have to give a ruling which ought to be the subject of an interlocutory appeal. Such rulings are few and far between and do not extend to most rulings of law.’”

2. The court in *Quillan* held that this passage “would almost invariably” be the position, and explained that in long and complex cases preparatory hearings may have other advantages which were explained. The present case is not a long and complex case. The judge said that it involved a “discrete question of

law which was certain to arise, which involved no factual dispute and which needed authoritatively determining, lest the trial proceed on what might turn out to be a false footing.” For that reason he concluded that it should be determined within a preparatory hearing. Neither side contends that he was wrong to do so, or that he was without jurisdiction to decide the issue in a preparatory hearing. The Respondent (“Lambeth”) does not contend that this court lacks jurisdiction to consider whether to give leave to appeal and, if so to determine the appeal.

The issue

3. The Applicants are due to stand trial in the Crown Court at Inner London on 15 September 2021 in respect of three counts of unlawfully marketing knives, contrary to s.1 of the Knives Act 1997 (counts 1, 2 and 3). Each count relates to the marketing of a different knife on a website which STC Ltd operates alongside its “bricks and mortar” business in the West Country. That website offers for sale a large variety of sports and leisure goods, including a selection of knives. STC Ltd is charged with each count, and so are the two individual applicants. It is alleged that they are guilty as officers of the company. S.9(1) of the 1997 Act provides as follows:-

“9.— Offences by bodies corporate.

(1) If an offence under this Act committed by a body corporate is proved—

(a) to have been committed with the consent or connivance of an officer, or

(b) to be attributable to any neglect on his part,

he as well as the body corporate is guilty of the offence and liable to be proceeded against and punished accordingly.”

4. The offences each concerned the way in which the particular knife mentioned in the count was marketed on the website. Count 1 related to an “Expendables Double Shadow Style knife”. Count 2 to a “Anglo Arms Kukri machete”. Count 3 offered for sale a “Rambo 3 replica knife”. The judge was invited to rule that the prosecution material did not disclose the offences charged. He refused so to do, and this application is for leave to appeal against that conclusion in respect of counts 1 and 3 only. His conclusion on count 2 is not challenged before us.

5. The website was interrogated by Lambeth’s investigators following concerns raised by staff at a hostel for the homeless in London whose residents included young men who were found to be buying knives using STC Ltd. and receiving them by mail order. It showed that the website followed a familiar structure in which a potential purchaser could migrate to the site and select from a number of categories of product; those categories were offered on a menu on the homepage. In the “Sports and Leisure” section was a tab called “knives” which led to the knife selection. The page for each knife was displayed if the potential purchaser clicked on its name. The names are therefore important in the marketing exercise, and they are as set out in the previous paragraph.

6. Each of the webpages for each of the three knives contained at least one photograph of it and a written description. The descriptions were

- i) “Count 1

Expendables II is an action-packed film that features hand to hand combat, heavy weapons, and most importantly, a range of iconic knives. For example, this Expendables Double Shadow Style Knife is a memorable blade from the blockbuster motion picture.

This double shadow style knife features a double-blade design, which is an iconic feature of the blade that appears in Expendables II. The blade itself has been crafted from, high-quality stainless steel, which makes it durable and long-lasting. To finish the blade, it has been given a mirror polish.

The handle has been manufactured with premium Micarta and even features a guard to protect your hand when in use.

Included in your purchase is a classic leather sheath, which will protect your knife when it is not in use. This sheath will also shield your knife when it is on display.

In regards to size, this Double Shadow Style Knife measures approximately 16.75 inches.”

7. The description ends with this paragraph as do the other two descriptions with a different name inside it at the end of it:

“Please note: This item is not for sale to anyone under the age of 18. You must also be aware of any rules and regulations in relation to knives in your own state or territory, before purchasing this Expendables Double Shadow Style Knife.”

- i) “Count 2

This Anglo Arms Kukri Machete with Wooden Handle and Sheath is a durable and high-quality machete that comes with a rigid black nylon sheath.

The black nylon sheath supplied with the machete features a large belt loop and a Velcro fastening strap. The blade can be removed from the sheath at any point for you to use. This Anglo machete also has a sturdy handle that is made from Indian Rosewood. This handle improves your grip and has been secured with three large diameter stainless steel rivets.

