

**In the High Court of Justice
Queen's Bench Division
Administrative Court**

In the matter of an oral hearing for permission to Judicial Review

CO/XX56/2020

BETWEEN:

The Queen on the application of

ISABELLA WINTERS

Claimant

~V~

DEVIL CROWN COURT

Defendant

Claimant

SKELETON ARGUMENTS

DATE OF HEARING: 27/03/2012

TIME ESTIMATED FOR HEARING: 30 MINS

ESTIMATED READING TIME REQUIRED: 15 MINS

Particular of claim

1. The Claimant was remanded over night at Bethnal Green Police Station and at HMP Wormwood scrub for a further 103 days for sending 5 emails to Starbucks, whom the Claimant accused of taking a small amount of money from his loyalty card and in doing so have caused the claimant distress and anxiety. On one of the emails, the Claimant expressed his distress and anxiety and of his concern that, Cho from Virginia Tech may have undergone the same distress and anxiety and caused him to commit mass murder. As a result, this legal person (Starbucks) reported to the police that the Claimant had caused it distress and anxiety.

When detained by PS Sleiker of Bethnal Green Police station, there were 11 charges:

9 charges under the Malicious Communications Act 1988 for sending emails to news/ media groups to raise awareness of the situation. This was later dropped while at Wormwood scrub without compensation or apologies.

1 charge under the Malicious Communications Act 1988 for sending 5 emails.

1 charge of failing to surrender - On which occasion the defendant asked for a travel card 9 days in advance to attend to no avail.



Malicious Communications Act 1988

(1) Any person who sends to another person—

(a) a letter, electronic communication or article of any description which conveys—

(i) a message which is indecent or grossly offensive;

(ii) a threat; or

(iii) information which is false and known or believed to be false by the sender; or

(b) any article or electronic communication which is, in whole or part, of an indecent or grossly offensive nature,

is guilty of an offence if his purpose, or one of his purposes, in sending it is that it should, so far as falling within paragraph (a) or (b) above, cause distress or anxiety to the recipient or to any other person to whom he intends that it or its contents or nature should be communicated.

(2) A person is not guilty of an offence by virtue of subsection (1)(a)(ii) above if he shows—

(a) that the threat was used to reinforce a demand made by him on reasonable grounds; and

(b) that he believed, and had reasonable grounds for believing, that the use of the threat was a proper means of reinforcing the demand.

(2A) In this section “electronic communication” includes—

(a) any oral or other communication by means of a telecommunication system (within the meaning of the Telecommunications Act 1984 (c. 12)); and

(b) any communication (however sent) that is in electronic form.

(3) In this section references to sending include references to delivering or transmitting and to causing to be sent, delivered or transmitted and “sender” shall be construed accordingly.

(4) A person guilty of an offence under this section shall be liable on summary conviction to imprisonment for a term not exceeding six months or to a fine not exceeding level 5 on the standard scale, or to both.

2. At a hearing at Feltham Magistrates’ Court, R raised a concern that D was concerning too much with the money matter. Of which D stated the need to investigate the money side of the matter as this would make the state of mind (mens rea) of the case, of which the Magistrates disagreed. D at this point was thrown off course and as a result found difficult to find any other path and consequently the learning clerk assisted but the mens rea left un-probed.

In doing so the Crown did not provide the equality of arms between parties thus contravened Article 6 of the ECHR.

Article 6

Right to a fair trial

1. In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. Judgment shall be pronounced



publicly but the press and public may be excluded from all or part of the trial in the interests of morals, public order or national security in a democratic society, where the interests of juveniles or the protection of the private life of the parties so require, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice.

2. Everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law.

3. Everyone charged with a criminal offence has the following minimum rights:

(a) to be informed promptly, in a language which he understands and in detail, of the nature and cause of the accusation against him;

(b) to have adequate time and facilities for the preparation of his defence;

(c) to defend himself in person or through legal assistance of his own choosing or, if he has not sufficient means to pay for legal assistance, to be given it free when the interests of justice so require;

(d) to examine or have examined witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;

(e) to have the free assistance of an interpreter if he cannot understand or speak the language used in court.

3. At the hearing at Devil Crown Court, R (the prosecution team CPS) put it to the Court, that they thought the email with reference to The Metro was a threat to the London Underground.

