Neutral Citation Number: [2024] EWCA Crim 229

Case Nos: 202301458 B4 & 202301463 B4

IN THE COURT OF APPEAL (CRIMINAL DIVISION)
ON APPEAL FROM THE CROWN COURT AT INNER LONDON
HHJ Reid
S20230094

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 12/03/2024

Before :
PRESIDENT OF THE KING'S BENCH DIVISION
LORD JUSTICE WARBY
and
MR JUSTICE BOURNE

- -

Between :

REX	**Respondent**
- and -	
JOHN JORDAN	**Appellant**

- -
- -

Adrian Waterman KC and Laura O'Brien (instructed by **Hodge Jones & Allen**) for the **Appellant**
Louis Mably KC (instructed by **Crown Prosecution Service**) for the **Respondent**

Hearing date : 24 January 2024

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Approved Judgment

This judgment was handed down remotely at 10.30am on 12 March 2024 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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Dame Victoria Sharp, P:

1. On 30 March 2023, in the Crown Court at Inner London, John Jordan was found in contempt of court, and an order was made for his committal to prison for 14 days, conditionally suspended for 12 months. On this appeal, which is brought as of right pursuant to s 13 of the Administration of Justice Act 1960, he challenges the finding of contempt and the penalty.

2. This is the judgment of the court to which all its members have contributed.

The Crown Court proceedings

3. On the morning of 30 March 2023, HHJ Reid was presiding over the trial of defendants associated with the Insulate Britain campaign group who were charged with causing a public nuisance. The appellant was in the park next to the Crown Court playing recorded music through a megaphone pointed at the court. The judge heard the music and considered it a disturbance of the hearing. He caused the appellant to be arrested and brought before the court on suspicion of committing contempt of court. The appellant confirmed that he wished to be legally represented. He was temporarily detained whilst a representative was found. The hearing of the trial continued meanwhile.

4. The judge prepared a written statement of the facts and the case against the appellant (the Charge). It was in the following terms, to which we have added paragraph numbering for ease of reference:

> **[1]** It is alleged that on 30 March 2023 Mr Jordan was in the park which backs onto the Inner London Crown Court. This was at around 11am. He was playing amplified music whilst sitting on a bench through a megaphone which was pointed at the court.
>
> **[2]** I noticed the music whilst Mr Till, the 4th defendant in my current trial, was giving his evidence in chief. After it had concluded I asked the jury to withdraw from court to see if Mr Till was being distracted by it. As the jury were leaving one of them complained to my usher about the noise from the music. It was clearly distracting them.
>
> **[3]** I rose and went to a window of the court where I observed Mr Jordan as set out above. The music was very loud in the room I was in despite the windows being shut.
>
> **[4]** Because of the disruption to the court proceedings and the importance of ensuring the jury were able to concentrate undistracted on Mr Till's evidence I ordered the arrest of Mr Jordan, whose name at that time I was unaware of.
>
> **[5]** Mr Jordan was brought into court at some point after midday. I went through the procedure in CPR 48(5). He indicated he would wish to receive legal advice and confirmed he would wish to be represented by Hodge Jones Allen if possible. I contacted Raj Chada via email and he has arranged representation for Mr Jordan.

> **[6]** I ordered Mr Jordan's temporary detention to seek to ensure there was no further disruption of the Court today.
>
> **[7]** As well as disrupting my court, court 4, the music was disrupting court 3 and caused the windows of that court to have to be shut to lessen the impact of the noise.
>
> **[8]** It is suggested that Mr Jordan has committed a contempt of court
>
> 1) By playing amplified music directed at the Court which disrupted court proceedings whilst a defendant was giving their evidence
> 2) Intending thereby to be heard in court and thereby disrupt the sitting of the Court
>
> **[9]** In doing so he
>
> 1) Caused a defendant's evidence to be interrupted so the disruption could be dealt with
> 2) Caused distraction to a jury.

