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IN THE COURT OF APPEAL
CRIMINAL DIVISION

Royal Courts of Justice
Strand
London, WC2A 2LL

Tuesday, 24 April 2012

B e f o r e:

LORD JUSTICE DAVIS

MR JUSTICE TREACY

RECORDER OF LEEDS - HIS HONOUR JUDGE COLLIER QC
(Sitting as a Judge of the CACD)

R E G I N A

v

JOHN ROBERT PARKINS

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(Official Shorthand Writers to the Court)
Mr A Jamieson appeared on behalf of the **Appellant**

J U D G M E N T

(As Approved by the Court)

1. LORD JUSTICE DAVIS: I will ask Treacy J to give the judgment of the court.

2. MR JUSTICE TREACY: This is an appeal with leave of the single judge against a Restriction Order made under section 41 of the Mental Health Act 1983.

3. The history of the case shows that Mr Parkins was found to be under a disability and then found by a jury to have done the acts charged against him on an indictment at Manchester Crown Court. There were two charges on the indictment. Count 1 was a charge of theft, and count 2, robbery.

4. After those procedures had been completed, the matter came before HHJ Nield on 14 July 2011. She exercised her powers under section 5 of the Criminal Procedure (Insanity) Act 1964 to impose a Hospital Order pursuant to section 37 of the 1983 Act, coupled with the Restriction Order already mentioned. In addition, she made this appellant the subject of a Restraining Order pursuant to section 5 of the Protection From Harassment Act 1997.

5. The facts underlying the case show that, on 6 November 2010, Mr Rahman Mahmudur was working in a general store in Manchester. The shop is a small convenience store and off-licence. The till area is protected. There is CCTV inside the shop. This appellant was known to the staff as a man who had been banned previously, having been caught stealing.

6. At about 5.30pm he entered the store with a female. They selected a can of beer. The shopkeeper refused to serve the appellant because he was banned, so the female paid and the pair left the shop. Shortly afterwards the appellant returned to the shop on his own. He tried to buy some beer and again was refused service. He threw some coins towards the till area and took the beer out of the shop with him. That represents the theft charge.

7. At about 6.15pm the appellant returned to the shop. By now, though, he had pulled his hood up and was wearing a scarf across the lower part of his face. However, the shopkeeper was able to recognise him. The shopkeeper was on his own in the premises. The appellant approached the till area at speed. He was brandishing in his right-hand a kitchen knife with a thick blade about 25 centimetres long. The appellant demanded that the till be opened and threatened to cut the shopkeeper if he refused.

8. The appellant entered the till area itself, and as he made his demands, he pointed the knife towards Mr Mahmudur's stomach, making a jabbing motion. The till was opened. The appellant stole the contents, some £835, and left the shop. The incident was captured by the CCTV. This represents count 2, the robbery charge.

9. The appellant was subsequently arrested. In interview he denied committing any act of robbery.

10. There were before the court a number of psychiatric reports. Dr Appleyard, on 3 May 2011, reported that the appellant was suffering from a psychotic illness, namely paranoid schizophrenia. He assessed the appellant as unfit to plead. He said that he was currently profoundly psychotic and required in-patient psychiatric treatment. A

period of intensive treatment with antipsychotic medication would make a significant impact on his mental health within a matter of weeks.

11. The court also had a report dated 7 April 2011 from another consultant, Dr Strickland. He stated that the appellant had previously been an outpatient at Mental Health Services, having been diagnosed with schizophrenia, but that his contacts and adherence with treatment had been poor. There had been brief formal admissions to hospital, but the appellant had quickly taken his own discharge and had been unco-operative with follow-up. Dr Strickland said that the appellant had no insight whatsoever into the fact that he was suffering from a mental disorder. The doctor had been trying to persuade him to accept anti-psychotic medication, but he had adamantly refused to take it.

12. There were then further reports addressing the question of disposal of the case. The first of those came from Dr Appleyard, dated 9 June 2011. He reported that the appellant remained psychotic; that he did not believe that he suffered from any mental illness; the level of psychosis was profound; and the mental disorder was of a nature and degree as to warrant in-patient psychiatric treatment. Whilst Dr Appleyard supported a section 37 order, he said it could be argued that the appellant did not need the additional imposition of a Restriction Order under section 41. He said that the risk that he perceived could safely and effectively be managed without such an order, and that the risk posed was not of a type that would routinely warrant the making of such an order.

13. Dr Appleyard acknowledged that the appellant posed a risk of offending when mentally unwell, but in his view the risks were not significant and fell short of what could be represented as a risk of serious harm. This appellant did not require treatment in medium security, and local hospital services could be involved in thorough care planning before the appellant's discharge, thus obviating the need for a Restriction Order. In Dr Appleyard's view, the appellant could be reintroduced to the community when he had progressed to the extent that he was no longer hallucinating.

14. There was a report dated 30 June 2011 from another consultant psychiatrist, a Dr Powersmith, who agreed with Dr Appleyard's report, and in particular agreed that a section 41 Restriction Order was not required.

