Neutral Citation Number: [2012] EWCA Crim 196
No: 201104423 A8
IN THE COURT OF APPEAL
CRIMINAL DIVISION

Royal Courts of Justice
Strand
London, WC2A 2LL

Thursday, 2nd February 2012

B e f o r e:

LADY JUSTICE RAFFERTY DBE

MR JUSTICE HOLMAN

MR JUSTICE MADDISON

R E G I N A

v

RAYMOND CHILES

Computer Aided Transcript of the Stenograph Notes of
WordWave International Limited
A Merrill Communications Company
165 Fleet Street London EC4A 2DY
Tel No: 020 7404 1400 Fax No: 020 7422 6138
(Official Shorthand Writers to the Court)

Mr D Higgins appeared on behalf of the **Appellant**

Mr M Eldridge appeared on behalf of the **Crown**

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

1. MR JUSTICE MADDISON: On 25th January 2011 at the Inner London Crown Court the appellant, Raymond Chiles, who is now aged 56, pleaded guilty to an offence of arson contrary to sections 1(1) and (3) of the Criminal Damage Act 1971. On 7th June 2011 he was sentenced by Her Honour Judge Faber to a hospital order under section 37 of the Mental Health Act 1983 and the judge ordered that the appellant be subject to the restrictions set out in section 41. He appeals against the restriction order by leave of the single judge.

2. It is accepted that a hospital order was appropriate in this case. As to the restriction order, section 41(1) provides as follows:

> "Where a hospital order is made in respect of an offender by the Crown Court, and it appears to the court, having regard to the nature of the offence, the antecedents of the offender and the risk of his committing further offences if set at large, that it is necessary for the protection of the public from serious harm so to do, the court may, subject to the provisions of this section, further order that the offender shall be subject to the special restrictions set out in this section ... ; and an order under this section shall be known as 'a restriction order'."

The restrictions referred to in section 41(1) are listed in section 41(3) of the Act and we have reminded ourselves of them. In particular, the powers under the Act to transfer or discharge the patient or to grant a period of leave are exercisable only with the consent of the Secretary of State. It is submitted on the appellant's behalf that the statutory conditions for making a restriction order were not met in this case.

3. The relevant facts are these. Shortly after midnight on 2nd October 2010 the appellant was alone at his home in London SE16, a terraced house. He telephoned the emergency services and told them that he had started a fire. According to him, it was after the telephone call that he actually lit the fire, setting fire it appears to curtains in a bedroom using a small quantity of white spirits as an accelerant. Three fire engines attended the scene. A fire officer estimated that 50 per cent of the bedroom had been damaged. It is clear from photographs we have seen that the damage was substantial. The bathroom had also been damaged to a limited extent. An elderly couple living next door had been evacuated from their home.

4. When he was seen by the fire officers the appellant appeared calm and detached in manner. He admitted starting the fire and asked to be arrested. The fire officers contacted the police, who attended the scene. To them the appellant repeated that he had set the fire and wished to be arrested. He said that he needed help and he did not want to return to his house. He was being threatened. A fire officer explained to one of the police officers that had the fire reached the gas cupboard, significant damage could have been caused to the appellant's own house and to neighbouring properties.

5. The appellant was arrested at that stage for what was described as "aggravated arson". He was later interviewed at Walworth police station in the presence of his mother, acting as an appropriate adult. He said that he had been repeatedly threatened and

harassed by kids of different ages and sizes. He also kept hearing voices in his head which frightened him. In the end he had had enough. It was doing his head in. He could stand it no more. He had set the fire because he wanted to get out of the property.

6. The appellant came before the court with no previous convictions. However, he had been cautioned on 10th May 2010 for an offence of criminal damage. On that occasion he had broken a neighbour's window, believing that his neighbour had been telling people details from his bank statements. In addition, the psychiatric reports (to which we will return in a moment) recorded that about one month before the arson the appellant had thrown a hammer through a closed window in his own home onto the street outside in an effort, said the appellant, to get attention and help, though none had come.