5. Mr Meredoc McMinn of Counsel was appointed to represent the appellant. He was provided with a copy of the Charge and had the opportunity to give the appellant legal advice and to take instructions. The matter returned to court shortly after 4:30pm when the appellant and Counsel appeared before the judge. The judge asked Counsel whether he needed more time to take instructions. Having consulted the appellant, Counsel made clear that he did not. The judge asked what the appellant's position was. Counsel replied that the appellant was before the judge for contempt. Asked if the appellant wanted an opportunity to apologise Counsel replied "Your Honour, no. His position is that he was not in contempt of court." The judge then explained that it was a summary procedure and asked if the appellant wished to give evidence. Counsel confirmed that he did.

6. Examined by Mr McMinn, the appellant agreed that he had had the opportunity to read the Charge "briefly". He confirmed he had been outside the court playing music in the park. He said the purpose of doing that was "to show a sign of solidarity with the people who are in court today." It had not been his intention in doing so to disrupt proceedings "in or about the court". He had not intended to disrupt this court or another court on any other occasion. When the police approached him they had not asked him to stop playing the music. They had said he was under arrest by order of the judge.

7. Questioned by the judge, the appellant agreed that he had been playing the music "through a megaphone or some other sort of amplification". He accepted that the police had asked him to turn down the music so they could talk to him. He confirmed that he had "sometimes" been responsible for music being played outside the front entrance to the court over the previous couple of weeks. Asked about the purpose of doing this he said, "as a show of solidarity for the people coming in and out of trial, and as a way to raise public alarm to what's happening in the court."

8. The judge asked the appellant whether he had had discussions with anyone who had been in court during trials involving Insulate Britain about whether music could be heard in the courtroom. He confirmed that he had spoken to defendants and said, "On occasion it can be heard, yes." He knew the courtroom in which the trial was taking

place had changed. Asked if there was "a particular reason why the megaphone was pointing directly at the court building" that morning, the appellant accepted that it was "placed in the direction of the court", but said the reason was that it "sat comfortably on my bag that way while I was having a cigarette." He declined to answer whether he was deliberately pointing it at the building, explaining "I will likely be brought to the Old Bailey, where I will have a proper trial". The judge explained that this was his trial and his opportunity to give evidence.

9. The appellant was asked what it was that he said needed "public alarm" to be raised by playing music at the front gate of the court. He said that what was happening in the courtroom – the fact that freedom of speech, defence, and motivation were "being removed" - was "terrifying" to him and to members of the legal profession. The judge, he said, was the talk of the profession.

10. The judge asked why the appellant had been playing music in the park at the back of the court rather than at the front gate "as had been generally your habit in the past." The appellant gave two reasons. He "had a few phone calls I had to make". He could do that because the music "wasn't always playing". Also, it was a residential area with members of the public there. He had spoken to quite a lot of them. Asked how playing music at the back of the court was going to raise public alarm as to what was going on in court, the appellant repeated that he had spoken to many residents. Questioned about how he felt that playing music was showing solidarity to Mr Till, the appellant's explanation was that "it is music played outside in the public sphere, so it is a sign of solidarity. It can be visually seen, it can be recorded by media … and I'm saying it's a form of solidarity."

11. The judge investigated the appellant's intentions:

> Q. Did you intend that the music would be heard in the courtroom?
>
> A. I wasn't sure if it would be or not.
>
> Q. Did you hope that it would be heard in the courtroom?
>
> A. Not necessarily. It's nice when they can hear it when they're coming out. Usually that's when they can hear it, when the doors are open, so on their way out.
>
> Q. If the court had heard it – so, thinking what was in your mind as you were going into the park, and then putting the music on, and then keeping on for a period of time - if the court had heard it, what did you hope the court would do about it?
>
> A. Enjoy the music, I suppose, have a dance, have a think, realise that there's people outside watching them.

12. The appellant said he had no criminal convictions or cautions. The judge asked about his future intentions, if the contempt was found proved. The appellant said that unless there were restrictions in place he would not see any issue about coming back to the area of the court. As to playing music he said "I might ask leave to think about it again"

but it would depend on whether there were new restrictions "or if there's new legislation or common law put in place against music". He said he did not think he had a right to disrupt court proceedings if he disagreed with what was going on in them but did believe that people had the right to a fair and free trial which "includes the right to be able to tell the truth in court."