In terms of appearance, this Kukri Machete features seven blood grooves, which have been milled into the blade. These holes help the blade to reduce the front end weight, without sacrificing the strength or integrity of the blade itself.

This durable machete has been created from stainless steel which will ensure that it will remain reliable. This Kukri machete is also constructed with a full tang and a razor-sharp concave blade. The blade uses a 343mm cutting edge, alongside a 13mm v-grind as well as a 4mm spine.”

ii) “Count 3

This Rambo 3 Replica Knife is a replica of the knife that appears in the third Rambo movie, which is used by John James Rambo. The Bowie design is now a distinctive knife in the Rambo franchise.

As you can see from the replica knife, there is an interesting slot on the blade itself. The story goes that the creator of the original knife created a design where another blade slotted into the slot of the blade. There are a lot of replicas in the world since this knife is so popular, however, ours is high-quality and durable.

The blade is silver stainless and there is even a handguard on the handle. The handle itself is made from a laminate Pakka wood, for durability and for a comfortable grip. This knife also comes with a high-quality leather sheath to protect your knife.

In terms of measurements, the total length is 425mm, whereas the blade length is approximately 285mm.”

8. It is not possible to set out the photographs in this judgment. The knives in counts 1 and 3 both have handguards between the blade and the handle of a type generally seen in daggers, and not generally seen in knives for domestic use, or use in butchery. The Rambo knife blade has a sharp cutting edge on one side and ends in a sharp point which would be ideal for stabbing a person, and no doubt has other uses as well. The Expendables knife blade divides into two prongs which means that it is useful for stabbing people, and does not appear to have a cutting edge which might make it useful for any other purpose. It resembles a carving fork except that the prongs are long, thick and quite close together. According to the description this feature is “iconic”. The

handles of both knives are designed so that the knife can easily be held with the hand clasped around the handle in a fist.

9. The principal purpose for which the knives seen in counts 1 and 3 designed appears from the photographs to have been use as a weapon. Although other uses may be possible, other types of knife are available for those which would serve those purposes at least as well. The descriptions appear to confirm this by emphasising the roles of these implements in *Expendables II* and *Rambo 3* respectively. The former passage refers expressly to “hand to hand combat”. The description in relation to the “*Rambo*” knife is less specific, perhaps because the “*Rambo franchise*” was thought by the author to be so well known that it speaks for itself.

The Knives Act 1997

10. This legislation received Royal Assent a few weeks before the 1997 general election. It has lain largely unnoticed since. No member of this court has had any professional dealings with it until today, either as advocate or judge, in the 24 years since it came into force in September 1997. We have not found any decision of this court dealing with it. As Mr. Gilbert, counsel for the applicants, has shown, successive legislation in relation to knives has not produced an entirely coherent regime regulating their possession, use and sale. He submits that this should inform the proper construction of the 1997 Act and that, if it is construed so that it is consistent with other offence-creating provisions, its scope will be narrower than first appears.

11. Ss. 1 and 2 of the 1997 Act are as follows:-

“1.— Unlawful marketing of knives.

(1) A person is guilty of an offence if he markets a knife in a way which—

- (a) indicates, or suggests, that it is suitable for combat; or
- (b) is otherwise likely to stimulate or encourage violent behaviour involving the use of the knife as a weapon.

(2) “Suitable for combat” and “violent behaviour” are defined in section 10.

(3) For the purposes of this Act, an indication or suggestion that a knife is suitable for combat may, in particular, be given or made by a name or description—

- (a) applied to the knife;
- (b) on the knife or on any packaging in which it is contained; or
- (c) included in any advertisement which, expressly or by implication, relates to the knife.

(4) For the purposes of this Act, a person markets a knife if—

- (a) he sells or hires it;
- (b) he offers, or exposes, it for sale or hire; or
- (c) he has it in his possession for the purpose of sale or hire.

(5) A person who is guilty of an offence under this section is liable—

- (a) on summary conviction to imprisonment for a term not exceeding six months or to a fine not exceeding the statutory maximum, or to both;
- (b) on conviction on indictment to imprisonment for a term not exceeding two years or to a fine, or to both.

2.— Publications.

(1) A person is guilty of an offence if he publishes any written, pictorial or other material in connection with the marketing of any knife and that material—

(a) indicates, or suggests, that the knife is suitable for combat; or

(b) is otherwise likely to stimulate or encourage violent behaviour involving the use of the knife as a weapon.

