

TRANSCRIPT OF PROCEEDINGS

Ref. G01RM088

IN THE COUNTY COURT AT ROMFORD

2a Oaklands Avenue
Romford

Before **DISTRICT JUDGE FRANKLIN EVANS**

IN THE MATTER OF

THE LONDON BOROUGH OF HAVERING (Claimant)

-v-

MICHELLE REES (Defendant)

**MR E TOPAL appeared on behalf of the Claimant
THE DEFENDANT did not attend and was not represented**

JUDGMENTS

**22nd DECEMBER 2021, 11.27-11.31; 12.23-12.33; 12.56-13.13
(AS APPROVED)**

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JUDGE FRANKLIN EVANS:

1. There is an application before me in these committal proceedings for an order to be made to dispense with personal service or, indeed, service at all, of the committal notice. The normal position is that a contempt application and the evidence in support are required to be served on the defendant personally. The power to rule otherwise comes from CPR Rule 6.28 which provides that the court may dispense with the service of any document which is to be served in the proceedings, and CPR 81.5 which applies that provision to contempt proceedings, and specifically to service of the contempt application and evidence in support.

2. Since committal proceedings directly involve the liberty of the subject, ECHR Article 6 is engaged, the court must be most anxious to ensure that, before exercising that power in relation to a committal notice, it is fair, just and proportionate to do so having regard to the rights of the accused person.

3. In this case the defendant, Michelle Rees, is an absconder. She was remanded when first brought before the court on 26 November 2021 on unconditional bail to appear on 10 December 2021. She did not appear on 10 December and a further order was made adjourning the matter to today, 22 December. The defendant has again not attended. Coterminous with that sequence of events, the defendant is the subject of criminal proceedings involving drink-drive and the unauthorised use of a car and was remanded on bail to attend the magistrates' court here on 8 December. She failed to attend on that day either.

4. I am satisfied on the evidence that careful, diligent and well-directed enquiries have been made by the police as to her whereabouts. No fewer than nine different addresses have been visited by the police. Close relatives have been questioned. I have no doubt whatever that the defendant has full knowledge of these proceedings; that is not only because in relation to each alleged breach I am concerned with today, she has been the subject of an arrest, but also because on 26 November she appeared before me, and I advised her in open court that her liberty was at risk, and that she was entitled to obtain non-means-tested legal advice and representation. In all the circumstances I conclude that the defendant has deliberately made herself scarce and is doing all she can to evade service.

5. On that basis, therefore, the matter comes within the goalposts, if I can put it that way, of CPR 6.28 and 81.5. This provides that the court can direct otherwise than that service be effected personally on the defendant and also to dispense with service under CPR 6.28. Given her actual knowledge of the proceedings and her apparent evasion of service, it is right, proportionate, fair and just that I should dispense with service of the committal notice. I order accordingly.

(There followed further proceedings – see separate transcript)

JUDGE FRANKLIN EVANS:

6. These are committal proceedings. I remind myself that the burden of establishing breaches of the order of 11 May 2021 lies first last and always on the Claimant, and that the appropriate evidential standard required for a finding of contempt is proof beyond reasonable doubt.

7. I have heard oral evidence today from WPC Lippiatt, WPC McCarthy and Mr Tom Grainger, the Anti-social Behaviour Officer for the London Borough of Havering. I have

been taken to other witness statements prepared by the police in support of the application to commit and which evidenced the breaches which have been alleged.

8. Under the 11 May order, the defendant was subject to an injunction forbidding her from contacting Mr John Gunn of 18 Garrick House, 98 Adelphi Crescent, Hornchurch RM12 4LB, and Mr Michael Rouse of 129 Taunton Road RM3 7PJ. The injunction prohibited the defendant from entering the areas of Hitchin Close and Taunton Road RM3 and Broadstone Road, Adelphi Crescent and Albany Road RM12. A power of arrest was attached to those provisions of the order.

9. I am satisfied that the order was personally served on the defendant on 10 June 2021. I have a certificate of personal service effected by Mr Grainger dated 10 June 2021.

10. The breaches which are alleged are these. First of all, that on 21 November 2021 the defendant was in John Gunn's home at 18 Garrick House. I heard evidence today from WPC Lippiatt which supported that. That evidence was unchallenged and uncontested for the very good reason - which I have already referred to in an earlier ruling - that the defendant is not present having absconded and failed to surrender to her bail. I find that breach proved to the criminal standard.

11. I find that, in relation to that breach, the defendant had notice of the order, that she did an act, namely going to and being in John Gunn's home at 18 Garrick House, and that that was a purposive, deliberate act. I will consider further the culpability of that in a moment, but for the purposes of constituting a breach the act was deliberate and not an inadvertent one and I am quite satisfied to the requisite standard beyond reasonable doubt that the defendant had knowledge of all those matters which constituted that act a breach of the order.

