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No: 201106503 D2
IN THE COURT OF APPEAL
CRIMINAL DIVISION

Royal Courts of Justice
Strand
London, WC2A 2LL

Tuesday, 19 June 2012

B e f o r e:

THE PRESIDENT OF THE QUEEN'S BENCH DIVISION
SIR JOHN THOMAS

MR JUSTICE COLLINS

MR JUSTICE CALVERT-SMITH

R E G I N A

v

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(Official Shorthand Writers to the Court)

Mr A S Longworth appeared on behalf of the **Appellant**

Mr D Bennett appeared on behalf of the **Crown**

J U D G M E N T
(As Approved by the Court)

1. THE PRESIDENT: On 20 October 2011, at the Crown Court at Stoke-on-Trent, before HHJ Trevor-Jones and a jury, the appellant was found unfit to plead. On 25 October 2011, the jury found that he had committed the act of sexual assault on a female child under the age of 13. The appellant was sentenced to a supervision order for 2 years. An appeal is brought by leave of the single judge against the finding that he had done the act charged.

2. The appellant has a significant degree of learning disability. That was assessed by a psychiatrist, Dr Halstead, who is a consultant psychiatrist at Ashley House Hospital, Staffordshire and also an honorary senior lecturer in psychiatry, learning disability and forensic psychiatry at St George's University of London. He considered that this significant degree of learning disability sufficiently explained his condition without the attribution of disorders such as Autistic Spectrum Disorder. He was also satisfied that he had no mental illness.

3. Dr Vaggas, a consultant in psychiatry in Shrewsbury, considered that the appellant had a mild to moderate degree of disability but with some features of autism. He had some residual features of an earlier Attention Deficit Hyperactivity Disorder.

4. The judge, on the basis of that evidence, spelt out in more detail by Dr Halstead and Dr Vaggas, found that he was unfit to plead.

5. It is important to draw attention to what was said by Dr Halstead in his report. He set out the Pritchard criteria as originally set out by Baron Alderson in the 1830s but spelt out those criteria as being interpreted in a modern sense to cover the following six features: being able to plead with an understanding of the indictment, being able to comprehend the details of the evidence, being able to follow court proceedings, knowing that a juror could be challenged, being able to instruct legal advisers, and being able to give evidence in his own defence. He concluded that the appellant clearly failed on each one of the Pritchard criteria. In addition, he did not understand the caution or the oath.

6. Dr Vaggas, who gave oral evidence, came to much the same conclusion, particularly emphasising his lack of capacity to instruct his legal team, his inability to understand the nature of the charge, his inability to understand the difference between a plea of guilty and not guilty, his inability to understand the right to challenge a jury, and his inability to instruct a legal team or to understand what was being instructed.

7. Unfortunately, we do not have a copy of the ruling of the judge finding unfitness to plead. We only know that the judge is said to have found that he failed on several counts of the relevant Pritchard test.

8. Having found that unfitness to plead, as is apparent from what we have said, the court went on to consider the question of whether the appellant had done the act charged. We need not outline in much detail that evidence. Essentially, it was that in July 2010, when the appellant was 24, he was staying at a caravan park in Cornwall with other residents from the care home in which he resided, together with other carers. On holiday in that same camp was a family. One of the daughters went with her sister to

the camp store. One of the daughters, to whom we shall refer to as ST, then aged 10, gave an account that the appellant had grabbed her, taken her behind some dustbins and had put his hands down her underpants, pulled her zip and touched her vagina twice. She told her mother and gave a description of the person concerned. There was also some evidence from the mother as to what had happened, consistent with what her daughter had said. There was also some evidence from the carer as to the timing at which the appellant had left the camp and whether he was present when he assault occurred.

9. It is plain from that evidence which we have set out that there was no case against the appellant that he had done the act charged without the following evidence, to which we will now refer. That evidence was an interview conducted on 12 August 2010 in Stoke-on-Trent by a police officer, in the presence of a solicitor and an experienced social care worker. Prior to the interview the appellant had been seen by a police surgeon, who said he was fit to be interviewed.

10. We were provided with a transcript of the interview. It is apparent from that transcript that the officer tried to explain the caution to the appellant and did it simply. The appellant responded on each of the occasions that he understood everything. When the officer said to him that the allegation was that ST would say that he had sexually assaulted her and asked the appellant to say something, the appellant responded:

> "I asked this girl right have sex with her right and I assaulted her and I said pull her knickers down in front of me, she said what would happen now, and I said pull her knickers down in front of me ... that's it."