(2) A person who is guilty of an offence under this section is liable—

(a) on summary conviction to imprisonment for a term not exceeding six months or to a fine not exceeding the statutory maximum, or to both;

(b) on conviction on indictment to imprisonment for a term not exceeding two years or to a fine, or to both.”

12. Ss. 3 and 4 provide defences. It is not necessary to set out s.3, but we will set out s.4 in order to illustrate the nature of the defences which it provides:-

“4.— Other defences.

(1) It is a defence for a person charged with an offence under section 1 to prove that he did not know or suspect, and had no reasonable grounds for suspecting, that the way in which the knife was marketed—

(a) amounted to an indication or suggestion that the knife was suitable for combat; or

(b) was likely to stimulate or encourage violent behaviour involving the use of the knife as a weapon.

(2) It is a defence for a person charged with an offence under section 2 to prove that he did not know or suspect, and had no reasonable grounds for suspecting, that the material—

(a) amounted to an indication or suggestion that the knife was suitable for combat; or

(b) was likely to stimulate or encourage violent behaviour involving the use of the knife as a weapon.

(3) It is a defence for a person charged with an offence under section 1 or 2 to prove that he took all reasonable precautions and exercised all due diligence to avoid committing the offence.”

13. The interpretation section is s.10. The definitions which have been drawn to our attention are these:-

. “*knife*” means an instrument which has a blade or is sharply pointed;

“*marketing*” and related expressions are to be read with section 1(4);

“*publication*” includes a publication in electronic form and, in the case of a publication which is, or may be, produced from electronic data, any medium on which the data are stored;

“*suitable for combat*” means suitable for use as a weapon for inflicting injury on a person or causing a person to fear injury;

“*violent behaviour*” means an unlawful act inflicting injury on a person or causing a person to fear injury.

The decision of the judge

14. The judge set out the background and summarised the submissions of the defendants. He said this about the background:-

“8. In October 2019 staff at a hostel for homeless young people in Stockwell, south London, became concerned at a number of packages bearing the label of Seaton Trading Company addressed to residents, all of whom were under the age of 18 years. Examination of the company’s website revealed that, in addition to sporting and camping goods, a wide range of knives were advertised, some of which exceeded 12 inches in length – corresponding to the size of some of the packages. One resident was asked to open the package addressed to him, which was then seen to contain a 20” knife; the resident ran off with the knife before it could be recovered by staff. A further package was found to contain a 12” knife and further similar but empty packages were found in another resident’s room.

9. The discoveries were shared with police and LB Lambeth Trading Standards Department. There followed an investigation involving Trading Standards departments in London and Devon and Somerset, as well as the Metropolitan Police and Devon and Cornwall Police, involving test purchases and the like, leading to the indictment before this court.”

15. The judge's summary of the defence application on which he was ruling is as follows:-

- i. the legislation is not engaged by the evidence relied on by the Crown in the current instance;
- ii. whilst the precise target and scope of the legislation is not clearly defined, it was not the intention of Parliament to criminalise wordings of the kind with which this case is concerned;
- iii. the Court should not allow the matter to proceed to a trial before a jury as a result.

16. The submissions made by Mr. Gilbert to the judge were very substantially the same as those made to us on this application. The judge summarised them in this way:-

“24. It is submitted by counsel for the defendants that:

- i. the sales listings relied on by the prosecution are not of a nature which engages the legislation, nor are they within its intended scope;
- ii. allowing a trial to proceed to determine such allegations would be to allow it to go ahead on a “false footing”, and
- iii. the Court is invited to dismiss the charges as a result.

25. It is further submitted that:

- i. the wording relied on by the Prosecution amounts to legitimate marketing, and neither: (a) indicates nor suggests a suitability for the items to be utilised as weapons, nor (b) is likely to encourage the use of the item in incidents of unlawful violence;
- ii. as such, whilst the scope of the legislation is unclear, the three listings are not of a type which engages it.

26. Finally it is submitted that proceeding to trial on the current indictment would be to allow the matter to go forward on a false footing because:

- i. the inferences the prosecution would invite the jury to draw are not supported by the evidence put forward; and/or
- ii. the statute is not intended to cover listings of the kind which form the subject matter of the indictment.”