15. Those were the medical reports before the court. The appellant's prior history shows that he is now 34 years of age. He has 20 previous convictions recorded against him involving some 51 separate offences. Those were mainly offences of dishonesty, including burglary and theft. The appellant had received eight separate custodial sentences. One of those involved an offence of robbery in January 2006 when he was sentenced to a term of 42 months' imprisonment. After release from that sentence, the only further conviction recorded against the appellant was for an offence of criminal damage in March 2010, for which he was conditionally discharged.

16. Dr Appleyard gave oral evidence to the judge at the hearing on 14 July. He reiterated his view that a Hospital Order was appropriate, but that a Restriction Order was not required. He said there were other ways to deal with this appellant pursuant to a section

37 order, both inside hospital and then on his discharge. If he was supervised properly with a care plan and adequate follow-up, then the risk to the public would not be serious. Thus it was not necessary to impose a Restriction Order, and indeed by not imposing one, there would be some greater flexibility in the treatment which could be afforded to the appellant, which would be beneficial to him. It was said that if an order pursuant to section 37 alone was made, the appellant would be free to move around the communal areas of the hospital, and could be observed in that setting as part of his overall assessment. If a section 37 order was made on its own, the appellant would not be released without having made substantial progress, and even then a post-release care plan would be put in place via a Community Treatment Order.

17. The judge, having heard that evidence and the submissions of counsel, indicated that she was satisfied that the appellant was suffering from a mental disorder of a type which made it appropriate for him to be detained in hospital. The only issue in the case was whether the Restriction Order under section 41 should be made. The judge pointed out, correctly, that the ultimate decision was for the court, even when medical witnesses did not advise or recommend a Restriction Order.

18. The judge took note of Dr Appleyard's evidence, and noted that he had said that if the appellant was discharged into the community and then went on to disengage from treatment, it would be possible for him to be brought back to hospital. Dr Appleyard had said that whilst there would be a risk of further offences being committed, the risk related to the commission of minor offences.

19. The judge indicated that she had difficulty with that view given this appellant's earlier history, and in particular the offence of robbery in 2006 and the present offence which could not in any way be regarded as minor offending.

20. Counsel had submitted that even those offences had simply involved the threat of the use of weapons, rather than the actual use of weapons, and submitted that that was a relevant factor for the judge to assess in determining whether there was a risk of serious harm.

21. The judge rejected the approach, both of Dr Appleyard and counsel, as to the measure of risk which the appellant presented. She said that the fact that a knife had not been used was merely a factor for consideration. The risk of use of a weapon such as a knife in the future could not be ignored. In the judge's view, the criminal justice system should retain the scrutiny of this case, rather than leave it to the medical profession.

22. Mr Jamieson, who appeared below, has advanced submissions before us today, asserting that the imposition of the section 41 Restriction Order was wrong. In essence, he has made two points to us: first of all, that the judge fell into error in assessing that the appellant posed a risk of serious harm to the public; alternatively, he has submitted to us that the judge fell into error in concluding a Restriction Order was necessary to protect the public. He argues that the Restriction Order should be quashed and that the matter therefore should have been dealt with, and should be dealt with by us today, by leaving in place simply the section 37 Hospital Order.

23. In addition to the reports which were available to the sentencing judge and the transcript of Dr Appleyard's evidence, we have seen a letter from a consultant psychiatrist at the Pennine Care National Health Service Trust, dated 17 April 2012. This report updates the position.

24. The appellant has been in a low security unit. He has been receiving and taking the appropriate medication. He has engaged well with treatment and is making progress, as indeed was anticipated at the time of the hearing before the judge below. The assessment at present is that the appellant may be suitable for consideration for discharge after a period of a further six months or so. Of course, it will be necessary for his case to be considered by a Mental Health Review Tribunal.

25. As the judge recognised, a section 41 order may be made if it appears to the court, having regard to the nature of the offence, the antecedents of the offender and the risk of commission of further offences, that the order is necessary to protect the public from serious harm. The decision is the responsibility of the judge, irrespective of the views of the medical practitioners.

26. It is clear to us that the judge approached the matter in detail and with care. She took account of the written and oral evidence of Dr Appleyard and the submissions of counsel, and gave them due weight. She was entitled to take a different view from that which had been urged upon her. We have to judge whether she fell into error in her conclusion.

27. The evidence showed that this appellant lacked insight into his mental illness and his offending behaviour. There was a history of poor contact with the health authorities when he was at large, and of poor adherence to treatment and follow-up requirements. The appellant's offending was linked to a lifestyle involving the abuse of controlled substances. This appellant has now twice been convicted of robberies involving threats with a weapon. On neither occasion did harm result, but on each occasion the victim behaved in a compliant way. Given the appellant's substantial past record and lifestyle, there is clearly a strong risk of re-offending.

28. In our judgment, the judge cannot be said to have unreasonably concluded that there was concomitant risk that such offending would result in serious harm to the public. Whilst the doctors felt otherwise, the judge was entitled to conclude that the proposal of the section 37 order, followed by community-based care, was not sufficient to obviate the risks identified. Dr Appleyard's view was that, acknowledging that the appellant might disengage from community-based treatment, and that if so there was a risk of re-offending, the risk was of minor offences only. Given the history, we see why the judge could not share that view.

29. In our judgment, the judge cannot be shown to have fallen into error. The letter of 17 April 2012 from the Pennine National Health Trust which updates the position does not, in our view, alter the position in any material way. In those circumstances, the appeal is dismissed.