[1985] Crim.L.R. 798

R. v. Lee

Court of Appeal (Criminal Division): Stephen Brown L.J., Bristow and Skinner JJ.:
July 18, 1985 (see note 1).

Trial
"Plea" of guilty to lesser offence included within the greater offence charged - effect - plea of not guilty of greater offence - admission of facts of lesser

The appellant was, with three others, charged with wounding with intent contrary to section 18 of the Offences against the Person Act 1861, that being the only count in the indictment. When the four accused were arraigned, and before the jury was empanelled and sworn, they all pleaded not guilty to wounding with intent, but the appellant pleaded guilty to unlawful wounding contrary to section 20 of the Act. That plea was not, however, acceptable to the prosecution and the trial proceeded on the section 18 offence. During his summing up the judge told the jury that the appellant had already pleaded guilty to the section 20 offence, and that they must in any event find him guilty of that. The jury returned a verdict on the appellant of not guilty of the section 18 offence. The appellant's counsel pointed out that the plea to the section 20 offence had not been tendered in the presence of the jury, and counsel for the prosecution attempted but was not permitted to cite R. v. Hazeltine (»»text) (1967) 51 Cr.App.R. 351. The jury returned a verdict of guilty on the section 20 offence. The appellant appealed against conviction.
Held, allowing the appeal, that it had been held in R. v. Hazeltine (»»text) that a plea of guilty such as that tendered by the appellant, which was not accepted by the Crown, must be withdrawn and was a nullity. Therefore since the appellant had not admitted during the course of the trial that he was guilty of the section 20 offence, the judge had misdirected the jury. The final verdict was a nullity, and the court thus had no power to apply the proviso. It was most unfortunate that the judge had not allowed counsel to cite R. v. Hazeltine (»»text). It was to be hoped that that case would now be engraved on everyone's mind, and that judges would be more patient when counsel properly intervened.

[Reported by Kate O'Hanlon, Barrister.]

Commentary: It was stated in Hazeltine (»»text) at p.354 that "it is clear that there can be only one plea to any one count in respect of which an accused person is put in charge of the jury. If an accused person says that he admits certain ingredients of the offence charged in the count but not others that is a plea of Not Guilty."
The purported plea of guilty to unlawful wounding, as a plea of guilty, was a nullity. It might, however have some effect as an admission. As was said in Hazeltine (»»text) at p. 356,
" ... it is open to the prosecution to call evidence before the jury to the effect that the accused person has pleaded Guilty to unlawful wounding and to make the point that it is inherent in such a plea that he admits that what he did was unlawful and malicious. Such an admission is wholly inconsistent with a defence
Note 1 For the appellant: Ian Glen (assigned by the Registrar of Criminal Appeals). For the Crown: Christopher Leigh (instructed by Keary, Stokes & White, Corsham).(Back to main text)

that what he did was done by accident or in self-defence. If the accused person gives evidence and sets up a defence which is wholly inconsistent with the admission which he has already made, then he should be cross-examined by the prosecution on that admission. He should be asked, for example: `If the story you are now telling the jury is true, namely, that you were acting purely in self-defence, why did you an hour ago admit in this very court that you were Guilty of unlawful wounding?' a question which most accused persons might find very difficult to answer." The "plea" is not conclusive but it is evidence against the defendant, like any other admission, and its relevance will depend on the course that the trial takes. [J. C. S.]