

Neutral Citation Number: [2024] EWHC 470 (Admin)

Case No: AC-2023-BHM-000135

IN THE HIGH COURT OF JUSTICE
ADMINISTRATIVE COURT
BIRMINGHAM CIVIL JUSTICE CENTRE

Priory Courts,
33 Bull Street,
Birmingham,
B4 6DS

Date: 7 February 2024
Start Time: 12:29 Finish Time: 13:00

Before:

MR JUSTICE CHOUDHURY

Between:

TAVIAN THOMPSON

Appellant

- and -

CROWN PROSECUTION SERVICE

Respondent

MR POTTS (Counsel) appeared for the Appellant
MS AILES (Counsel) appeared for the Respondent

JUDGMENT

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MR JUSTICE CHOUDHURY:

1. This is an appeal by way of case stated. It concerns the statutory definition of a "zombie knife" contained in paragraph 1(s) of the *Criminal Justice Act 1988 (Offensive Weapons) Order 1988* ("the 1988 Order"), and whether a knife within the possession of the appellant fell within that definition.

2. The background to this matter may be briefly stated as follows. On 21st December 2021 the appellant was charged with the possession in private of a weapon – namely, a "zombie knife" – to which section 141(1A) of the *Criminal Justice Act 1988* applied. As a consequence of the same incident, the appellant was also charged with threats to kill against his mother and with criminal damage. The appellant entered a not guilty plea to the weapons offence and to the threats to kill. He did plead guilty to the criminal damage charge and was remanded in custody. The appellant accepted that he was in possession of the knife which is the subject of the weapons charge. However, he denied that the knife fell within the statutory definition of a "zombie knife".

3. Paragraph 1 of the 1988 Order, so far as relevant, provides:

"Section 141 of the Criminal Justice Act 1988 (Offensive Weapons) shall apply to the following descriptions of weapons, other than weapons of those descriptions which are antiques for the purposes of this Schedule: ...

(s) the weapon sometimes known as a 'zombie knife', 'zombie killer knife' or 'zombie slayer knife', being a blade with —

(i) a cutting edge;

(ii) a serrated edge; and

(iii) images or words (whether on the blade or handle) that suggest that it is to be used for the purpose of violence."

It was not disputed that the knife in question had a cutting edge and a serrated edge. However, it was denied that it bore "images or words ... that suggest that it is to be used for the purpose of violence".

4. The appellant's trial date in February 2022 was vacated, and so too was the adjourned trial date in July 2022. On the latter occasion, Deputy District Judge Olwen Davies adjourned the appellant's case to be determined by a District Judge. The second defendant's case, in which the identical point regarding a knife arose, was adjourned to the same date.
5. On 15th September 2022 the appellant appeared before District Judge Waite. The sole issue before the judge was whether or not the knife fell within the definition of a "zombie knife", to which reference has been made above. The following facts were agreed: (1) the knife was a bladed weapon with a cutting edge and a serrated edge; (2) the knife bore the words "Rambo First Blood Part 1"; (3) the knife blade was nine inches long; and (4) the handle of the knife could be unscrewed and inside was a compass, fishing line and a match.
6. Mr Potts for the appellant submitted that, amongst other matters, the words on the knife indicated nothing more than the name of a novel and a film; that it was not Parliament's intention to criminalise possession of film memorabilia; and that the words "Rambo First Blood Part 1" do not suggest that the knife is to be used for the purpose of violence. The judge recorded that it had been conceded before him that the court could take judicial notice of the fact that Rambo is a violent character in a series of violent books and films. There is some dispute before me as to whether that concession was in fact made before the district judge, but for reasons which will become apparent below, it matters not whether it was.

7. The judge concluded that the knife in question did fall within the definition. His reasoning is succinctly set out in the case stated as follows:

"I was of the opinion that:

(a) There certainly could be clearer examples of words which evidenced that a knife was to be used for the purposes of violence. It does not follow that, because this is not the easiest or clearest example imaginable, the defence must succeed. The court must consider whether it can be sure on these facts that the test is met.

(b) The knife in this case may be characterised in various ways. For example, Rambo knife, survival knife, film memorabilia. The fact that the knife has other elements or features does not bar it from meeting the definition of a zombie knife should the statutory test be met. It is not necessary, applying the statutory test, that violence be the only possible purpose of the item.

(c) Whatever was Parliament's intention, the court's task is to decide how to interpret the legislation that was in fact set down.

(d) Rambo is indeed the name of a character in a film and a book. However, it is not an obscure reference. 'Rambo' has passed into general use and is defined in dictionaries. The court can take judicial notice of the fact that Rambo is a violent character in a violent series of books and films.

(e) The fact that the words on the knife are also the name of a film cannot provide a defence in all circumstances. What if there were a film, as there may well be, called 'Headsplitter'? [The appellant had relied upon a photograph of another knife accepted to be a "zombie knife" within the definition which bore that word on its blade.]