12. The second breach is that, later in the same day and in the night of 21 November 2021 into the early hours of 22 November 2021, the defendant was found in 73 Taunton Road. That too is evidenced by the testimony that I have received today from the officers, including WPC Lippiatt. That evidence is unchallenged. Again I am quite satisfied to the higher criminal standard that this was a provision within the May order of which the defendant was fully aware, that she had notice of it, that she purposively acted so as to be at 73 Taunton Road and that she had knowledge of all the facts which made that a prohibited act under the terms of the order.

13. The third breach is that the defendant was found in Hitchin Close and Taunton Road, having been chased there by a police car alerted by erratic driving of a vehicle being driven by the defendant. The vehicle she was driving was John Gunn's car which (according to what Gunn told the police) she had taken without his consent, along with his house keys. The evidence that I received about that came from WPC Constantinou. Once again I am satisfied beyond reasonable doubt that the defendant knew that she was not to attend or be found in Hitchin Close or Taunton Road, but that she deliberately intended to be there. It was a purposive act, not inadvertent, and she had knowledge of all those facts which made the carrying out of that act a breach of the order.

14. In relation to the fourth breach, the defendant, Michelle Rees, was arrested on 25 November 2021 in Michael Rouse's home at 129 Taunton Road. This was established by the unchallenged evidence of WPC Lippiatt, WPC McCarthy and DC Pearce. In relation to this act I find it proved to the requisite standard that the defendant, with notice of the order,

deliberately went to and was found in the company of Michael Rouse at his home at 129 Taunton Road.

15. Lastly, in relation to the fifth breach, on 3 December 2021, after she had been placed on remand by this court on 26 November, the defendant was found and arrested inside 73 Taunton Road. I have received unchallenged evidence about that from WPC Lippiatt and I find it proved beyond reasonable doubt that the defendant purposively and deliberately did an act, going to that address, which she knew was prohibited by, and constituted a breach of the order.

16. I consequently find that all five of the breaches set out in the notice of committal have been proved and I will now move on to consider the penalty or sanction that the court should impose.

(There followed further proceedings – see separate transcript)

JUDGE FRANKLIN EVANS:

17. It falls to me now to consider the appropriate penalty in relation to the five breaches which I have found proved. All five are intimately bound up with the pattern of behaviour known as cuckooing, a repellent practice and a social evil- far removed from spring or innocence. It is the colloquial name for the practice of befriending or appearing to befriend vulnerable individuals, winning their confidence, and then taking advantage of their vulnerability to plunder their money, assets and property. It is all the worse because the vulnerability of the victims commonly leaves them feeling dependent on the cuckoo, and reluctant to support criminal prosecutions against them.

18. On strong evidence furnished by the claimant, the order in May 2021 was made in the terms which it was, including the provisions which have been breached. The crystal clear express purpose of those provisions was to give protection to the named individuals in the order and to keep the predatory defendant away from the streets and the area where these individuals lived. Every one of these breaches involved her going back – presumably for her own ends - to the places and people judged by the Court to need protection from harmful contact with her. They therefore fall to be seen as striking at the heart of the protective purpose of the original order.

19. Breach of a court order is a serious matter. A deliberate flouting of a court order is expressed on the authorities and having regard to the Sentencing Guidelines to cross what is referred to as the custodial threshold - that is to say, the degree of culpability and seriousness that indicates that the court must impose a custodial sentence rather than a fine, or some other penalty such as a sequestration of assets which it is open to the court to impose. In my view, all five of these breaches, because they flout the protective provisions that were put in place in the injunction and, as it were, double-shotted with a power of arrest, cross the custody threshold.

20. The Defendant by not attending court and absconding has hardly served her own cause. I have heard no mitigation, apology or explanation. I have heard nothing about the Defendant's plans or intentions that might conceivably enable me to suspend part or all of any sentence. There is no attempt to purge the contempt. The culpability and harm resulting from each of these breaches stand stark and undiluted.

21. It falls to me, therefore, to assess the culpability in relation to each one and the level of harm resulting in each case taken separately to arrive at a sentence for each one, always having regard to the need for proportionality, to the need to impose a sentence which is as short as possible - that is to say, as short as possible commensurate with the purpose of enforcing the purpose of the order - and, of course having in mind the needs to achieve compliance and rehabilitation, if possible, alongside the punishment that must attach to a deliberate breach of a court order.

