



Neutral Citation Number: [2026] EWCA Crim 1135

Case No: 202601170 B5

IN THE COURT OF APPEAL (CRIMINAL DIVISION)
ON APPEAL FROM THE CROWN COURT AT BOURNEMOUTH
HHJ Maylin
55CH0178825

Royal Courts of Justice
Strand, London, WC2A 2LL
Date: 01/09/2026

Before :

THE VICE PRESIDENT OF THE COURT OF APPEAL CRIMINAL DIVISION
(Lord Justice Edis)

SIR GARY HICKINBOTTOM
and
MRS JUSTICE ELLENBOGEN

Between :

ANTHONY KALINGA
- and -
THE KING

Appellant

Respondent

Aleks Lloyd of Counsel (instructed by **Renshaw Derrick**) for the **Appellant**
Vincent Scully of Counsel who did not appear below (instructed by **the Crown Prosecution Service**) for the **Respondent**

Hearing date : 20 August 2026

Approved Judgment

This judgment was handed down remotely at 10.30am on 1 September 2026 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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Sir Gary Hickinbottom:

Introduction

1. This appeal raises one short point of law: can someone be convicted of having an offensive weapon in a public place contrary to section 1(1) of the Prevention of Crime Act 1953 (“the 1953 Act”) if they come into possession of an article and immediately use it as a weapon?
2. On 11 March 2026 in the Crown Court at Bournemouth before Her Honour Judge Maylin and a jury, the Applicant was convicted of assault occasioning actual bodily harm (Count 1) and having an offensive weapon (Count 2). On 26 June 2026, he was sentenced to 14 months’ imprisonment less the appropriate period for time spent on qualifying curfew on Count 1, one month concurrent on Count 2 and two months consecutive for other matters.
3. The Applicant applied for leave to appeal against conviction on Count 2 only. That application has been referred to the Full Court by the Registrar, and we have had the benefit of helpful written and oral submissions from Aleks Lloyd of Counsel for the Applicant and Vincent Scully of Counsel for the Crown.
4. For reasons which will become apparent, we grant leave.
5. References in this judgment to simply “section 1” and “section 1(1)” are to that section and subsection of the 1953 Act.

The Facts

6. Shortly after 4am on 25 April 2025, the Appellant and an acquaintance, Ebima Cessay, were involved in an altercation in Old Christchurch Road, Bournemouth. By the time of the trial, Mr Cessay was not a supportive witness, but the entire episode was captured on CCTV footage and the prosecution proceeded on the basis of that footage and evidence of Mr Cessay’s injuries.
7. We have seen the CCTV footage, which is of high quality. The Appellant is seen to go up to Mr Cessay, who is in possession of two crutches, which it appears he needs because of a problem with his leg. The Appellant puts his hands on Mr Cessay and an altercation ensues over several minutes, during which they both fall to the floor, one on top of the other. They disengage and both stand up. The Appellant hands Mr Cessay one of the crutches, but Mr Cessay sinks to the floor, before getting up again a couple of minutes later with the assistance of that crutch. Words appear to be exchanged for several minutes, before they square up to one another. A passer-by stops and appears to attempt to reconcile the two men, during which time Mr Cessay strikes the Appellant once with the crutch he is holding, before discussions resume. A second passer-by stops and joins in the discussions. Mr Cessay then swings his crutch at the Appellant, and one of the passers-by hands the Appellant the second crutch which had been on the floor. The Appellant immediately – the timer on the footage suggests within, literally, a second or two – strikes Mr Cessay with it. Mr Cessay falls to the floor, and the Appellant continues to hit him to the head area, breaking the crutch, now defensively-held by Mr Cessay, in the process. Several passers-by then intervene and the Appellant

withdraws; and there is no further relevant activity until the police arrive at the scene, ten minutes later.