17. Omitting the part which deals with the machete in count 2 which is not the subject of an application for leave to appeal, the judge rejected the defence submissions in the following way:-

“30. In my judgement the defence is correct to accept that:

- i. the items referred to in the listings subject of the three counts are knives within the meaning of the Act;
- ii. the items were being marketed by the Company for the purposes of the Act; and
- iii. the listings may be taken as an “indication or suggestion” that applied to the knives.

31. That being so, the Act is clearly engaged and the only question is whether there is evidence upon which a jury properly directed could convict a defendant on each count.

32. I accept the prosecution’s submission that it is extremely unlikely that knives would be marketed explicitly for being suitable for use in an act of violence and that section 1(3) permits a broad interpretation of “an indication or suggestion” that a knife is suitable for combat, or otherwise is likely to stimulate violent behaviour involving the use of the knife as a weapon. I also accept the submission that the photographs/images of the knives together with the accompanying descriptions or copy can provide evidence of the *actus reus* of the offence.

33. The Expendables Double Shadow knife with its bifurcated blade does not appear to have any innocent practical purpose. Its design, together with references to the film featuring hand-to-hand combat and the other highlighted wording, is capable of indicating or suggesting that it is suitable for combat, whether or not it is also of interest to collectors. It follows that I find there is a case to be considered by a jury in respect of count 1.

34. The Rambo 3 replica knife is a large knife based on the Bowie knife – which had its origins in a cut-down sword.

Whilst it might have practical uses by some outdoor enthusiasts, to carry it in public would be to invite arrest. The design of the knife, together with the references to the Rambo films is, in my judgement, capable of indicating or suggesting that it is suitable for combat, or is otherwise likely to stimulate violent behaviour involving the use of the knife as a weapon. In this latter regard I take judicial notice of the prevalence of 'Rambo' knives carried by street gangs in London, often featuring in crimes of serious violence. It follows that I find there is case to be considered by a jury in respect of count 3."

The Grounds of Appeal

18. There are three grounds of appeal:-

- i) The Learned Judge "accept[ed] the submission that the photographs/images of the knives together with the accompanying descriptions or copy can provide evidence of the actus reus of the offence". It is contended that the judge erred in reaching such a conclusion.
- ii) It is contended that, whilst there is no guidance on the meaning of the Act, it cannot have been the intention of Parliament to prohibit what may be described as common marketing techniques.
- iii) It is submitted that the inferences that the Crown invites from the listings are not ones which the jury can properly come to on the evidence before it and that the judge erred in finding that they could. A complaint is made that the judge should not have taken "judicial notice" of the prevalence of Rambo knives on the streets of London.

19. In support of Ground 1, Mr. Gilbert makes some submissions based on the construction of the 1997 Act, and of other legislation. He says this:-

“6. It is submitted that:

- i. section 2 of the 1997 Act creates a specific offence of publishing pictures of knives in a specified manner,
- ii. therefore, section 1 cannot be concerned with the same, and is aimed solely at the wording of the marketing text, and not the whole listing, and
- iii. that this is correct appears to be confirmed by the wording of section 2 and its reference to a picture being displayed “in connection with the marketing” of a knife. The conjunctive structure suggests the two are to be considered separately.

7. Furthermore, it is submitted that Parliament has legislated widely concerning knives and the use and sale of the same. The Appellants note that:

- i. the Criminal Justice Act 1988 prohibits:
 - a. having a bladed or sharply pointed article in a public place (section 139)
 - b. having the same at a school or further education establishment (section 139A), and
 - c. threatening others with a bladed article in a public place or on school or further education premises (section 139AA),
- ii. the Offensive Weapons Act 1959 prohibits:
 - a. the possession of flick and gravity knives (section 44), and
 - b. the delivery of bladed articles to:
 1. residential premises (section 38), and
 2. persons under eighteen (section 39), and
- iii. the manufacture of the sale of flick of gravity knives is prohibited by section 1 of the Restriction of Offences Weapons Act 1959.

8. As such, it is contended that:

- i. Parliament could have legislated to prohibit the sale of such knives completely, and
- ii. that it has not done so plainly means that the sale of such is a permitted activity, regardless of form.

9. It is submitted that it follows that the display of such items for sale is not an illegal activity. Therefore, the digital display of such is also not a prohibited act and, as a result, section 1 of the 1997 Act is only concerned with the listings of such.