13. Re-examined by Mr McMinn, the appellant said that when he was playing the music he had no idea about what stage the proceedings in court had reached. The judge then asked if he had given any thought to whether he might be disrupting one of the defendants in giving their evidence to the jury. He initially replied that he could have turned down the volume if given the chance. Asked the question again, he replied:

> No, I didn't think it would be disruptive. As I say, I work in a call centre: you hear music all the time. I work in shops: you hear music all the time. I don't see that as necessarily disruptive.

14. Mr McMinn made three submissions on the appellant's behalf. First, he invited the judge to accept as credible the appellant's evidence that his actions were undertaken as a gesture of solidarity without intending to disrupt proceedings. Counsel argued that people taking part in protests often behaved in this way, even if other participants intended disruption, and that such conduct was unobjectionable. Secondly, Mr McMinn asked the judge to take account of the appellant's evidence that he would have switched down the music if asked. Thirdly, he argued that the Appellant had no knowledge of the stage of proceedings in court and that it followed that he had not intended to disrupt the court.

15. The judge gave his ruling. He said that it was appropriate to deal with the matter of contempt now. He observed that the appellant had accepted "what lawyers might call the *actus reus* of the matter" and recited what he had observed, in substantially the terms of paragraphs [1]-[3] and [7] of the Charge. The judge held that the allegation of disrupting court proceedings was "undoubtedly" made out "because the music was heard in court, it caused me to have to ask the jury to leave, at least one of the jurors was distracted, and in relation to another court in the building they had to shut the windows so that the work of that courtroom could continue disturbed as little as possible."

16. As to the allegation of intent, the judge reminded himself that his findings must be made to the criminal standard of proof and there was no burden of proof on the appellant but said that it was "quite obvious to me from his evidence what his intention was". The appellant had put it as solidarity or raising the alarm, but it was clear from the way in which he was not frank about the positioning of the megaphone and the way he had answered questions that he was deliberately pointing the music at the court and playing it at "such a level that the police had to ask him to turn it down when I sent them out to arrest him."

17. The judge rejected the appellant's evidence about his reasons for being in the park. The park was known to be generally unfrequented by the public. And the appellant's claim to have gone there to make phone calls was "clearly a lie". His claim that he did not think the music would be disruptive showed, at best, a "fundamental misunderstanding" because "this is not a call centre, this is not a shop, this is a Crown Court, where people are on trial, and where a defendant was trying to give his evidence". The judge was

"quite satisfied" that the appellant's intention was that the music should be heard in court, noticed by the court, and the only possible intention was to disrupt the proceedings "even if by having the proceedings note his presence and have to take some action about it." He found each element of paragraphs [8] and [9] of the Charge established to the criminal standard.

18. On the question of penalty, the judge said to Counsel that his client's attitude was "glib in the extreme". He said that "of course generally [the appellant] has a right to protest" but that what he had to do was to ensure the current trial was not disrupted in the future. Given the appellant's attitude in the witness box the judge had no confidence that he would not disrupt them again unless steps were taken to prevent this. "He no doubt in his own mind would think that somehow he was exercising freedom of speech". He was therefore minded to commit the appellant to prison. That could be done conditionally, with a restriction on coming within 300 metres of the court and not disrupting any other court proceedings anywhere in the country. But the judge's provisional view was that the appellant could not be trusted to abide by such conditions. If that was the impression he was left with it would not be appropriate to suspend the committal.

19. Mr McMinn took instructions and submitted that the appellant would comply. He had said so in evidence and if he broke the conditions and committed some other contempt he would be doubly at risk. The judge was persuaded. Addressing the appellant, he expressed that, in doing something he thought would support people on trial, the appellant was in fact disrupting them at perhaps the most important part of the case. His attitude from the witness box indicated that he had no idea how serious court proceedings were. He had displayed "complete disrespect for the court". The judge acknowledged again that generally "you are perfectly entitled to demonstrate where you want" but concluded that in order to avoid future disruption it was appropriate to impose a committal to prison for 14 days suspended for 12 months on the two conditions we have mentioned.

The grounds of appeal

20. The eight written grounds of appeal and supporting skeleton argument settled by the appellant's solicitor advocate are somewhat diffuse. The grounds have been further elaborated and expanded by Mr Waterman KC in oral argument. There is a degree of overlap between the arguments relied on. However, the main points can be summarised fairly under five headings as follows.

