Asif Tufal

CASES ON BURGLARY

BURGLARY

***R v Brown* [1985] Crim LR 212**

A witness, having heard the sound of breaking glass, saw the defendant partially inside a shop front display. The top half of his body was inside the shop window as though he were rummaging inside it. The witness assumed that his feet were on the ground outside, although his view was obscured. The defendant was convicted of burglary. He appealed on the ground that he had not "entered" the building, since his body was not entirely within it.

The Court of Appeal held, dismissing the appeal, that the word "enter" in s9 TA 1968 did not require that the whole of the defendant's body be within a building. The statement of Edmund-Davies LJ in *R v Collins* [1973] (below) that entry must be "substantial and effective" did not support the defendant's contention. "Substantial" did not materially assist in the matter, but a jury should be directed that, in order to convict, they must be satisfied that the entry was "effective". There had clearly been an entry in the present case.

***R v Ryan* [1996] Crim LR 320**

The victim, an elderly householder, found the defendant stuck in a downstairs window of V's house at about 2.30am. The defendant's head and right arm were inside the window which had fallen on his neck and trapped him. The rest of his body was outside the window. He was convicted of burglary and appealed on the grounds that there was no entry because he could not have stolen anything from within the building on account of being stuck.

The Court of Appeal dismissed the appeal. *R v Brown* (1985) made it clear that the defendant could enter even if only part of his body was within the premises. The defendant's inability to steal anything because he was trapped was totally irrelevant.

***R v Collins* [1973] QB 100**

The defendant, having discovered that a woman was lying asleep and naked on her bed, stripped off his clothes and climbed up a ladder on to the window sill of the bedroom. At this moment the woman awoke and, mistakenly believing that the naked form at the window was her boyfriend, beckoned the defendant in. The defendant then got into her bed and it was only after the defendant had intercourse with her that the woman realised her error. The defendant's conviction for burglary (entering as a trespasser with intent to commit rape contrary to s9(1)(a)) was quashed "on the basis that the jury were never invited to consider the vital question whether the defendant did enter the premises as a trespasser, that is to say knowing perfectly well that he had no invitation to enter or reckless of whether or not his entry was with permission …"

NOTE: Another difficulty of the case lay in determining whether the defendant had entered the building before or after an invitation to enter had been made. If he was already inside the room, having climbed through the window frame, and kneeling upon the inner sill (before any invitation had been made to him) he would already be guilty of burglary for he had already entered with intent to rape and the victim's subsequent consent could not alter that. If he was kneeling on the sill outside the window he would not have been guilty of burglary as the invitation to enter had been made while he was still outside the premises.

***R v Jones and Smith* [1976] 3 All ER 54**

The defendants took two television sets from the house of the father of one of the defendants, without his knowledge or consent. The defendants were convicted of burglary contrary to s9(1)(b) TA 1968, despite evidence given by the father that his son "… would never be a trespasser in my house …" The defendants appealed on the ground that there had been no proof of trespass by them.

The Court of Appeal held that the defendants were rightly convicted on the basis that a person enters a building as a trespasser where he realises he has exceeded his permission, or is reckless as to whether he has done so. In the present case, the defendants might have had permission to enter the house for normal domestic purposes, but not to enter in the middle of the night to steal.

***R v Walkington* (1979) 68 Cr App R 427**

The defendant had entered a department store during opening hours, and had approached a three-sided partition that surrounded a till on the middle of the shop floor. He proceeded to stand inside the partitioned area and opened the till drawer to see if it contained any money for him to steal. The defendant was convicted under s9(1)(a) of entering part of a building as a trespasser with intent to steal.

The Court of Appeal held that the area inside the partition represented "part of a building" from which the public had been impliedly excluded. The defendant being aware of this had been correctly convicted.

***R v Laing* [1995] Crim LR 395**

The defendant was found in the stock room of a department store some time after the store had closed to the public. He was convicted of burglary contrary to s9(1)(a) TA 1968 on the basis that he was trespassing when he was found by the police. The trial judge had directed the jury that even though the evidence was that when he entered he was not a trespasser, it was open to them to decide that he had become one when he was found. However, the Crown had not sought to argue that he had entered a *part* of a building as a trespasser by going into the stock area, which was not open to the public at any time.

The Court of Appeal allowed the defendant's appeal. There was no argument put to the court that the defendant had entered the store as a trespasser, and the prosecution had opted not to argue that he became a trespasser by moving from one part of the store to another. A defendant cannot become a trespasser in a building or part of a building for the purposes of burglary, where he has previously entered that building, or that part of the building, as a lawful visitor.

AGGRAVATED BURGLARY

***R v Stones* [1989] 1 WLR 156**

The defendant was arrested shortly after having burgled a house. On being searched he was found to be in possession of a household knife. The defendant alleged that he carried it with him because he was under a general threat of attack from a group of men. The defendant was convicted of aggravated burglary contrary to s10 and appealed on the ground that he had not been in possession of the knife with intent to use it in the course of the burglary.

The Court of Appeal held that s10 merely required that the defendant had with him a weapon of offence at the time of the burglary. Applying the mischief rule, the court felt that what Parliament sought to prevent was the commission

of burglary by a defendant who might be tempted to use any weapon of offence in his possession if challenged or opposed during the course of a burglary.

***R v Kelly* [1993] Crim LR 763**

The defendant had broken into a house, using a screwdriver to effect entry. When surprised by the householder, the defendant told him to unplug the video and then pushed the screwdriver into his ribcage. On leaving the house, the defendant was apprehended by police, holding a video in one hand and the screwdriver in the other.

The Court of Appeal held that the defendant became guilty of aggravated burglary when he used the screwdriver to prod the householder in the stomach. It was held that the focus of s10 was use during burglary, so that the screwdriver taken into the house became a weapon of offence on proof that he intended to use it for causing injury to, or incapacitating, the householder at the time of the theft.