10. Finally, it is argued for the Appellant's that the structure and wording of the legislation supports this argument as section 1 (3) and (4) distinguish between:

- i. the marketing of the item (ss.1(4)), which includes the exposure of such for sale or hire (ss.1(4)(b)), and
- ii. the 'indications or suggestions' which may be applied to such (ss.1(3))."

Discussion

Ground 1

20. Ss. 38 and 39 of the Offensive Weapons Act 2019 are not yet in force, and are therefore irrelevant to the issue we have to decide even if, once implemented, they might become relevant. We say nothing more about that Act.

21. It is true that the sale of knives of this kind has not been made straightforwardly illegal. Carrying them in a public place without a reasonable excuse is certainly an offence under s.139 of the Criminal Justice Act 1988 and may also amount to an offence under s.1 of the Prevention of Crime Act 1953. Other offences may also be committed, as identified by Mr. Gilbert, depending on the circumstances.

22. The suggestion that because selling knives has not simply been prohibited, the 1997 Act does not regulate how that selling may lawfully be done is in our judgment entirely without merit. It does. That is its purpose. Selling knives is not a crime unless the way it is done breaches the terms of either s.1 or s.2 of the 1997 Act. If it does, the act becomes criminal unless the seller can make out a statutory defence under s.3 or s.4. We are not concerned with defences at this stage.
23. The 1997 Act prohibits marketing (s.1) or publishing material connected with marketing (s.2) which indicates or suggests that the knife is suitable for combat or is otherwise likely to stimulate or encourage violent behaviour involving the use of the knife as a weapon. In this case it is enough for the prosecution to show that the marketing suggested that the knife was “suitable for combat”, which merely means “suitable for use as a weapon for inflicting injury on a person or causing a person to fear injury.” That wide definition means that a great many knives satisfy it. These offences, however, are not principally about the nature or purpose of the knife, but about the way in which it is marketed. The marketing must not contain any “suggestion” that the knife is “suitable” for hurting someone to any extent. These are low thresholds, as Mr. Heller on behalf of Lambeth submits. The knife does not have to be “made or adapted for use in causing injury to any person” (to cite the wording of the Prevention of Crime Act 1953). If it is, however, and the way that it is marketed suggests that this is so, then the offence is committed. It may be very difficult to market some types of knife at all without making this suggestion. This does not mean that such marketing ceases to be criminal.

It would be a rational aim of an Act of Parliament to restrict substantially the ability of sellers to market weapons of the kind with which this case is concerned and the choice of wide words and low thresholds appears to be intended to do just that.

24. The argument that the court must ignore the picture of the knife when deciding whether an offence has been committed under s.1 because of the terms of s.2 has equally little merit. It would obviously be absurd for Parliament to stipulate that a court must leave an image of a knife out of account in assessing the effect of the way it was marketed for the purposes of s.1, and such a consequence could only arise by the use of clear words. There are no such clear words. Indeed, there are no words arguably capable of bringing about this result at all. The reason why the sections are in different terms is because they regulate different things. S.1 deals with the person who “markets a knife”. S.2 deals with a person who is not marketing the knife, but publishing material in connection with the marketing of any knife which may be being done by someone else. So, here, the website was operated by STC Ltd., and STC Ltd. was marketing the knife by the website. Its conduct was governed by s.1. If the marketing was done through a web platform offered by someone else, such as Amazon, or through advertisements appearing in online editions of newspapers, then Amazon or the newspaper would be regulated by s.2. It may be that STC Ltd would also commit an offence under s.2, but that does not mean that s.1 does not apply as well. The definition of the conduct caught by s.2, “publishing any written pictorial or other material”, is very wide and shows that anything which is published will be caught, of whatever kind,

if it falls within s.2(1)(a) or (b). S.1 is concerned with marketing and the “way” in which it is done. Again, there is no limiting provision. If activity within s.1(4) takes place, then in whatever “way” it is done, it will be caught if it falls within s1(1)(a) or (b).