If above is the case as R claimed, then this would void the defendant's freedom expression, as in article 10 of the Convention:

Convention for the Protection of Human Rights and Fundamental Freedoms

Rome, 4.XI.1950

Article 10

Freedom of expression

1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This Article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.

2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security,



territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.

International Covenant on Civil and Political Rights

Article 19

1. Everyone shall have the right to hold opinions without interference.
2. Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.
3. The exercise of the rights provided for in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:
 - (a) For respect of the rights or reputations of others;
 - (b) For the protection of national security or of public order (ordre public), or of public health or morals.

The email below shows very clearly that it was a newspaper that the defendant had tried to get some media attention with, thus there is no ground for suppressing freedom of speech:

From: hizo@live.co.uk
To: mail@ukmetro.co.uk; ukpressoffice@starbucks.com
Subject: FW: Customer Care E-mail Reference: 319614
Date: Mon, 17 May 2010 18:04:27 +0000

From: hizo@live.co.uk
To: ukpressoffice@starbucks.com
Subject: FW: Customer Care E-mail Reference: 319614
Date: Mon, 17 May 2010 17:43:14 +0000



From: hizo@live.co.uk
To: ukinfo@starbucks.com
Subject: FW: Customer Care E-mail Reference: 319614
Date: Sat, 15 May 2010 12:57:58 +0000

With reference to your letter, I should have money on the 9th if I started on the 7th with £5 and only used £2.50.

I need to know if you are investigating this case or this can be treated as a case of theft in the eye of the law. This means it can and may have to be dealt with by the administrator of the law.

4. The Defendant on all occasions tried to inculcate that he wanted his money back, thus re-enforcing a demand.

Malicious Communications Act 1988 Section 2:

(2) A person is not guilty of an offence by virtue of subsection (1)(a)(ii) above if he shows—

(a) that the threat was used to reinforce a demand made by him on reasonable grounds; and

(b) that he believed, and had reasonable grounds for believing, that the use of the threat was a proper means of reinforcing the demand.

If we are to look at the Communication Act 1998 Section 2 as above, the **Malicious Communications Act 1988 Section 2** deemed this to be not a crime. (Article 7 of the ECHR)

In this regard, all punishments concern in this matter contravenes Article 7 of the ECHR

Article 7

No punishment without law

1. No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence under national or international law at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the criminal offence was committed.

2. This Article shall not prejudice the trial and punishment of any person for any act or omission which, at the time when it was committed, was criminal according to the general principles of law recognised by civilised nations.



5. Furthermore, the Human Rights Act 1998 Section 12 (3) also states that the court is the only body that can make a decision as to what should or should not be allowed, giving scope for interpretation that the police is not in the position to make that decision and to be kept in remand for such a crime is out of the question.

Human Rights Act 1998

12 Freedom of expression.

(1) This section applies if a court is considering whether to grant any relief which, if granted, might affect the exercise of the Convention right to freedom of expression.

(2) If the person against whom the application for relief is made ("the respondent") is neither present nor represented, no such relief is to be granted unless the court is satisfied—

(a) that the applicant has taken all practicable steps to notify the respondent; or

(b) that there are compelling reasons why the respondent should not be notified.

(3) No such relief is to be granted so as to restrain publication before trial unless the court is satisfied that the applicant is likely to establish that publication should not be allowed.

(4) The court must have particular regard to the importance of the Convention right to freedom of expression and, where the proceedings relate to material which the respondent claims, or which appears to the court, to be journalistic, literary or artistic material (or to conduct connected with such material), to—

(a) the extent to which—

(i) the material has, or is about to, become available to the public; or

(ii) it is, or would be, in the public interest for the material to be published;

(b) any relevant privacy code.

(5) In this section—

"court" includes a tribunal; and

"relief" includes any remedy or order (other than in criminal proceedings).