22. I turn to the individual breaches. On 21 November 2021, the defendant was in John Gunn's home at 18 Garrick House. John Gunn is a vulnerable individual named expressly in the order of District Judge Goodchild in May this year. 18 Garrick House is a location which was specifically referred to in the order as one that this defendant should not visit. It seems to me, therefore, that by going there, the defendant was seeking to carry on with her cuckooing activities. Her culpability in deliberately going to that address and the harm of her being with John Gunn both lie in her attempting to revive a harmful relationship with the risks of exploitation and of anti-social behaviour, from which the local authority had taken considerable steps to try to shield Mr. Gunn, including by relocating him and beginning these proceedings. The defendant chose deliberately and for her own purposes to ignore the order and its purpose together with the welfare of Mr Gunn. In terms of culpability and harm the breach can be characterised as moderately high. It merits an immediate term of imprisonment of two months. As mentioned, I do not think that suspension is open to me given the fact that the defendant has absconded and that there are no mitigating factors which have been put before the court.

23. The first breach opened the way for breaches two and three, which I now address, when the defendant took John Gunn's car and went to 73 Taunton Road later on the evening of 21 November 2021. 73 Taunton Road was also a property forbidden to the defendant as under the protective purposes of the order. Another vulnerable individual lived at that address, and the culpability of that breach I also assess as moderately high. The harm involved in resurrecting a relationship which was potentially toxic and from which the vulnerable individual needed protection is also moderately high. The Defendant was serving her own ends by breaching the Order as she did. The appropriate sentence in relation to that breach is also two months immediate imprisonment. As it was a separate breach with its own discrete quantum of culpability and harm, that term should be consecutive to the first.

24. The third breach took place at about 2.20 in the morning of 22 November 2021, whilst the defendant was driving the blue Peugeot motor car she had taken without permission from Mr. Gunn. It is in evidence that she was obviously affected by drink whilst in charge of this vehicle which she ended by abandoning at the side of the road and fleeing from it after being chased by a police car. At the time, the defendant was in Hitchin Close and Taunton Road. I take full account of the fact that, although I think she may have been charged with a drink drive offence, it is for the criminal court to deal with criminal offences committed at the wheel of the car and they do not fall within the purview of this judgment.

25. Nonetheless, in the context of breaches of the order made in May 2021 it seems to me that the defendant's driving of the car – as she did – belonging to a vulnerable individual taken by her without his consent and at a location where the order forbade that conduct puts that breach similarly at a moderately high level of culpability and with a moderately high level of harm involved. This was exactly the kind of anti-social behaviour which the Order was intended to prevent. For that breach, the appropriate sentence is a further two months, which because of its distinctive type and character should be served consecutively to the first

two breaches, making a combined total for those first three breaches of six months imprisonment.

26. I next come to breaches 4 and 5. Breach 4 took place when the defendant was arrested in Michael Rouse's home at 129 Taunton Road on the afternoon of 25 November 2021. At that time, she was on police bail in relation to the drink drive and motoring offences. It, therefore, seems to me that, it being the fourth consecutive breach of the injunction, one sees the culpability climbing a gradient and increasing above the level of the earlier breaches. The culpability in relation to this breach is higher than the earlier ones, even if the level of harm resulting from it was no higher, but no lower, than they. Here was an added element of contumacious disregard, a deliberate and more flagrant flouting of the injunction, as well as the commissioning of conduct whilst on bail, which requires a higher tariff. The appropriate sentence in relation to this breach is four months. Again it stands apart and has its own causes course and consequences from the first three breaches,, and the sentence should be consecutive to the earlier terms.

27. After that breach was committed, the defendant was brought before this court on 26 November. Since no prison sentence can be for a period less than one day, and the Defendant was arrested on the 25th, there are two days to fall into account and for credit to be given against the end sentence here.

28. But, on 26 November, she was brought before this court and remanded, by me, on bail with a careful reminder – which she acknowledged - that the provisions of the order of the order of May 2021 were and remained in full force and effect.

29. That warning and reminder and the remand on bail were disregarded when breach 5 was committed. On the afternoon of 3 December, the defendant was arrested again inside 73 Taunton Road. It seems to me that the level of culpability is higher and the gradient steeper still than in relation to breach number 4. It appears that the defendant contumaciously decided to continue with her cuckooing activities as usual and in clearest defiance of the Court. While the harm may be moderate or intermediate, the scale of culpability was considerably higher. On that basis, the sentence will be six months immediate imprisonment consecutive to the other sentences of imprisonment.

30. That gives a total period of imprisonment of 16 months. I have to stand back and review the totality of the sentence to ensure that it is both proportionate to the breaches found and the minimum global term commensurate with the gravity of events and the objects of the Court in exercising the committal jurisdiction. The overall term has to be seen against the statutory maximum sentence of 2 years on any one occasion. That maximum is comparatively short and is therefore not reserved for the very worst sort of contempt which can be imagined. These breaches fall within the range of conduct which can fairly be regarded as justifying an aggregate sentence of two thirds the maximum tariff.

31. The defendant will be given credit or the sentence will be reduced in the term that she serves by the two days that she has already served in custody. There will be a warrant of committal and there is to be a transcript of this judgment expedited and then placed in due course on BAILII and published on the website of the judiciary of England and Wales.

This transcript has been approved by the Judge