8. Mr Cessay suffered an injury to his nose, a cut above his forehead and a cut to his thumb.

The Criminal Proceedings

9. The Appellant was initially charged with assault occasioning actual bodily harm; but, by the time of the trial, the indictment included a second count namely that, contrary to section 1 of the 1953 Act, the Appellant “without lawful authority or reasonable excuse, had with him in a public place... an offensive weapon, namely a Crutch”.
10. On the first day of the trial, relying upon C (A Juvenile) v Director of Public Prosecutions [2001] EWHC 1093; [2002] Crim LR 322, the Appellant made an application under R v Galbraith (1981) 73 Cr App R 124 that there was no case to answer on Count 2, on the basis that the Crown could not prove its case on that charge even taking its case at its highest because “the intent to use the weapon had to be formed before the occasion of its actual use” (Defence Skeleton Argument, paragraph 8), and the crutch, once the Appellant had it in his possession, was used instantly. The Crown submitted that “given the whole background, it is perfectly feasible for the jury, in the circumstances, to conclude that [the Appellant] decided he was going to inflict injury upon Mr [Cessay]. He has armed himself with the crutch and set about doing just that” (10 March 2026 Transcript, page 3C-E). In her Ruling the following day, the Judge appears to have accepted that submission.
11. In due course, the jury found the Appellant guilty on both counts.
12. As his primary ground of appeal, Mr Lloyd submits that the Judge erred in not acceding to the application to dismiss. As a second ground, he submits that the Judge’s directions to the jury on Count 2 were, in any event, wrong.

The Law

13. The long title of the 1953 Act is: “An Act to prohibit the carrying of offensive weapons in public places without lawful authority or reasonable excuse”.
14. Section 1(1) provides, under the heading: “Prohibition of the carrying of offensive weapons without lawful authority or reasonable excuse”:

“Any person who without lawful authority or reasonable excuse, the proof whereof shall lie on him, has with him in any public place any offensive weapon shall be guilty of an offence...”.

“Offensive weapon” is defined in section 1(4) to mean “any article made or adapted for use for causing injury to the person, or intended by the person having it with him for such use by him or by some other person”.
15. The scope of this provision has been regularly, if infrequently, considered by the courts.
16. Until 1973, the courts were not unambiguous when considering the circumstances in which possessing an object the inherent purpose of which is not as an offensive weapon

(i.e. it has not been made or adapted for use for causing injury), but which has in fact been used as such, fell within section 1(1) of the 1953 Act.

17. In R v Jura [1954] 1 QB 503, the defendant who was with a woman went to a shooting gallery where, after firing some shots at the target, in a moment of anger, he turned and shot at the woman who was walking away. She was hit in the hip causing a slight wound. The defendant was convicted by the jury of common assault and an offence contrary to section 1(1). The judge had directed the jury thus:

“If this was an accident, pure fortuity, then he is not unlawfully in possession of an air rifle. His possession only becomes unlawful if, in your opinion, he turned the rifle deliberately upon the woman. Then immediately his possession of it becomes unlawful and he is in possession of an offensive weapon in a public place.

18. On appeal, this court held that that direction was wrong in law. Referring to the long title of the 1953 Act (quoted above: paragraph 13), Lord Goddard CJ drew a distinction between “having” or carrying the article on the one hand, and using it to harm another individual on the other. He said:

“The appellant was not carrying this rifle without lawful excuse because he was at a shooting gallery where for the payment of a few pence people can amuse themselves by firing at a target. He was carrying the rifle for that purpose, so he had an obvious excuse for carrying it. It was his use of the rifle which was unlawful, and for which he might have been convicted of a felony.”

19. In Woodward v Koessler [1958] 1 WLR 1255, a boy was charged with having an offensive weapon, namely a sheath knife, which he had taken to use to force the door and break into a cinema, but had in fact used at the cinema to threaten an elderly caretaker who had interrupted the break in and accosted him. He waved the knife at the man and said: “Look out” and “Can you see this?” The justices had found that the defendant was not carrying an offensive weapon. The Divisional Court, in short judgments, disagreed. Lord Goddard CJ said:

“If we were to hold that this young boy with this shocking weapon going up to an elderly man and saying: ‘Can you see this?’ was not being in possession of an offensive weapon for causing injury, it would be driving a coach and four through this useful Act. It would mean that it would hardly ever be possible to secure a conviction. We know perfectly well that the reason why the definition is rather obscure and is not a very easy one in some respects to construe is because one of the weapons, which these young hooligans like to use as much as another, is a bicycle chain. Of course that is not made for injury, but if a boy swinging a bicycle chain and saying, ‘Look out’ is not using an offensive weapon, then I do not know what is an offensive weapon.”

