IN THE COURT OF APPEAL OF NEW ZEALAND

I TE KŌTI PĪRA O AOTEAROA

CA563/2023
[2024] NZCA 625

BETWEEN	HEBER KURE WATSON Appellant
AND	THE KING Respondent

Hearing:	5 November 2024
Court:	Cooke, Fitzgerald and Jagose JJ
Counsel:	A J McKenzie for Appellant W S Taffs and C L Fiennes for Respondent
Judgment:	29 November 2024 at 10.30 am

JUDGMENT OF THE COURT

The appeal against conviction is dismissed.

REASONS OF THE COURT

(Given by Jagose J)

[1] While acknowledging he should bear criminal responsibility on some basis for his 17 January 2022 participation in offending against occupants at an address in Christchurch's Riccarton, Heber Kure Watson appeals his 12 July 2023 conviction for aggravated robbery as being against the weight of the evidence before the jury.

[2] The aggravation charged was of robbery "together with any other person or persons".[1] Robbery is "theft accompanied by violence or threats of violence, to any person or property, used to extort the property stolen or to prevent or overcome resistance to its being stolen".[2] Mr Watson contends there was "insufficient nexus" between the violence and the thefts at the address, meaning the elements of the charge for aggravated robbery were not established and the conviction should not stand.

Background

[3] At about 1 pm on 17 January 2022, Mr Watson and his co-defendants (three men and a woman) arrived in two cars at the Westfield carpark in Riccarton. After some organisation between them, they drove the two cars to a nearby residential address. Wearing some form of face covering, the four men walked up the driveway and confronted two men working on a trailer.

[4] The male defendants assaulted the two men before taking them to a sleepout on the property, where a woman was present. They continued to assault the two men and woman in the sleepout, asking them about the whereabouts of a third man. With the three remaining in the sleepout, the male defendants removed household items from both the sleepout and a house on the property to the cars in which they arrived.

[5] Mr Watson's co-defendants all pleaded guilty to the aggravated robbery.

Context

[6] Under s 147 of the Criminal Procedure Act 2011, the trial Judge declined to dismiss the charge at the close of the Crown case.[3]

---

1 Crimes Act 1961, s 235(b).
2 Section 234(1).
3 *R v Watson* [2023] NZHC 1887 [Section 147 reasons judgment]; and *R v Watson* [2023] NZHC 1813 [Section 147 judgment].

[7] Quoting the statutory definition of robbery,[4] the Judge identified this Court's guidance in *R v Maihi*:[5]

> It is implicit in "accompany" that there must be a nexus between the act of stealing … and a threat of violence; and further the threat of violence must be used to prevent or overcome resistance to the property's being stolen. Both must be present. "Accompany" does not require that the act of stealing and the threat of violence be contemporaneous. It is sufficient and necessary that they be present together. A threat may have a continuing effect which is still operating when goods are handed over.

[8] The Judge was satisfied an inference was available "the violence was, at least in part, to facilitate the robbery",[6] and accordingly there was evidence on which a jury safely could conclude Mr Watson committed an aggravated robbery,[7] as it did.

Argument on appeal

[9] For Mr Watson, Andrew McKenzie explains the appeal is, "in essence", against the Judge's refusal to dismiss the charge. He argues the direct evidence of the female victim the threats and violence ended on provision of sought information establishes they were not for the purpose of theft. He also argues it was significant the theft was not from the victims but from an unoccupied house on the property.

Approach to appeal

[10] We must allow the appeal only if satisfied either the jury's verdict was unreasonable with regard to the evidence, or a miscarriage of justice has occurred for any reason.[8] A verdict will be unreasonable "if, having regard to all the evidence, the jury could not reasonably have been satisfied to the required standard that the accused was guilty".[9] A miscarriage of justice means either something has gone wrong at trial to create a real risk the outcome of the trial was affected or to result in the trial itself being unfair or a nullity.[10]

---

4 Section 147 reasons judgment, above n 3, at [8].
5 At [8], quoting *R v Maihi* [1993] 2 NZLR 139 (CA) at 141, referring to *R v Mitchell* [1988] 2 NZLR 208 and *R v Hale* (1978) 68 Cr App R 415.
6 Section 147 reasons judgment, above n 3, at [23].
7 At [26].
8 Criminal Procedure Act 2011, s 232(2).
9 *Owen v R* [2007] NZSC 102, [2008] NZLR 37 at [17].
10 Criminal Procedure Act, s 232(4).

Discussion

[11] The key issue is whether there was sufficient evidence before the jury to support the aggravated robbery charge. That necessitates a review of the relevant evidence given at trial.

[12] The female victim's evidence-in-chief was she was sitting on the bed in the sleepout. The sleepout's other occupant had fled after becoming aware of the confrontation occurring in the driveway.

[13] A number of the defendants, including Mr Watson, dragged one of the male victims into the corner of the sleepout and "kept punching him and just grabbing whatever like sharp, um, device or anything that was around that they could hurt him with" and "there was blood everywhere". She said Mr Watson:

> … was just wound up and just kept, just kept going at [the first male victim] and it was just vicious and it was horrible.
>
> …
>
> [Mr Watson] just wanted to kill [the first male victim], um, he was, like he was so hyped up and just scary …

[14] The "same thing" happened to the other male victim, although he was hit fewer times.

[15] Another of the defendants — described by the female victim as "the main guy, like the, the one taking charge" — questioned and threatened the victims, asking about the whereabouts of a third man:

> He asked me who I was and where I was from, um, obviously I was completely beside myself and I didn't want to say anything so I didn't, but then I got, ah, threatened and I never had anything to do with any of this kind of, um, anything like this before so I obviously gave up where I was staying.