25. The reliance on the terms of s.1(3) and (4) in support of this submission is equally lacking in merit. S.1(3) provides that the name or description of a knife used in marketing materials may give an indication or suggestion that a knife is suitable for combat. S.1(4), as already explained, defines “marketing”. Nothing in either of them suggests that s.1 is concerned only with words and not images. On the contrary, the very wide terms used in both sub-sections make it clear that the court is entitled to look at the whole context and content of a marketing exercise in deciding whether it suggests that a knife is suitable for combat.
26. For these reasons, we are satisfied that there is no arguable merit in Ground 1 and we refuse leave. The judge was obviously right to consider the whole of the website page, including the picture, in the case of each knife.

Ground 2

27. The suggestion that Parliament did not intend to criminalise some marketing techniques is completely without foundation. That is what the Knives Act 1997 did.

Ground 3

28. Ground 3 complains that some inferences for which the Crown contends are not open to the jury on the evidence. The task of the jury in this case, on this issue, is to decide whether the webpage for each knife, in context, suggests that the knife is suitable for use in hurting people. It is not clear to us what part the drawing of inferences plays in that process. The case is about what the webpage “suggests”. That is a matter of fact to be decided by the jury using its combined experience of 21st Century London. They will be aware of the fact that knife crime is a current cause of concern, because all Londoners are.
29. The complaint about the judge “taking judicial notice” of the prevalence of Rambo knives in London deserves more thought, but has no substance either. Lord Lane CJ in *Simpson (C.)* (1984) 78 Cr. App. R. 115 dealt with the proper role of judicial notice in a case in this area of the criminal law. The case concerned the statutory definition of “offensive weapon” contained in s.1(4) of the Prevention of Crime Act 1953. The court concluded that a stiletto (a pointed implement which cannot be used to cut but only to stab) is an offensive weapon *per se* because it was made or adapted to cause injury. A sheath knife may or may not be, and it will be a matter of fact for the jury to decide. In the former case, the judge could take judicial notice of the fact that a stiletto is made or adapted to cause injury to the person, and direct the jury that it is, as a matter of law, an offensive weapon. In the case of the sheath knife, the jury must decide whether it was offensive *per se*, and, if not, whether it is proved that D had it with him in a public place for use as a

weapon. In either event, the knife will be found to be an offensive weapon and the burden will shift to the defendant to show that he had a reasonable excuse for possessing it. Lord Lane said this:-

“This is one of the areas where there is great scope for unevenness in the administration of the law. If it is to be left in each case to a jury to decide whether or not a flick-knife is an offensive weapon *per se*, the identical weapon may be the subject of different decisions by different juries.

It is perhaps convenient to read a passage from Cross on Evidence (5th ed.), at p.160, which appears to be apposite to this consideration. It is under the heading, ‘Judicial Notice’ and under the sub-heading, ‘Rationale.’ It runs as follows: ‘There are at least two reasons why we should have a doctrine of judicial notice. In the first place, it expedites the hearing of many cases. Much time would be wasted if every fact which was not admitted had to be the subject of evidence which would, in many instances, be costly and difficult to obtain. Secondly, the doctrine tends to produce uniformity of decision on matters of fact where a diversity of findings might sometimes be distinctly embarrassing.’”

It is never easy to say where the line should be drawn in this type of situation. This Court has held that the category into which a sheath knife falls is a matter for the jury— *Williamson (supra)*—because in effect it depends on the sort of knife which was in the sheath. We think that the flick-knife falls on the other side of the line and that these knives do come into the category of weapons which are offensive *per se*, namely the first category which is raised by the definition in section 1(4) of the Act.”

30. The exercise required of the judge in this case was rather different. He was not seeking to put himself into a position to direct the jury as a matter of law that Rambo knives are prevalent in London. Judicial notice is a means of finding facts without evidence. The judge was not a fact finder when dealing with the present application. It was, in substance, a submission of *no case to answer* made before the start of the trial. The judge concluded that the defence submissions had some arguable merit because he decided to deal with

them in a preparatory hearing rather than at the conventional point in the trial, nevertheless the principles that he was applying are the same as would apply at the conclusion of the prosecution case.

31. Judicial notice is described in *Phipson on Evidence* (19th Ed.) Chapter 3, and there is no need to examine it at any length here. The issue before the judge in relation to this count, the Rambo knife, was whether a jury could properly find that the marketing material suggested that the knife was suitable for use in causing injury. The prevalence of such knives in London would be relevant to that question only if the name itself carried that suggestion because it was so widely known as a weapon. On that question, it seems to us that it would be wrong for the judge to direct the jury that it was so on the basis of his judicial experience. That being so, judicial notice was simply irrelevant to what had to be decided.