6. The defendant was remanded for 104 days by a Magistrates' Court. A Magistrates' Court has the power to remand a suspect for a maximum of 56 days and the maximum penalty a Magistrates Court could hand out is 3 months (90 days), by doing so, the State contravened the following:

Convention for the Protection of Human Rights and Fundamental Freedoms

Rome, 4.XI.1950

Article 5

Right to liberty and security

1. Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:

(a) the lawful detention of a person after conviction by a competent court;

(b) the lawful arrest or detention of a person for non-compliance with the lawful order of a court or in order to secure the fulfilment of any obligation prescribed by law;

(c) the lawful arrest or detention of a person effected for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence or when it is reasonably considered necessary to prevent his committing an offence or fleeing after having done so;

(d) the detention of a minor by lawful order for the purpose of educational supervision or his lawful detention for the purpose of bringing him before the competent legal authority;

(e) the lawful detention of persons for the prevention of the spreading of infectious diseases, of persons of unsound mind, alcoholics or drug addicts or vagrants;

(f) the lawful arrest or detention of a person to prevent his effecting an unauthorised entry into the country or of a person against whom action is being taken with a view to deportation or extradition.

2. Everyone who is arrested shall be informed promptly, in a language which he understands, of the reasons for his arrest and of any charge against him.

3. Everyone arrested or detained in accordance with the provisions of paragraph 1 (c) of this Article shall be brought promptly before a judge or other officer authorised by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release pending trial. Release may be conditioned by guarantees to appear for trial.

4. Everyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings by which the lawfulness of his detention shall be decided speedily by a court and his release ordered if the detention is not lawful.



5. Everyone who has been the victim of arrest or detention in contravention of the provisions of this Article shall have an enforceable right to compensation.

International Covenant on Civil and Political Rights

Article 9

1. Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law.

2. Anyone who is arrested shall be informed, at the time of arrest, of the reasons for his arrest and shall be promptly informed of any charges against him.

3. Anyone arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release. It shall not be the general rule that persons awaiting trial shall be detained in custody, but release may be subject to guarantees to appear for trial, at any other stage of the judicial proceedings, and, should occasion arise, for execution of the judgement.

4. Anyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings before a court, in order that that court may decide without delay on the lawfulness of his detention and order his release if the detention is not lawful.

5. Anyone who has been the victim of unlawful arrest or detention shall have an enforceable right to compensation.

Article 15

1 . No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence, under national or international law, at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time when the criminal offence was committed. If, subsequent to the commission of the offence, provision is made by law for the imposition of the lighter penalty, the offender shall benefit thereby.



2. Nothing in this article shall prejudice the trial and punishment of any person for any act or omission which, at the time when it was committed, was criminal according to the general principles of law recognized by the community of nations.

7. While remanded at Wormwood Scrubs the Defendant was kept in cells with convicts

International Covenant on Civil and Political Rights

Article 10

1. All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person.

2.

(a) Accused persons shall, save in exceptional circumstances, be segregated from convicted persons and shall be subject to separate treatment appropriate to their status as unconvicted persons;

(b) Accused juvenile persons shall be separated from adults and brought as speedily as possible for adjudication.

3. The penitentiary system shall comprise treatment of prisoners the essential aim of which shall be their reformation and social rehabilitation. Juvenile offenders shall be segregated from adults and be accorded treatment appropriate to their age and legal status.

Standard Minimum Rules for the Treatment of Prisoners

C. Prisoners under arrest or awaiting trial

84. (1) Persons arrested or imprisoned by reason of a criminal charge against them, who are detained either in police custody or in prison custody (jail) but have not yet been tried and sentenced, will be referred to as "untried prisoners" hereinafter in these rules.

(2) Unconvicted prisoners are presumed to be innocent and shall be treated as such.

(3) Without prejudice to legal rules for the protection of individual liberty or prescribing the procedure to be observed in respect of untried prisoners, these prisoners shall



benefit by a special regime which is described in the following rules in its essential requirements only.

85. (1) Untried prisoners shall be kept separate from convicted prisoners.

(2) Young untried prisoners shall be kept separate from adults and shall in principle be detained in separate institutions.

86. Untried prisoners shall sleep singly in separate rooms, with the reservation of different local custom in respect of the climate.

87. Within the limits compatible with the good order of the institution, untried prisoners may, if they so desire, have their food procured at their own expense from the outside, either through the administration or through their family or friends. Otherwise, the administration shall provide their food.

88. (1) An untried prisoner shall be allowed to wear his own clothing if it is clean and suitable.

(2) If he wears prison dress, it shall be different from that supplied to convicted prisoners.