11. Over the course of the rest of the interview the appellant was asked more questions and confirmed, in essence, his admission that he had done the act complained of.

12. At the trial of the question as to whether he had done the act charged, an application was made to exclude that interview. The judge rejected that application. He found that although he had heard evidence from Dr Vaggas on that, that the interview should not be excluded under section 67 of the Police and Criminal Evidence Act. He said that the appellant was represented by an experienced solicitor and an experienced social worker. He then went on and said:

> "Secondly, during the interview the caution was broken down by the police and, in particular, most importantly, broken down to ask whether the defendant understood that he had a right not to say anything, and by his response he did indicate that he understood that. He had had already a pre-interview consultation with that solicitor and the social worker, and it is unthinkable that the caution and the existence of his rights in the anticipated interview were not thoroughly explained to the defendant and to the apparent satisfaction of the solicitor and social worker.
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> Further, at no time, either before, during or after that interview, was any representation made by the solicitor or social worker through the solicitor that the defendant was unfit to be interviewed."

13. The conclusion reached by the learned judge has this logical difficulty: the evidence from the psychiatric reports is clear that the appellant's condition at the time of the interview was, essentially, the same as at the time when the judge decided he was unfit to plead. Secondly, it is apparent from the psychiatric evidence that he was unfit to plead in each of the ways in which we have set out; the judge appears to have accepted that conclusion in his ruling of unfitness to plead. It is, therefore, very difficult to understand how the judge, having made that finding, could have found that the person concerned would understand the caution and have sufficient understanding to be interviewed. Of course, there could be cases where the state of the defendant's condition had changed, but that is not this case.

14. It is, therefore, impossible, in our judgment, to understand how the interview could have been admitted in this case, in the light of the findings the judge made himself in relation to unfitness to plead.

15. We would add this: as this court has observed on a previous occasion, these cases of unfitness to plead are very difficult cases. There is the extremely important public interest of ensuring that, where the court proceeds to see whether the defendant did the act, time is taken to ensure that that inquiry is handled justly and fairly. In this particular case, it appears that shortly before the trial some DNA evidence was obtained by the Crown. It was formally served on the first day of the trial. We are told that that evidence would be disputed, but the judge took the view that the proper course was to not to adjourn the matter for that evidence to be looked at and considered, but to proceed.

16. As the court observed in the case of R v Norman [2008] EWCA Crim 1810, these cases require very careful case management. A judge must be directed to the relevant passages in Archbold or Blackstones which set out the way in which these proceedings should be conducted and take the utmost care to ensure that the rights of the defendant before him and the public interest are properly taken into account. Time may be required. These cases are quite different from the ordinary case before the Crown Court.

17. In this case, although we have every sympathy and understanding for the position in which the learned judge was placed, time should have been taken, in the public interest, to look at the DNA evidence and to see whether proceeding to hear that was by far the better way in the interests of the public and of this appellant. It is particularly important that time is taken because, in the light of the conclusion we have reached, we have to set aside the finding. We have no power to order a retrial, which we certainly would have done in the public interest, had we had power to do so.

18. For those reasons, therefore, we are compelled to set aside the finding but can order no retrial.

19. It is, we would add, high time that Parliament remedied this most unfortunate error in the law.

20. Thank you both very much indeed.

21. MR LONGWORTH: My Lord, because of the nature of the case, I do not have the benefit of a representation order.

22. THE PRESIDENT: No, you are paid out of central funds. You do not represent the defendant, you cannot, therefore, have legal aid on his behalf. The representation is funded through central funds. That is why these cases are quite different.

23. MR LONGWORTH: I am grateful. Thank you.

24. THE CLERK OF THE COURT: My Lord, the note is that the court is required to direct an acquittal under section 16.

25. THE PRESIDENT: We direct an acquittal. Obviously, the home will be taking every step to ensure that the public is protected. I am sure they are. They know the problem and I am sure they will feel they can protect the public to the best of their ability.

26. MR LONGWORTH: As I understand it, there is also further training on how their representatives should act when they are acting as the appropriate adult in interviews. They have done everything they can.

27. THE PRESIDENT: Thank you both very much indeed.