[16] The "threat" was "if I don't tell them where I'm staying, then they'll shoot me". The female victim also was "chucked back onto the bed" from which she had moved "because there was stuff getting chucked on the bed and around the sleepout". The defendants in the sleepout were:

> … just like wanting information from [the second male victim] as to … where [the third man] is and, um, that was pretty much it, that was a, yeah. The only thing that they were really interested in.

[17] On provision of the third man's name, the leader said to pass on to him "they will be back at 5 pm I think or in that afternoon with a van or something along those lines, um, to collect him".

[18] When asked "[w]hat was being spoken about in terms of property", the female victim queried "[u]m, like what was taken or ... ?" and answered the affirmative reply:

> Um, heaps. Ah, there was, from the sleepout that, it was [a flatmate]'s TV, um, [a flatmate]'s TV, all of his, he had a lot of, um, caps like label caps, um, jewellery, um, just anything and everything that they wanted to take they took, like they pretty much emptied out his, his house or his sleepout, it was quite well, um, equipped.
>
> …
>
> … I can't really pinpoint a certain individual that was like taking the majority of the stuff, it was like they were all just like taking turns at coming in, grabbing something and then they'd take, take it out to the car obviously which I found out they would packing all the stuff into, um, and then the next person would come in and it was like a back and forth thing really.

[19] Mr Watson "seemed to be the one that took control of the attacking" she had seen. The leader told her "not to contact the police". She heard from the sleepout "someone yell out: 'Cops, cops', and then it was like everything, everyone just dropped everything and bolted every, every way they could". After the defendants left:

> So I, um, kind of just sat there for a couple of minutes and gathered myself, um, and then they — the boys weren't making any noise or moving and, um, I went to [the first male victim] first and just chucked the sheet of him, asked him if he was okay and like he was, he was all right, well he wasn't all right but he was alive and then I went over to [the second male victim] and did the same thing and he was alive, um, he was actually able to talk [the second male victim] was and communicate so that was good. I just concentrated on [the first male victim] and then managed to get the boys out onto like outside …

[20] Under cross-examination, the female victim agreed:

> [R]andom guys turned up, beat up two people who lived there wanting information about a third person that lived there … [a]nd then decided to help themselves to whatever they want

[21] She agreed they threatened her "to 'stay quiet', don't talk to the cops'". Asked if there were "threats to hand over [her] property or hand over anything", she responded "[n]othing of mine, no". She accepted "as far as [she] saw it this was violence to get information, namely who [the third man] was". When asked whether "once that information was given the violence stopped", she said "[u]m, I, I think so. It just seemed like it was violent all the time, it wasn't, yeah".

[22] On re-examination, the following exchange occurred:

> Q. … [W]ere they making general threats about the property?
>
> A. Um, were they making threats about the property, I can't remember – I don't, I just – I know they didn't threaten me as to wanting any of my stuff, not that I had anything there but like my shoes for instance or –
>
> Q. What property were they making threats about?
>
> A. Well, I can't, I don't – I don't think they were like they, they were past the point of threatening they were taking.

[23] We consider it artificial and unrealistic to contend a qualifying "nexus" between the violence and the theft was not available.[11] The victims were violently assaulted and threatened, to the extent they remained bleeding, compliant and unresisting in the confined place of the theft, immediately in the wake of which their assailants removed its contents.

[24] That also was the question asked of the jury in the question trail leading to the verdict:

> Are you sure that when Mr Watson assaulted, threatened to assault or actively encouraged the assault of that person or those persons, this was done with the intention of assisting himself and any one or more of [the defendants], to take the … items?

---

11 *R v Maihi*, above n 5, at 141.

[25] It was open to the jury to conclude, "as a matter of common sense", the actual violence meted out to the victims served as a threat of further violence, and that implicit threat was used to obviate any risk of resistance to the theft.[12]

[26] As the female victim observed, the defendants "were past the point of threatening they were taking". The threat was "operative at the time the property [was] stolen".[13] The earlier violence still accompanied the theft.[14] Questions of primary or secondary intent do not arise on the facts of this case.[15] The point of s 234 is "to penalise more severely a theft that is committed through the use (or threat) of violence".[16]

[27] Accordingly, the Judge's s 147 decision did not put at risk any better outcome for Mr Watson and the jury's verdict was not unreasonable. No miscarriage of justice has occurred.

Result

[28] The appeal against conviction is dismissed.

Solicitors:
Crown Solicitor, Christchurch for Respondent

---

12 At 141; *R v Tahana* [2021] NZCA 497, (2021) 29 CRNZ 1002 at [40]–[41]; and *Brown v R* [2022] NZCA 413 at [36].

13 *R v Tahana*, above n 12, at [37], referring to *R v Mitchell*, above n 5, at 216.

14 *Brown v R*, above n 12, at [37], citing *R v Tahana*, above n 12, at [41].

15 Argument before the Judge in the section 147 reasons judgment, above n 3, at [18], and on appeal, addressed the correctness of *R v Gruenwald* CA99/04, 9 August 2004, at [17], where this Court held evidence of breaking and entering with intent to assault and of assault with intent to injure also supported an aggravated robbery conviction "if the jury was satisfied that [the defendant] had, as at least a secondary intent, a shared intention to take".

16 *R v Tahana*, above n 12, at [42], endorsed in *Brown v R*, above n 12, at [29].