89. An untried prisoner shall always be offered opportunity to work, but shall not be required to work. If he chooses to work, he shall be paid for it.

90. An untried prisoner shall be allowed to procure at his own expense or at the expense of a third party such books, newspapers, writing materials and other means of occupation as are compatible with the interests of the administration of justice and the security and good order of the institution.

91. An untried prisoner shall be allowed to be visited and treated by his own doctor or dentist if there is reasonable ground for his application and he is able to pay any expenses incurred.

92. An untried prisoner shall be allowed to inform immediately his family of his detention and shall be given all reasonable facilities for communicating with his family and friends, and for receiving visits from them, subject only to restrictions and supervision as are necessary in the interests of the administration of justice and of the security and good order of the institution.

93. For the purposes of his defence, an untried prisoner shall be allowed to apply for free legal aid where such aid is available, and to receive visits from his legal adviser with a view to his defence and to prepare and hand to him confidential instructions. For these purposes, he shall if he so desires be supplied with writing material. Interviews between the prisoner and his legal adviser may be within sight but not within the hearing of a police or institution official.



8. The Defendant was interviewed without the presence of an appropriate adult and remanded for his own safety and the safety of the public. At the Magistrates' Court, a duty psychiatrist Jessie J found the Defendant to be of psychiatric disorder. At Wormwood Scrub a psychiatrist Dr Maximus Jose Carlo found the Defendant to be insight less and recommended that he was to be relocated to a hospital for treatment.

The Defendant was at Wormwood Scrubs for the whole duration. (104 days)

Appeal On the 28th April 2011, at the start of the court session Mr Recorder D Sinner QC made very clear he only want to know the particular of the case concerning the emails. On his request, the areas of the conduct of the officers concerning P.A.C.E code C 1.7B were left out.

Codes of practice – Code C Detention, treatment and questioning of persons by police officers

1.4 If an officer has any suspicion, or is told in good faith, that a person of any age may be mentally disordered or otherwise mentally vulnerable, in the absence of clear evidence to dispel that suspicion, the person shall be treated as such for the purposes of this Code.

See Note 1G

1.7 'The appropriate adult' means, in the case of a:

(a) juvenile:

(i) the parent, guardian or, if the juvenile is in local authority or voluntary organisation care, or is otherwise being looked after under the Children Act 1989, a person representing that authority or organisation;

(ii) a social worker of a local authority;

(iii) failing these, some other responsible adult aged 18 or over who is not a police officer or employed by the police.

(b) person who is mentally disordered or mentally vulnerable: See Note 1D

(iv) a relative, guardian or other person responsible for their care or custody;

(v) someone experienced in dealing with mentally disordered or mentally vulnerable people but who is not a police officer or employed by the police;

(vi) failing these, some other responsible adult aged 18 or over who is not a police officer or employed by the police.

Furthermore, under the...

Standard Minimum Rules for the Treatment of Prisoners

B. Insane and mentally abnormal prisoners

82. (1) Persons who are found to be insane shall not be detained in prisons and arrangements shall be made to remove them to mental institutions as soon as possible.



(2) Prisoners who suffer from other mental diseases or abnormalities shall be observed and treated in specialized institutions under medical management.

(3) During their stay in a prison, such prisoners shall be placed under the special supervision of a medical officer.

(4) The medical or psychiatric service of the penal institutions shall provide for the psychiatric treatment of all other prisoners who are in need of such treatment.

83. It is desirable that steps should be taken, by arrangement with the appropriate agencies, to ensure if necessary the continuation of psychiatric treatment after release and the provision of social-psychiatric after-care.

9. The Claimant posits the two cases below for the Court's attention:

Boldea v. Romania

Boldea v. Romania

Judgment: Strasbourg, 15th May 2007

<http://www.thepeachgardenfund.org/documents/boldea.pdf>

CASE OF KANDZHOV v. BULGARIA

European Court of Human Rights

Application no. 68294/01

Final Judgment: 06/02/2009

<http://www.thepeachgardenfund.org/documents/kandzhov.pdf>

Summary

And on the summary, the Claimant invites the Court to give permission to Judicial Review on the ground that the Claimant had not been given a fair trial, this would be an opportunity for the Claimant to have the equality of arms, so that he may undo the injustice, the imposition, so that democracy may prevail, evolve and develop.