7. When the appellant pleaded guilty on 25th January 2011, it was to an offence of simple arson on a written basis which was accepted by the prosecution and the court. This adopted what the appellant had said when interviewed by the police and what was said in a report dated 3rd December 2010 from a psychiatrist, Dr Iles, who had been instructed by the appellant's solicitors. This report was before the court. It was a very full report and what follows is intended only as a brief summary.

8. The report stated that the appellant had suffered all his life from severe asthma and had other physical ailments. Having been in employment from the ages of 17 to 40, he had then been made redundant and had lived a rather isolated existence ever since. The report continued that the appellant's first significant contact with the psychiatrist services had been on 20th September 2010, and thus not long before the date of the arson. On that occasion he had been visited at home. He had said that voices were threatening to kill him and that people were listening with microphones inside his home. He had complained that he was being persecuted and harassed in his home and in the local area by what he described as "druggies, little kids and big people". On 1st October 2010 he had been visited by a psychiatrist, again at his home. The psychiatrist had recorded that the appellant appeared to be suffering from a psychotic illness and required further assessment. It was on the next day, 2nd October, that the appellant had committed the index offence. He had then been remanded to Her Majesty's Prison Brixton. On 5th October 2010 he had appeared before the Camberwell Green Magistrates Court, where Dr Iles had first seen him. The appellant had then said that he had started the fire to get help because the children who had been harassing him had said that they would kill him if he called the police. Dr Iles had considered that the appellant was acutely mentally ill and had arranged for him to be transferred to the health care wing at Brixton Prison. There, on 7th October 2010, he had unhappily been found attempting to hang himself with his belt. He had told nursing and medical staff that he believed that his whole family had been murdered, the windows were talking to him and the prison officers were talking about him. In the days that followed he had been observed to be crying repeatedly and apparently responding to auditory hallucinations. On 18th October he had behaved bizarrely during a visit from his family, and when he was seen again by Dr Iles later that same day his presentation had been consistent with a psychotic illness. He had therefore been started on anti-psychotic medication. However, his intense persecutory delusions had continued, as had his auditory and now apparently sometimes visual hallucinations.

9. Dr Iles concluded his report of 3rd December 2010 by saying that although there might have been an incident in the past where the appellant was the victim of anti-social behaviour, he was convinced that this was continuing despite evidence to the contrary and these beliefs were delusional in nature. The diagnosis was one of paranoid schizophrenia, though the appellant was fit to plead. In Dr Iles' opinion the appellant had been mentally ill at the time of the offence. In terms of culpability, while he had the capacity to form the intention to light the fire and understood that it was against the law to do so, his decision to act was affected by his mental disorder, specifically his delusions of persecution. The actions had been taken so that the fire brigade would call the police, he being frightened to do so himself because of threats from his imagined tormentors. The report continued that the appellant had very limited insight into his mental disorder. Dr Iles recommended that further medical evidence be obtained prior to sentencing so that the appellant's suitability for a hospital order could be assessed.

10. There was also before the court on 25th January 2011 an addendum from Dr Iles dated 23rd January 2011. This stated that the appellant was still suffering from paranoid schizophrenia and was acutely unwell. The appellant had said that if he were to return to live anywhere in Southwark the harassment by the children would probably continue because the bin men would tell the children where he was living. Dr Iles recommended that an interim hospital order be made pursuant to section 38 of the 1983 Act.

11. After the appellant had pleaded guilty on 25th January 2011, sentence was adjourned to enable further medical evidence to be obtained. In addition, on or shortly after 25th January an interim hospital order under section 38 of the 1983 Act was made, and on 7th February 2011 the appellant was transferred from Brixton Prison to the Gresham Psychiatric Intensive Care Unit at the Bethlem Royal Hospital.

12. While at the Gresham Unit, he was seen again by Dr Iles on 7th April 2011. Dr Iles prepared a further report dated 14th April 2011. This recorded that the appellant now denied having had any further thoughts of self-harm, and indeed denied having heard any voices since being at the Unit. Asked whether he still believed that the children were out to get him, he said: "the only way I'd be able to find out is to go home and find out". He remained convinced that children had been tormenting him in the past and now also referred to harassment in the past from the "Yardies".