    (1) Seriousness. It is argued that the appellant's conduct did not represent a serious enough interference with the administration of justice to amount to contempt, and that the judge erred in finding that it was.

    (2) Specific intent. It is argued that the judge's factual conclusions on intent are legally essential to his finding that the appellant is liable for contempt but should be set aside as unsafe because of unfairness in the procedure that led to them.

    (3) Fairness. The proceedings are said to have fallen short of the minimum standards of fairness prescribed by the common law and the Convention. The grounds complain that the judge acted with undue haste, in a way that needlessly compromised the appellant's fair trial rights. Mr Waterman has argued, further, that

the nature of the case and the judge's decision to deal with the matter himself brought his impartiality into question.

(4) Incompatibility. It is said that in "showing solidarity" and playing music outside the court the appellant was exercising the fundamental human rights of freedom of expression and assembly protected by articles 10 and 11 of the Convention. The judge should have conducted a fact-specific proportionality assessment. This would have led him to conclude that summary proceedings for contempt were disproportionate or that the appellant's conduct was not a contempt.

(5) Excessive penalty. The imposition of a custodial penalty is said to have been an excessive response to peaceful protest.

21. Some of these points go beyond the scope of the original grounds of appeal. The allegation of judicial bias is new as is the contention that unfairness undermines the finding of specific intent. But no objection was taken by Mr Mably KC and we are satisfied that it is possible to deal fairly with all these grounds. We therefore grant leave to amend as necessary.

The legal context

22. Before addressing the grounds it will be helpful to identify aspects of the relevant legal and procedural context.

Contempt in the face of the court

23. Contempt of court is a potentially misleading term. This part of the law is not about insults or other expressions of disrespect for judges or courts or their decisions. Contempt of court is the label or umbrella name for a disparate body of legal rules or principles which share the common purpose of protecting the due administration of justice. The achievement of that aim is not only of interest to those directly involved in legal proceedings. Securing the efficient and fair administration of justice is intrinsic to upholding the rule of law, which is in the interests of the public generally.

24. This case is concerned with what is generally known as "contempt in the face of the court". It is unnecessary to define the boundaries of this category of contempt. It certainly extends to conduct observed by the judge which is liable to have an immediate disruptive impact on the course of proceedings. Common examples are in-court protests or outbursts by participants or observers: see Archbold, *Criminal Pleading Evidence and Practice* (2024) at para 28-86, *Morris v Crown Office* [1970] 2 QB 114, *R v Hill* [1986] Crim LR 457, *R v McDaniel (Cliff)* (1990) 12 Cr App R (S) 44, *R v Huggins (Raffael)* [2007] EWCA Crim 732, and *Re Yaxley-Lennon (Practice Note)* [2018] EWCA Crim 1856, [2018] 1 WLR 5406 [27].

25. It is well-established that it is not necessary to prove that the course of justice was in fact impeded or prejudiced. It is enough to show that what the defendant did created a risk that this would occur. The conduct that must be proved to establish contempt at common law was identified by Sir John Thomas P. in *Attorney General v Davey* [2013] EWHC 2317 (Admin), [2014] 1 Cr App R 1 at [2], drawing on earlier House of Lords authority: "an act or omission calculated to interfere with or prejudice the due administration of justice". In this formulation the word "calculated" identifies an

objective degree of likelihood not a subjective state of mind, as Sir John Thomas made clear when he went on to explain (ibid.) that "conduct is calculated to interfere with or prejudice the due administration of justice if there is a real risk, as opposed to a remote possibility, that interference would result".

26. The jurisdiction to punish for contempt in the face of the court is considered in domestic law to be criminal in nature. For these reasons it is appropriately listed in Archbold as among "offences against public justice". Archbold identifies it as an offence of strict liability, stating that "where conduct amounts to a contempt in the face of the court, or is closely related to such contempt, specific intent is not required; it is sufficient that the act is deliberate and in breach of the criminal law or a court order of which the person knows": see para 28-36. The authority cited for this proposition is *Solicitor General v Cox* [2016] EWHC 1241 (QB) [2016] 2 Cr App R 15 (DC). That was a case of contempt by publishing photographs taken in court in breach of section 41 of the Criminal Justice Act 1925 but the authors submit that "the reasoning as to mens rea is applicable to all cases of contempt in the face of the court".