In his judgment (with which Ashworth J agreed), Donovan J said: “I think all one has to do is to look and see, for the purpose of ascertaining what the intention is, what use, in fact, was made of it. If it is found that the person did, in fact, make use of it for the

purpose of causing injury, he had it with him for that purpose, and I think that is good enough...”.

20. One interpretation of Woodward v Koessler was that, to fall within the scope of section 1(1), it was sufficient for the defendant to have something in his possession which he uses as an offensive weapon: use of an article to cause injury in itself establishes that the defendant had it with him with intent to cause injury. That formulation was approved by this court in R v Powell [1963] Crim LR 511 (the relevant parts of the transcript being quoted in R v Dayle [1974] 1 WLR 181; 58 Cr App R 100 at pages 103-4), in which it was said: “[I]t is clear that use producing injury establishes an intent when carrying the article in order to cause injury with it”.
21. Those cases do not appear to have been cited, but the same interpretation of the scope of section 1(1) was adopted, in Harrison v Thornton (1966) 68 Cr App R 28. Following an altercation in the street and the arrival of the police, the defendant picked up a stone and threw it at those with whom he had a dispute, but missing them. Charged under section 1(1), he was convicted by the Metropolitan Magistrate, and appealed to the Divisional Court which upheld his conviction. Giving the main judgment, Marshall J said: “As soon as he armed himself with the stone and had in fact used it by throwing it, in my judgment in this particular case the stone became an offensive weapon within the definition set out in subsection (4) of section 1 of the Act of 1953”. He considered Jura was distinguishable, because (explained Lord Parker CJ in a separate judgment), in that case the defendant was perfectly lawfully in possession of the air rifle which never became an offensive weapon until the moment he decided to use misuse it whereas, in the case before the court, the stone was an offensive weapon the moment it was picked up.
22. It was difficult to reconcile these cases; but the courts endeavoured to do so, beginning with this court in Dayle. During the course of a fight, the defendant took a car jack or wheel brace from the boot of his car and injured his opponent with it. He was charged with assault occasioning actual bodily harm (Count 1) and an offence under section 1(1) (Count 2). The jury were directed that they should decide, first, whether it was proved that the defendant threw the jack and thereby assaulted the complainant and, if so, they should automatically convict on Count 2. This court held that that was a misdirection, Kilner Brown J giving the judgment of the court saying:

“...[I]f an article (already possessed lawfully and for good reason) is used offensively to cause injury, such use does not necessarily prove the intent which the Crown must establish in respect of articles which are not offensive *per se*. Each case must depend on its own facts.”
23. However, the clarification of the law did not end there. In Ohlson v Hylton [1975] 1 WLR 724, the defendant, a carpenter, became involved in an altercation at Blackfriars Underground Station during which he took a hammer from his case and immediately hit the complainant on the head with it. He, too, was charged with assault occasioning actual bodily harm and an offence under section 1(1). The justices convicted on both charges; but the defendant successfully appealed the conviction on the section 1(1) charge to the Crown Court. The prosecutor then appealed to the Divisional Court by way of Case Stated.

24. In dismissing the appeal, Lord Widgery CJ (with whom Ashworth and Michael Davies JJ agreed) said;

“This is a case in which the mischief at which the statute is aimed appears to me to be very clear. Immediately prior to the passing of the Act of 1953 the criminal law was adequate to deal with the actual use of weapons in the course of a criminal assault. Where it was lacking, however, was that the mere carrying of offensive weapons was not an offence. The long title of the Act reads as follows: ‘An Act to prohibit the carrying of offensive weapons in public places without lawful authority or reasonable excuse’. Parliament is there recognising the need for preventive justice where, by preventing the carriage of offensive weapons in a public place, it reduced the opportunity for the use of such weapons. I have no doubt that this was a worthy objective, and that the Act is an extremely important one. If, however, the prosecutor is right, the scope of section 1 goes far beyond the mischief aimed at, and in every case where an assault is committed with a weapon and in a public place an offence under the Act of 1953 can be charged in addition to the charge of assault. In such a case the additional count does nothing except add to the complexity of the case and the possibility of confusion of the jury. This has in fact occurred.