13. In this second main report Dr Iles carried out a highly detailed risk assessment. This accepted that what was referred to as past violent behaviour was generally the best predictor of future violent behaviour, using the word "violent" in an extended sense so as to include fire setting. The risk assessment included the following passages:

> "The defendant recognises that he was having problems around the time of the index offence. At times, he has accepted that these problems constituted a mental illness. However, he does not acknowledge the true severity of his illness ...
>
> There is evidence that whilst the defendant's mental state has improved since treatment following the commission of the index offence, he has ongoing residual symptoms of major mental illness. These symptoms

include ongoing disorder of content of thought (i.e. continued conviction that the children in his neighbourhood were tormenting him, that the bin men were involved in the conspiracy and that the children were capable of knowing what he was doing even when he was out of their view) and probable ongoing auditory hallucinations (the nursing staff on Gresham Psychiatric Intensive Unit have observed him laughing to himself and studying them closely) ...

There is little evidence that the defendant demonstrates impulsivity...

The defendant has shown a good treatment response to his current treatment plan which includes oral antipsychotic medication, nursing intervention, regular medical review and periodic contact with the occupational therapist ...

Children, who the defendant perceives to be involved in tormenting him, are potential destabilisers for him. His move from Peckham to Bermondsey around two years ago demonstrated this to be the case. Whilst he does not believe that the children know where he is, this is only because he does not believe that they could find out. He believes that bin men told the children his new address when he moved last time. It is only his belief that the same bin men do not collect rubbish near the hospital that stops him from believing that the children could find out where he is now. It is my opinion that his return to Southwark could result in further ideas of persecution. As he is likely to be returned to Southwark upon his release/discharge, it is my opinion that there is a high probability of exposure to destabilisers ...

Non-compliance with remediation attempts is linked to insight ... the defendant has partial insight into his illness. Whilst his insight is only partial, he has been fully compliant with treatment since his remand to HMP Brixton, following the commission of the index offence. He accepts that he will require ongoing support and supervision from a mental health team following his release/discharge and it is my opinion that he will probably continue to remain compliant with other aspects of his treatment, including his prescribed medication. It is my opinion, therefore, that there is only a low probability of non-compliance with remediation attempts ...".

Then, under the heading "Summary":

"Risk assessment ... revealed a number of ***present*** risk factors including: previous violence; major mental illness; early maladjustment; prior supervision failure; and exposure to destabilisers.

It revealed the following ***possible*** risk factors: relationship instability; employment problems; lack of insight; active symptoms of major mental illness; and stress.

> The following risk actors were ***absent***: young age at first violent incident; substance use problems; personality disorder; negative attitude; impulsivity; unresponsiveness to treatment; plans lack feasibility; lack of personal support; and non-compliance with remediation attempts."

14. We hope in the course of that summary fairly to have set out the significant features of the risk assessment both for and against the appellant, but we emphasise that we have taken the entire risk assessment into account.

15. Dr Iles went on in this report to confirm his earlier diagnosis of paranoid schizophrenia, which made it appropriate for the appellant to be detained in hospital for medical treatment. He described paranoid schizophrenia as a severe and enduring illness, commonly following a course of remission and subsequent relapse. He expressed the opinion that should a hospital order be made, a section 41 restriction order would be unwarranted. The risk of similar offences in the future was in the low to moderate range. Dr Iles concluded by saying:

> "Whether the offence itself is considered serious enough to warrant the use of a restriction order is ultimately for the court to decide."

