CRIMINAL LAW UPDATE

DEVON CHAMBERS

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CASE REPORT:

R v BXQ [2025] EWCA Crim 1088

The recent Court of Appeal decision in *R v BXQ* [2025] EWCA Crim 1088 provides an important clarification on the application of joint enterprise in cases of inflicting grievous bodily harm. The judgment also affirms the principles governing submissions of no case to answer.

In *R v BXQ*, the defendant was involved in a confrontation with the complainant following an earlier dispute. BXQ challenged the complainant and invited him to the front of the house. Once outside, BXQ pushed the complainant, after which a third man ('C') ran out and hit the complainant with a golf club, breaking his leg.

According to the complainant's evidence, BXQ then joined in the attack, repeatedly kicking him whilst encouraging C to continue, shouting 'kill him'. BXQ was charged alone with offences under section 18 and section 20 of the Offences Against the Persons Act 1861 on the basis of joint enterprise.

During the trial, at first instance, the trial judge upheld a submission of no case to answer. In doing so, he applied the well-known principles from *R v Galbraith* [1981] 1 WLR 1039 which require a case to be withdrawn from the jury where the Prosecution have adduced no evidence that a crime has been committed by a defendant. Alternatively, where some evidence has been presented, the judge must intervene if the evidence is so tenuous, vague or inconsistent that no reasonable jury, properly directed, could safely convict.

In the judgment, he reasoned that:

a. There was not enough evidence for the jury to infer that the initial attack was jointly planned;
b. The serious injury (broken leg) was inflicted initially, when C was acting alone; and
c. The joint attack that followed the serious injury, caused no more than relatively minor additional injury.

He concluded that no reasonable jury could properly convict BXQ of the offences.

The Court of Appeal allowed the prosecution's appeal on the basis that the trial judge's ruling was an error of law or principle under section 67 of the Criminal Justice Act 2003. In doing so, the Court reaffirmed the approach in dealing with submissions of no case to answer where the prosecution have advanced merely a circumstantial case. The Court referred to *R v Turnbull* [1977] QB 224 which explains that the issue for the judge is whether a reasonable jury could, on one possible view of the evidence, be entitled to reach the adverse inference that the prosecution evidence intends to make. If the judge concludes that a reasonable jury could be entitled to do so, properly directed, on the evidence, putting the prosecution case at its highest, then the case must continue.

In this case, the Court determined that the jury would have been entitled to draw the inference that this was an attack involving joint enterprise. The Court made reference to the precedent of *R v Jogee* [2016] UKSC 8, that liability as a secondary party requires proof of an intention to assist or encourage the commission of the offence. It was made clear that the relevant intention may be inferred from conduct involving joining in an ongoing attack, actively encouraging further violence and continuing participation after a serious injury has been inflicted.

Resulting from the above, the Court summarised the correct approach in dealing with cases where D1 and D2 are charged with section 18 and section 20 offences:

a. If the evidence is sufficient for the jury to be able to be sure that D1 and D2 were joint participants throughout, both defendants have a case to answer.

b. If the evidence is such that no reasonable jury could exclude the possibility that the grievous bodily harm was inflicted by D1 in an entirely separate attack, and that D2 caused some minor further injury, there will be no case for D2 to answer in respect of the really serious injury.
c. If the evidence is such that the jury can find that D1 began and D2 joined a single continuing attack that as a whole resulted in really serious injury, there will be a case to answer against both.

The Court of Appeal followed this approach and concluded that on the evidence in *R v BXQ* made available to the jury, a finding that BXQ and C were joint participants in a single continuing attack was possible and, therefore, the case should not have been withdrawn from the jury.

One important issue left open by *R v BXQ* concerns issues of intention and knowledge. In this case, the Court's analysis was based on the principles stated in *R v Grundy* [1989] 89 Cr App R 333 and *R v P* [2003] EWCA Crim 1561, whereby the grievous bodily harm itself is considered through the totality of the injuries suffered by the victim, and not on a 'hit by hit' basis. However, *BXQ* does not address the situation where D2 joins an ongoing attack without any knowledge that any serious injury has already been caused, and intends only to cause minor harm. As discussed, joint enterprise requires an intention to assist or encourage the offence charged. This gives rise to further questions as to the circumstances in which a defendant who lacks knowledge of the prior grievous injury can be found to possess the required intent for a grievous bodily harm offence.

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