In the absence of authority I would hold that an offence under section 1 is not committed where a person arms himself with a weapon for *instant* attack on his victim. It seems to me that the section is concerned only with a man who, possessed of a weapon, forms the necessary intent before an occasion to use actual violence has arisen. In other words, it is not the actual use of the weapon with which the section is concerned, but the carrying of a weapon with intent to use it if occasion arises.

This seems to have been the view of Lord Goddard C.J. in one of the earliest cases under the Act, namely, R v Jura...”

25. The Lord Chief Justice then reviewed the authorities, particularly explaining the dictum of Donovan J in Woodward v Koessler (followed in Powell and reflected in Harrison v Thornton), that, if a weapon is used to cause injury, an offence under section 1 must have been committed. That interpretation was, he said, too wide: Donovan J meant no more than that a defendant’s intent must be judged on the whole of the evidence including, where appropriate, the fact that the weapon was used offensively, an approach laid down in Jura.

26. Lord Widgery CJ concluded thus:

“... [N]o offence is committed under the Act of 1953 where an assailant seizes a weapon for instant use on his victim. Here the seizure and use of the weapon are all part and parcel of the assault or attempted assault. To support a conviction under the Act the prosecution must show that the defendant was carrying or otherwise equipped with the weapon, and had the intent to use it offensively before any occasion for its actual use had arisen.”

27. That interpretation of the scope of section 1(1) was approved by this court in R v Humphreys [1977] Crim LR 225. Whilst being assaulted, the defendant took a penknife

from an inside jacket pocket and stabbed the complainant. He was convicted of unlawful wounding and an offence under section 1(1) offence. However, following Ohlson v Hylton, this court held that, if a person happens to have an article which, in desperation or in the heat of the moment, he uses *ad hoc*, then he is not guilty of the offence of having an offensive weapon in a public place because he has not been carrying that weapon in a public place with the necessary intent to cause injury. The conviction was overturned.

28. The law has consequently been thus well-established and applied since 1975.
29. So, in Bates v Bulman [1979] 1 WLR 1190; 68 Cr App R 21, during an altercation with the complainant, the defendant was handed at his request an unopened clasp knife which, the justices found, was not made or adapted for use for causing injury; and he opened it and held it to the head of the complainant with the intention of causing him injury. The justices convicted him of a section 1(1) offence. On appeal to the Divisional Court, it was submitted that the defendant did not have possession of the knife for long enough for it to be said that he had it with him in a public place for the purposes of section 1(1). The Divisional Court agreed, holding that the case was indistinguishable from Ohlson v Hylton and Humphreys. Stocker J (with whom the Lord Chief Justice and Croom-Johnson J agreed) said:

“... [I]t seems to me that the purport of the [1953] Act, as revealed by its long title, is to cover the situation where an accused person – a defendant – has with him and is carrying an offensive weapon intending that it shall be used, if necessary, for offensive purposes. Where an assault in fact takes place, whether it amounts to an assault occasioning actual bodily harm or a lesser or greater substantive offence, and the only circumstances in which the weapon used is converted or could be converted into an offensive weapon for the purposes of the definition in the assault is concerned, then an alternative or second charge under the [1953 Act] would be more likely to confuse than to resolve the situation.

Therefore, in my judgment, the real purpose of this Act is to prevent the carrying of offensive weapons. Their use would almost certainly be better dealt with by a substantive offence...”.

30. In C (A Juvenile), the police were called to a disorder on a housing estate. The defendant, who was taking her dog for a walk, after aiming bad language at the police, put the dog over a wall but retained the lead which she swung at the police officers narrowly missing them. She was charged with, and convicted by the justices of, an offence under section 1(1). She appealed by way of Case Stated, the question for resolution being in the following terms

“Whether there was evidence upon which we were entitled to hold that the defendant had formed the intent to use the dog chain offensively before the occasion of its actual use”.