16. At the Gresham Unit the appellant had been, and indeed still is, under the care of Dr Ayonrinde, and he too wrote a report for the court dated 17th April 2011. He described the circumstances leading up to the offence similarly to Dr Iles. The appellant had told Dr Ayonrinde that his intention in committing the offence had been to cause enough damage to require his relocation but not so much as to destroy the building or cause death or injury to others. Dr Ayonrinde said that since the appellant had arrived at the Gresham Unit he had behaved in a calm, pleasant and polite manner and had been consistently compliant with his medication. However, he had been observed apparently talking and laughing to himself. Asked about this, the appellant denied that he any longer had any hallucinatory experiences and said that he did not believe that he had a mental disorder at all, though he was willing to continue with his medication and to remain in hospital. Ultimately, he said, he wished to go home, though he had some worries about this because of fears of further harassment and because of bad memories of his last home. However, he said if he found himself in a similar situation again he would not light a fire.

17. In the conclusion to his report, Dr Ayonrinde agreed with Dr Iles that the diagnosis was one of paranoid schizophrenia and that this appeared to have been present at the time of the offence of arson. The appellant had responded to his anti-psychotic medication, but still experienced residual and delusional belief symptoms, mainly as to his paranoia and persecutory experiences of harassment before the arson. He would benefit from continued treatment and monitoring in a secure psychiatric setting and it was necessary to carry out a continuing assessment of the fire setting risk he presented. He would also need to undertake fire and arson and victim awareness programmes. Dr Ayonrinde, like Dr Iles, recommended a hospital order under section 37 of the Act, but stated that the additional restrictions under section 41 were not necessary.

18. Both doctors also gave oral evidence at the sentencing hearing confirming what they had said in their written reports. Dr Ayonrinde added in evidence that the appellant was still on anti-psychotic medication and his delusions had reduced significantly. However, quite a lot of further therapeutic work was required, as was continued monitoring of the appellant's mental state. If no section 41 restriction was imposed, said Dr Ayonrinde, the appellant would be held in his present secure conditions for at least a further two to three months before moving to a less secure, but nevertheless a secure, psychiatric setting with more emphasis on treatment and rehabilitation. He would remain in that setting for at least 12 to 24 months. He could then be returned into the community if the treating psychiatrist thought that this was appropriate. At that stage he would probably go into a supported supervised setting rather than a normal domestic setting. In this regard Dr Ayonrinde echoed oral evidence that had already been given by Dr Iles.

19. When cross-examined, Dr Ayonrinde agreed with Dr Iles that there was a low to moderate range of serious harm to the public: low if the appellant was not returned to a normal domestic setting and moderate if he was. The judge then asked Dr Ayonrinde about a suggestion that had been made at the last court appearance that the appellant was imminently to be moved from the Gresham Unit to another unit. Dr Ayonrinde replied that that was now highly unlikely. The role of the Gresham Unit within the National Health Service was not under review.

20. Passing sentence, the judge acknowledged that neither of the psychiatrists thought that a section 41 restriction order was necessary. She said that the arson represented an escalation in seriousness from the appellant's previous offending and referred to the moderate risk of further offences if the appellant were set at large. She also took into account, she said, the facts of the arson. As to the future, she accepted that the appellant would not be able freely to leave the Gresham Unit, or the less secure unit to which he was likely to be transferred in due course. However, said the judge, she could not be confident as to the future of those care services. She said as follows:

> "So far as he [that being a reference to Dr Ayonrinde] is concerned there is no immediate return likely to the community but I cannot be confident as to the future of these care services. When last in court there was talk of you being moved to, in fact, [the Gresham] psychiatric intensive care unit not being your unit at all but being moved somewhere else.
>
> Dr Ayonrinde himself has emphasised what is necessary is the continuity of psychiatric care. I cannot be confident in the current fluctuating state of the NHS that the security that the public needs to be protected from you will be ensured unless there is an another government department which has input into the issue of your release and that is what I will achieve by the section 41 order."

21. In what we regard as clear and helpful written and oral submissions, Mr Higgins, on behalf of the appellant, accepts that the risk assessment inherent in the decision whether or not to impose section 41 restrictions is one for the court alone, balancing the relevant factors in the particular case, and that the court is entitled to impose such restrictions

even if the psychiatrists in the case unanimously express the opinion that the restrictions are unnecessary. He has referred us to the cases of Birch [1990] 90 Cr App R 78, Acharya [2005] EWCA Crim 772 and Steward [2008] EWCA Crim 1255, from which these general principles are to be derived, but the outcomes in which turn on their own facts.