32. This, though, is a highly technical approach to an ordinary issue. Language used in marketing materials is chosen because it carries meanings which are understood by those who are likely to read them. The ability of the jury to interpret words and images to derive their meaning (or what they “suggest”) relies on them using their own general knowledge and ability to interpret the material. The judge when dealing with a submission of *no case* will decide what options are properly open to the jury by reference to the material and the way in which such words and images are understood. We consider that the judge plainly approached his task on a proper basis even if his use of the phrase “judicial notice” may have been open to a technical challenge. It makes no difference.

Reservation

33. It has not been necessary to decide whether there is any way of lawfully offering for sale knives of the kind which feature in counts 1 and 3. They are combat knives and it would probably be difficult to offer them for sale in any way which conceals this fact. The true scope of this Act may fall for consideration in future cases.

Conclusion

34. For these reasons, we have concluded that there is no merit in any of the three grounds of appeal which are advanced on behalf of these defendants and we refuse the applications for leave to appeal.
35. **MR HELLER:** My Lord, there is an application for costs. I do not have a schedule. I have alerted my learned friend to a sum which is £1,875 and it relates solely to preparation for a appearing at this appeal by counsel. Those sums are fixed by the terms of the framework which determines the costs payable to counsel by local authorities within London.
36. The application, the statutory base of the application I should say, is section 18 of the Prosecution of Offences Act, which provides that the Court of Appeal may make an order for costs in such sum as is just and reasonable following the dismissal of an appeal under section 35 of the Criminal Procedure and Investigations Act, which your Lordship has done.

37. **LORD JUSTICE EDIS:** There is no requirement for negligence or any unreasonable conduct or anything of that kind; it is simply a general discretion?

38. **MR HELLER:** I will refer your Lordship to the relevant section. Section 18 of the Prosecution of Offences Act entitled the award of costs against the accused. Subsection (2):

"Where the Court of Appeal dismisses—

...

(d) an appeal or application for leave to appeal under section 35(1) of the Criminal Procedure and Investigations Act 1996.

it may make such order as to the costs to be paid by the accused, to such person as may be named in the order, as it considers just and reasonable."

39. **LORD JUSTICE EDIS:** Thank you very much. Mr Gilbert.

40. **MR GILBERT:** I do not think I can stand against it my Lord. I have tried quite a lot this morning but I will not try that.

41. **LORD JUSTICE EDIS:** Yes. Do you have anything to say about time to pay?

42. **MR GILBERT:** I am grateful my Lord. May I ask for... well, I would normally ask for 28 days. It might be that, come the end of the trial there are other costs applications and it might be sensible if everything is wrapped up

together but I do not know if this Court would be prepared to sort of take a speculative date to allow that?

(The Bench Conferred)

43. **LORD JUSTICE EDIS:** Mr Heller, I am sorry, you probably did say this but I missed it if you did, did you say that £1,875 including VAT?

44. **MR HELLER:** It is not including VAT which is not recoverable.

45. **LORD JUSTICE EDIS:** Not recoverable because?

46. **MR HELLER:** It can be reclaimed by the prosecuting authority.

47. **LORD JUSTICE EDIS:** Thank you.

48. **MR HELLER:** But to clarify and upon enquiry from the learned court clerk, it is £625 per hour per applicant.

49. **LORD JUSTICE EDIS:** Yes. Why? Are they not jointly and severally liable; so in other words if the company go into liquidation?

50. **MR HELLER:** I do not think they would be as a matter of law and the Prosecution of Offences Act requires this specific sum to be ordered so I do not think the Court can make an order for £1,875 to be paid by them collectively.

51. **LORD JUSTICE EDIS:** That is what you are asking for anyway. We will not probe further whether that is right. So £625 in respect of each of the applicants.

52. **MR HELLER:** Yes, correct.

53. **LORD JUSTICE EDIS:** We make an order for costs under section 18(2) of the Prosecution of Offences Act 1985 in favour of Lambeth. The order will be against each applicant that they must pay £625 within 28 days.

54. Epiq Europe Ltd hereby certify that the above is an accurate and complete record of the proceedings or part thereof.

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