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When does aggressive panhandling become robbery?

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Case commented on:

R v Ajang, [2012 ABCA 364](#)

This case addresses the relationship between members of society who are homeless or poor, and those who are uncomfortable and/or threatened by homeless or poor people, when they are asking for money. Mr. Ajang was charged with robbery under section 343(c) of the *Criminal Code*, RSC 1985 c C-46, which states that everyone commits robbery who assaults a person with intent to steal. The Trial Judge (Judge P.M. McIlhargey) found Ajang guilty of assault, but acquitted him of robbery. The Crown appealed this acquittal and the matter was heard by Justices Connie Hunt, Patricia Rowbotham and Brian O’Ferrall. The Court of Appeal overturned the acquittal and found that there was sufficient evidence of an intent to steal to support a conviction for robbery.

The facts of the case are important. The complainant was getting into her car near her apartment, when she was approached by two very intoxicated men, one of whom was Mr. Ajang. One of the men blocked the car door with his knee, thus preventing her from closing it. Ajang then leaned into the car, putting his face close to the complainant’s, causing her to move towards the passenger seat (*Ajang*, para 3). Ajang then asked the complainant for money and she told him that she did not have any. He next asked for alcohol. The complainant said she felt threatened and started to scream. The men cursed at her and told her to stop (*Ajang*, para 4).

Ajang kept asking for money and the complainant eventually gave him her change purse that she had in the car. Ajang emptied the purse, and returned it to the complainant. A passerby stopped his car, told them to leave the complainant alone, and called 911. The two men resumed walking, and were apprehended by the police, who found that Ajang had \$21.55 in his pocket. Ajang was charged with robbery (*Ajang*, para 5).

While the Trial Judge was convinced that the men were aggressive to the point of assault, he was not convinced beyond a reasonable doubt that Ajang was guilty of robbery. In particular, there was no contact with the complainant, the complainant was not injured and there was no weapon involved (*Ajang*, para 6). Because the actions of the accused could be consistent with aggressive panhandling or a botched robbery, the Trial Judge had doubts and gave the benefit of the doubt to the accused (*Ajang*, para 7).

The Trial Judge held that by holding the car door open and repeatedly asking for money, Ajang had caused the complainant to fear for her safety and thus committed an assault (*Ajang*, para 8).

The Crown appealed, arguing the Trial Judge committed errors of law by 1) concluding that Ajang 's actions did not constitute an intent to steal or stealing, and 2) interpreting *Criminal Code* s. 343 incorrectly.

First, the Court of Appeal noted that whether an intent to steal has been proven requires the judge to consider the entire context (citing *R v Hodson*, 2001 ABCA 111). The Trial Judge must assess whether the offence was carried out “in an atmosphere of apprehension which was exploited by the thief, including, but not confined to, his spoken words” (*Hodson*, para 15). In *Hodson*, an accused who was convicted of theft was ordered to be re-tried for robbery after he had approached a teen-aged clerk at a Dairy Queen stating, “Give me all your money”. As noted by the court, the young woman in *Hodson* had not given the accused the money out of some sense of “largesse”, but rather because she feared for her safety. Likewise, in *Ajang*, the complainant gave him the money because she feared for her safety (*Ajang*, para 13).

The Court of Appeal also relied upon the case of *R v Lecky* (2001), 152 CCC (3d) 418, affirmed (2001), 157 CCC (3d) 351 (Ont CA)—a case which is more similar to *Ajang*— for the method of assessing the difference between panhandling and robbery. In *Lecky*, a pedestrian walking on the street noticed that Lecky was asking people for money. The pedestrian was then asked for money, and he declined, and began to walk by the accused. A few seconds later, the accused went ahead of him and asked him for money again. The pedestrian shook his head and said, “No”, and kept walking. The accused persisted, kept coming closer to the pedestrian, repeating the words “Give me some money”, which he said was made several times. Next, when they reached the curb, the accused asked the pedestrian for his glasses and then said to him “Are you scared? Are you scared?” which the pedestrian took for a threat. Finally, the pedestrian relented and gave the accused person five dollars. During the encounter, the accused had forced him off the road by stepping in front of him, to his side and leaning into his face closely. (*Lecky*, para 17). In *Lecky*, the trial judge held that there must be an objective assessment of the evidence to determine whether (*Lecky*, para 28-9):

...the accused by his acts and words has been proven to have evolved from being a common beggar into a robber, who, by threat, intentionally coerced money from an unwilling citizen.

The Alberta Court of Appeal was convinced by the finding that there was an assault, that the demands for money were repeated and aggressive, and that the complainant gave Ajang the money because she felt threatened. Further, an objective passerby was concerned, stopped and dialed 911 (*Ajang*, para 16). The Trial Judge had failed to consider the entire context of the event, which had been characterized by repeated, aggressive and threatening conduct toward the victim (*Ajang*, para 17).

It seems there is a fairly fine line between panhandling (which is legal in some circumstances) and robbery (which is not legal). Some people who are desperate for food or money can become aggressive or appear threatening to others. If society cannot assist poor people in a more productive manner, perhaps we will need public legal education for panhandlers as to behaviour that is not aggressive or threatening, yet produces their desired financial outcome.

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