22. Mr Higgins submits that in the circumstances of this particular case there was insufficient material to warrant the conclusion that a restriction order under section 41 was necessary to protect the public from serious harm. He points in particular to the appellant's age, his general state of physical health, his very minor criminal record, the lack of any significant psychiatric intervention prior to September 2010, the agreed basis of plea, the appellant's immediate confession, a lack of any intention on his part to cause or endanger life or to cause injury, a lack of any fascination on his part with fire, his co-operation and compliance with his medication and treatment generally, the "low to moderate" risk assessment and the unanimous opinion of the psychiatrists that a section 41 restriction order is unnecessary. He relies also on the way in which the appellant's case is likely to be managed should no section 41 restriction be imposed, including the availability of treatment and medication in the community, and, should the appellant eventually be released under a community treatment order pursuant to section 17A-E of the 1983 Act, the power to recall him should he not comply. Mr Higgins adds that if the judge took into account her expressed concerns about the future of the National Health Service, she was wrong to do so.

23. Mr Higgins has also produced to us an e-mail dated yesterday, 1st February 2012, from Dr Ayonrinde to Mr Higgins' instructing solicitor. We have read the e-mail. It states, amongst other things, that there are now no overt or identified symptoms of mental illness in the light of current treatment, that Mr Chiles does not present with behavioural disturbance or risk behaviours to himself or others and does not express any attempt to harm others or to behave in a manner which may be considered to pose a threat to others. Mr Chiles, says the e-mail, currently presents a low risk of fire setting or harm to others. On the contents of that e-mail, Mr Higgins also understandably relies.

24. We accept the submission that the judge should not have taken into account, as she does appear to have done, her concerns about the future of the National Health Service. There was simply no evidence or information to justify such concerns. However, conducting a balancing exercise of the kind to which we have referred, we are of the view that there were, and still are, features of this case which should properly be taken into account and which, taken together, warranted the imposition and warrant the continuation of a section 41 restriction order. The first is the nature of the appellant's disorder. Paranoid schizophrenia is described in the reports we have as a severe and enduring illness, of which the appellant still until recently had residual symptoms. It is an illness which tends to follow a course of remission and relapse. The appellant has limited insight into his disorder, having at one stage claimed that there was no disorder at all, and although we are pleased to see that he is presently compliant with his medication, it would in our view be irresponsible to disregard the risk that he may not be so compliant on release to the community because of his lack of insight into his own condition. At present he has expressed inconsistent reactions to the prospect of

returning to a domestic setting, saying that both he would like to and that he is fearful of doing so because kids might start harassing him again. Dr Iles, though he does not believe a section 41 restriction is necessary, accepts that there is a high probability of exposure to such destabilisers. The appellant has, it is true, committed only one offence of arson, but past behaviour is a good predictor of possible future behaviour. Moreover, the existence of a moderate risk of further fire setting were the appellant to return to a domestic setting is, in our view, a matter of concern, not least given the circumstances of the instant offence. We accept that the appellant neither intended to endanger nor was reckless as to any danger to life, but the offence he committed did in fact present a significant danger to life. Fires can easily get out of control. The fire was set in a terraced dwelling house. The risk of the fire spreading to neighbouring properties or of an explosion in the event of the fire coming into contact with a supply of gas are self-evident. In our view, it is important that there should be a careful review of the risks which the appellant presents to the community at the time when it is proposed to release him.

25. Therefore, there was, in our view, ample material to justify the conclusion to which the judge came that a restriction order was "necessary for the protection of the public from serious harm". Accordingly, attractively though it has been presented, this appeal must be dismissed.

26. We are, having said that, pleased to note the progress which has so far been made by the appellant Mr Chiles. We express the hope that that progress will be maintained. It is of course the case that should it be maintained then that is something that can properly be taken into account by a tribunal reviewing this case, and indeed by the Secretary of State when deciding how the appellant's case should be managed in future.