(f) There is no intention required in order to be guilty of the offence beyond the intention to be in possession of the knife. The definition of 'zombie knife' requires the court to consider what the images or the words ... suggest, not what was the applicant's intention. Any use to which the knife was in fact put is therefore not relevant to the question that the court has to answer.

(g) It is not part of the definition in the Statutory Instrument that the violence be unlawful.

(h) The court needs to consider whether, taking the plain and natural meaning of the words in evidence, those words suggest that the knife was to be used for the purpose of violence.

(i) Consequently, I was sure that the knife did meet the definition of a zombie knife."

8. In the light of that finding, the appellant entered a guilty plea to the weapons offence and a further trial date was set for the threats to kill charge. On 18th October 2022 the appellant's mother did not attend court to give evidence in respect of that charge. Accordingly, the prosecution offered no evidence. The appellant was then sentenced to a financial penalty in respect of the weapons and criminal damage offences, taking account of the time already spent on remand.
9. The appellant invited the court to state a case. On 1st December 2022, the judge acceded to that request, and, having set out the summary of reasons (which is above), identified the following question for this court:

"Was I right to conclude on these facts that the definition of 'zombie knife' in paragraph 1(s) of the Criminal Justice Act 1988 (Offensive Weapons) Order 1988 was met?"

Legal Framework

10. Section 141(1A) of the Criminal Justice Act 1988 provides:

"(1A) Any person who possesses a weapon to which this section applies in private is guilty of an offence and liable —

(a) on summary conviction in England and Wales, to imprisonment for a term not exceeding 51 weeks, to a fine or to both".

Section 141(1C) of the 1988 Act provides:

"(1C) For the purposes of subsection (1A) as it has effect in relation to England and Wales, a person possesses a weapon to which this section applies in private if the person possesses the weapon in a place other than —

- (a) a public place,
- (b) school premises,
- (c) further education premises, or

(d) a prison."

11. Subsection (2) empowers the Secretary of State by order to specify the weapons to which the section applies. The relevant order is the 1988 Order, which, at paragraph 1 identifies, through a series of subparagraphs (a) – (t), a range of weapons from knuckle-dusters to "cyclone" knives to which section 141 of the 1988 Act applies. As already stated, subparagraph (s) contains the definition with which this appeal is concerned.
12. There are various defences available under section 141 of the 1988 Act, including that the weapons are of historical importance (subsection 7A); that they are held in possession in order to make them available to museums and galleries and for educational purposes (subsections (8) to (11ZA)); and that they are for the purposes of theatrical performances, films and television programmes (subsections 11A to 11B).

Submissions

13. Mr Potts submits that the words on the knife possessed by the appellant did not suggest that the knife is to be used for the purpose of violence. He does not rely on the submission made by the Appellant below that the words "Rambo First Blood Part 1" are merely the name of a novel or a film, or that the knife could be regarded as film memorabilia or a survival knife. He very reasonably concedes that, as the judge found, such matters would not preclude the knife from falling within the definition.
14. Mr Potts submits that:
 - i) The judge erred in focusing on the word "Rambo" instead of considering the words as a whole which depict a specific film; namely, the first in a series of films featuring the character Rambo. This is said to be significant as there

could be a difference in the characterisation of Rambo between the first and subsequent films, such difference being relevant to what is being suggested by the inclusion of the words on the knife.

- ii) The fact, of which the judge took judicial notice – namely, that Rambo was a violent character in a violent series of films - was not so well known or indisputable as to be capable of being the subject of judicial notice without further enquiry.
- iii) In so far as a dictionary definition was relied upon by the judge, such definition is of limited assistance and in fact shows that the understanding of Rambo's characteristics was as a result, chiefly, of the sequels to the first film in the series and not to the film referred to by the words on the knife.
- iv) The only material capable of offering any real assistance would be the film First Blood Part 1 itself. However, any views based on that would be highly subjective and any exercise involving viewing the film to discern what it means should be approached with extreme caution. As there was no evidence before the judge about that – about the film or what it means – there was no evidence on which the judge could properly have relied to support his decision that the relevant test was met, and the appeal should therefore be allowed.

15. Ms Ailes, who appears for the respondent, submits that the judge was right to conclude as he did for the reasons he gave. That ruling was legally correct and was in fact the only decision reasonably open to the judge on the undisputed evidence.