31. The High Court (Elias J) said:

“In my judgment, the real issue in this case is whether it was open to the justices to find that there was a sufficient break in the nexus between the

intention of the defendant to use the dog lead as weapon and its actual use so as to enable them to say that the relevant intention was formed before the occasion to use violence occurred. That would be a matter of fact and degree, bearing in mind in particular the length of time involved between forming the intent and carrying it into effect, and the context in which the events took place, as well as the purpose which section 1 is designed to achieve. Another way of putting the point is to ask whether the adoption of the article and the intention to use it as an offensive weapon can properly be considered to be part and parcel of the attack itself or can be seen as distinct from it. Plainly, since the thought is father to the deed, the intent to use a weapon in a violent way will always precede its actual use. As the Ohlson and Jura cases both make clear, if the requisite intent prior to actual use were sufficient to constitute the intention necessary for the offence, then every assault with a weapon would also amount to unlawful possession contrary to section 1 of the 1953 Act, and plainly that is not the law.”

In our view, that correctly summarised, in clear and unambiguous terms, the law as explained in Ohlson v Hylton and Humphreys. We understand why it was the case most relied on by the Appellant in his application to dismiss in this case.

32. The most recent case to which we were referred was R v Tucker [2016] EWCA Crim 593. At about 2.30am, there was an affray on the High Street in Soham, which the defendant joined having walked from premises 30m away holding a cricket bat which he used to hit a man on ground. He was charged with affray, common assault and an offence under section 1(1); and was found guilty on all counts. He appealed against the section 1(1) conviction, which was duly dismissed on the basis that the defendant left his house with the bat and an offensive intention, walking towards those involved in the affray; and “it cannot be said that bringing the bat into a public place with the requisite intention was part and parcel of the incident involving its use upon [the complainant]” (see [17]).
33. Therefore, despite the early ambiguity, the law is now both long-established and clear. It draws a clear distinction between possessing or “having” an offensive weapon and using it. Where there is use, i.e. an actual or attempted assault on an individual, whether the person perpetrating that assault is guilty of an offence under section 1(1) will depend on whether the taking up of the article and intention to use it offensively can properly be considered as distinct from the assault itself. If it cannot, then the person using the weapon is not also guilty of a section 1(1) offence; and it is inappropriate to charge that as a separate offence.

The Appeal

34. We have reviewed the authorities above with some care because the scope of section 1(1) appears to continue to cause issues when it arises.
35. In this case Mr Scully for the Crown, who did not appear below, accepted that the Judge here misapplied the law; and, had she applied it correctly, she would have acceded to the Galbraith application on Count 2. Indeed, he did not seek to defend the prosecution decision to add that count to the indictment.

36. We agree. As this court observed in Tucker (at [19]), there will be cases where there is room for argument as to which side of the line the particular case falls. But this is not one of them. The CCTV footage is striking. The crutch was taken to the scene by the complainant. The Appellant used it as a weapon upon being handed it by a passer-by instantly – within one or, at most, two seconds. On the available evidence, the Appellant having the crutch and forming the intention to use it as a weapon could not properly be considered as distinct from the assault itself. The Judge erred in law in not withdrawing the count from the jury when asked to do so.
37. In these circumstances it is unnecessary to consider the second ground of appeal. A judge directing a jury about this offence must direct them in accordance with the law as explained in this judgment. Whether the Judge did so in this case is now an academic matter.
38. Indeed, we consider that, on the available evidence, the Crown should not have added that count to the indictment. It could only have acted as an unnecessary distraction and, as the cases indicate, it was unnecessary. The fact that the offence was visited only by a short sentence concurrent with the sentence imposed for the assault – which, of course, took into account the Appellant's use of the crutch as a weapon – reflects that. As a consequence, allowing the appeal against the Count 2 conviction will make no substantive difference to the Appellant, in the sense that the sentence imposed will be unaffected.

Disposal

39. For those reasons, we grant leave to appeal and quash the conviction on Count 2. The prosecution does not seek a retrial and so that brings the proceedings about this redundant count to an end.