Discussion

16. Section 141(1A) of the 1988 Act was inserted into the 1988 Act by section 46 of the Offensive Weapons Act 2019 and came into effect on 14th July 2021. I am told that there is, as yet, no authority considering the meaning and the scope of the relevant provisions, and in particular the definition with which this case is concerned.
17. Paragraph 1 of the 1988 Order identifies various types of weapon, many of which are bladed. The order could simply have specified knives of a certain size as being subject to the prohibition. However, given that the prohibition is on private possession, as opposed to possession in a public place, such an approach would have risked outlawing knives that may have a legitimate purpose in a domestic setting; for example, in the preparation of food or in clearing foliage. Instead, the prohibition targets certain categories of weapon that have become popular in recent years, particularly amongst those attracted to gang culture. It identifies those weapons by their descriptive characteristics. These characteristics, which seek either to conceal the true nature of the weapon or which accentuate the ability to cause bodily harm, distinguish these weapons from household objects such as kitchen knives.
18. Many of the weapons so identified will be immediately familiar to those working in the criminal justice system. That is perhaps most true of the weapon which is the subject of the definition in issue in this case, the zombie knife. It is a regrettable feature of many knife crimes, particularly those involving young defendants, resulting in the deliberate infliction of serious bodily harm or murder, that the perpetrator was in possession of a zombie knife. The characteristics of such knives are clearly intended to horrify and strike fear into those against whom they are deployed or threatened to be deployed.

19. Parliament has seen fit to prohibit the possession of such knives in private, but the question is how does one define such a knife. The 1988 Order does so by identifying three characteristics. The first two - namely that the knife has a bladed edge and a serrated edge - are not controversial. It is accepted in this case that the appellant's knife did bear those characteristics. The third characteristic is that the knife has "images or words (whether on the blade or the handle) that suggest that it is to be used for the purpose of violence". The definition requires an objective consideration of what the images or words in question "suggest". The subjective intention of the person in possession is irrelevant. Thus, it matters not if the person in private possession of the knife is merely a "collector" who seeks to display the knife in a cabinet or by some other means and who has no intention of ever using it to commit or threaten violence. If the images or words on the knife in private possession suggest that it is to be used for violence, then the offence is committed.
20. The question then arises what kinds of images or words would give rise to that suggestion. It might be said that some images, such as that of a skull and crossbones, for example, or a "biohazard" symbol are purely decorative and are no more suggestive of the purpose being violence than they would be if present, say, on a Halloween costume. In my judgment, that would be to apply an unduly narrow reading of the term "suggest", which it has been accepted means "to bring to one's mind by association of ideas".
21. If the words or images on a knife can by the association of ideas bring to mind that the item is to be used for violence, then the statutory definition would be met. There would be a wide range of words and images that will suggest a violent purpose, from those that include a specific instruction, whether by express wording or imagery, that

the knife is to be used to inflict injury, to the more subtle communication bringing to mind an association with a violent purpose. The latter could include, for example, a reference to a violent act, the cause of a violent act, or the result of such an act. The fact that the violent act or its cause or outcome so suggested is itself fictional cannot preclude the statutory definition from being satisfied. The very term "zombie" is fictional, and it is not suggested that a knife with the words "zombie killer" - an entirely fictional notion - would not suffice to bring that knife within the definition.

22. Viewed in these terms, the examination of the words and images on a knife may be more impressionistic than focused on a specific word or image. The images or words suggestive of a violent purpose may be surrounded by others that are perhaps not, in isolation, so suggestive. However, that would not necessarily mean that the statutory definition is not met. To take a simple example, encircling the term "zombie killer" by images of doves or olive branches, which are universally symbolic of peace, or words such as "love" and "peace", would not necessarily take the knife outside the definition. It will be for the judge in each case to make a determination based on the actual images and the words on the knife as to whether the judge can be sure that the images or words suggest that the purpose is for its use in violence.
23. Mr Potts' first submission is that the judge erred in focusing on the word "Rambo" instead of considering the words on the knife as a whole. He further submits that, if all of the words had been considered, it would have been plain that they refer to a particular film. This submission is without any real foundation, as it is plain from the case stated that the judge had all the words on the knife in mind and did indeed expressly refer to the fact that together they denote the name of a particular film.

24. That in itself would not mean that the words could not satisfy the definition. In any case, whilst the appropriate course is to consider the images and/or words on the knife in their entirety to discern whether they are suggestive of violence, it would not be wrong to focus in on one or more of those words or images if they can properly be said, even in the context of other words or images present, to suggest that the purpose is for its use in violence.
25. In the present case the title of the film, "Rambo First Blood Part 1", could be suggestive of a violent purpose. That is so for at least three reasons.
- i) As the judge found, the reference to Rambo, a violent character in a series of violent films, can readily be said to give rise to that suggestion. The question of whether it was appropriate to rely upon a dictionary definition or to take judicial notice of that fact is one I deal with below.
 - ii) The use of the term "First Blood" on its own can be suggestive of violence. This is not using the term "blood" to denote a familial relationship, but to an act involving the drawing of "first blood"; i.e. initiating an act of violence. That is not to say that even a reference to "blood" to denote a familial relationship could not in some circumstances be suggestive of violence.
 - iii) The words taken together refer to a film which is violent.
26. That takes me to Mr Potts' second submission which is that the term "Rambo" and its association with violence was not something of which judicial notice could be taken, as it was not "so notorious as not to be the subject of dispute amongst reasonable men". I was referred to the following extract from Phipson on Evidence, 20th Edition, at 3-17:

"The court will take judicial notice of facts which are notorious. There are in fact two situations in which the court will do so: those facts which can be noticed without enquiry and those facts which can be noticed after enquiry. The latter circumstance is less common, and the matters judicially noticed must be indisputable and may be taken from accepted writings, standard works and serious studies and enquiries. (*Norrie v. NSW Registrar of Births, Deaths and Marriages* [2013] NSWCA 145 at 94.)

The party seeking judicial notice of a fact has the burden of convincing the judge: (a) that the matter is so notorious as not to be the subject of dispute amongst reasonable men; or (b) the matter is capable of immediate, accurate demonstration by resort to readily accessible resources of indisputable accuracy. (*Scott v. Attorney-General (Bahamas)* [2017] UKPC 15 at 41.)"

27. The judge in the present case noted that "Rambo" has passed into general use and is defined in dictionaries. The fact that it is a term defined in dictionaries would be sufficient in itself for the judge to take account of the definition. A dictionary definition is a legitimate source for the court to use in discerning the meaning to be attached to words. Having decided to take account of the dictionary definition, it was not in fact necessary for the judge to go on to take judicial notice of anything further. The actual dictionary definition that the judge may have had in mind is not specified. I was referred by Mr Potts to that set out in the Oxford English Dictionary, which provides:

"The name of John Rambo, the hero of David Morrell's novel *First Blood* (1972), popularised in the films *First Blood* (1982) and its sequels; a Vietnam war veteran represented as violently aggressive, strong, self sufficient and uncompromising. Compare earlier 'Rambo-like' (an adjective and adverb), and also 'Ramboesque' (an adjective).

Notes: the uses of this word are chiefly based on John Rambo's characterisation in the first film sequel, *First Blood Part 2* (1985) and later."

28. Under "Meaning and use", the definition continues by referring to simple uses and says as follows:

"A person resembling or displaying characteristics of Rambo; an exceptionally tough, strong and uncompromising man, (especially in militaristic contexts), one who is characteristically aggressive and violent ..."

29. Mr Potts submits that the notes to that definition, and in particular the reference to the fact that the uses of the word are chiefly based on Rambo's characterisation in the sequel and later rather than the first film in the series are significant. That is because, he says, it implies a difference of characterisation between the first and second films, and to take judicial notice of Rambo's characteristics without enquiring further into those differences risks the judge falling into error.
30. Skilfully though that submission was made, I cannot accept it. The dictionary definition is clear that Rambo is a violent and aggressive character, and the word "Rambo" is a word used to depict a person who is "characteristically aggressive or violent". The fact that the character depicted in the movies, whether the first one or subsequent ones, is not irredeemably bad or even necessarily the aggressor in all of his escapades does not undermine that definition. The definition was one which the judge was entitled to rely upon in discerning what was being suggested. It was neither necessary nor relevant in the circumstances of this case for the judge to go behind that definition and/or to enquire as to the precise etymology of the word "Rambo" in order to understand what is being suggested.
31. As to the taking of judicial notice, it seems to me that, notwithstanding Mr Potts' best efforts to persuade me otherwise, the fact that Rambo was a violent character in a series of violent films is clearly one that is beyond dispute between reasonable men. The high point of Mr Potts' submission is that the character of Rambo was not irredeemably bad, or even the aggressor, and that there are nuances to his character that are not appropriately accounted for in saying he is a violent character. However,

none of that assists Mr Potts. There may well be a more nuanced picture to be drawn. Indeed, the film would have been unlikely to have had the artistic and commercial success that it did were that not so. However, that does not mean that the judge was not entitled to take account of the key component of the character and the films, which is violence. It was not necessary in these circumstances to have seen the film in order to reach the determination that the judge did.

32. There may well be other cases where the images and words refer to more obscure characters, events or films, but which, on analysis, are clearly suggest that the purpose is the use of the knife in violence. Each case will depend on its own facts and on the particular words and images in question. It may be that in some cases the Crown considers it appropriate to adduce expert evidence as to the meaning of certain images and words in particular contexts in the same way that such evidence is adduced to explain street slang or drug references.
33. This was not a case where such evidence was necessary. The judge was entitled to say that the words on this knife did not contain an obscure reference; that they did refer to a violent character in a series of violent films; and that, as a result, they suggest that the knife is to be used for the purposes of violence. In my judgment, the judge's decision and reasoning disclosed no error of law. For these reasons, the answer to the question identified in the case stated is, "No, the judge was not wrong".
34. Accordingly, this appeal is dismissed.

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