Procedure

27. The purpose of the jurisdiction to punish for contempt of this kind is the same as that which supports other aspects of the contempt jurisdiction: "to give our courts the power effectively to protect the rights of the public by ensuring that the administration of justice shall not be obstructed or prevented": *Morris v Crown Office* at 129 (Salmon LJ). As Stephenson LJ observed in *Balogh v St Albans Crown Court* [1975] 1 QB 73 (at 88), if the courts are to do justice "they need power to administer it without interference … and to punish those who … obstruct them directly or indirectly in the performance of their duty". That may call for a swift and decisive response to events which threaten the due administration of justice. For that purpose the court may exercise the contempt jurisdiction "summarily".

28. Two core characteristics of the "summary" process are that the contempt proceedings are initiated and pursued by the judge rather than an independent prosecutor and are relatively swift. In the past there was more to it than that. In *Balogh*, Stephenson LJ described the summary process as "the power of a superior court to commit (or attach) a contemnor to prison without charge or trial": see p88. The alleged contemnor in that case was arrested and brought before the court without an opportunity to take legal advice. The allegation was never formulated or put to him in writing. He appeared before the court and was dealt with in person without representation. At that time no legal aid was available (see Stephenson LJ at 90G). Balogh was found liable and committed to prison for conduct which this court later found to fall short of an attempted contempt. In 1989, the summary jurisdiction was still being described as a power to proceed with no summons or indictment nor any written account of the accusation, by an inquisitorial rather than an adversarial procedure lacking some of the "ordinary" features of criminal process: see *R v Griffin (Joseph)* (1989) 88 Cr App R 63 (Mustill LJ).

29. In *Balogh*, the court said that the nature of the summary process meant that it should only be used where it is "imperative for the court to act immediately" (see Lord Denning at 85) to protect the administration of justice in particular proceedings that were "in progress or about to start" (see Lawton LJ at 92-93). It remains a guiding principle that the summary process should be used with restraint, but more recent cases have dispelled

any notion that the jurisdiction is strictly circumscribed in the way these passages might suggest. The court is called upon to form a multi-factorial judgment which takes account of the underlying purpose of the jurisdiction, the available alternative courses of action, proportionality, and the essential requirements of fairness.

30. In *Griffin* at 69, the court identified urgency as a matter that was "material, not to the existence of the jurisdiction but as to whether the jurisdiction should be exercised in preference to some more measured form of process." In *Wilkinson v S* [2003] EWCA Civ 95, [2003] 1 WLR 1254 [19] the court, having considered *Balogh* and other authorities, observed that "it is necessary to distinguish between jurisdiction and good practice" and held that the summary jurisdiction is not limited to cases where action is necessary to preserve the integrity of a trial which is in progress or about to begin. The court noted that a judge faced with a serious disturbance is "placed in a very difficult position". In that case the disturbance had ceased. The options were to invoke the summary procedure or refer the matter to the Attorney General for a decision on what action to take. The judge was not wrong to choose the first option. In *R v Santiago (Steven Anthony)* [2005] EWCA Crim 556, [2005] 2 Cr App R 24 the alternative option was to refer the matter to the Director of Public Prosecutions to bring a prosecution in the Magistrates' Court. The court concluded at [27] that this would have been disproportionate and that the judge was entitled to proceed summarily after a short delay. A judge "should not take action immediately if to do so would be unfair to the defendant" but that was not the position on the facts.

31. These developments in the approach to the threshold for summary action have been accompanied by changes in practice and procedure. It remains the case that the summary process is initiated and overseen by the judge. The court's inherent power to order the arrest and remand in custody of a person suspected of contempt in the face of the court (see Lord Denning in *Balogh* at 87G-H) was affirmed in *Wilkinson v S* and has not been questioned on this appeal. Other aspects of the process have changed materially. Anyone accused of contempt of court is entitled to legal aid. The rules of court now contain express procedural safeguards.

32. The rules that apply to contempt in the face of the court are contained in Part 48 of the Criminal Procedure Rules 2020, which provides so far as material:

> *Contempt of court by obstruction, disruption, etc*
>
> **Initial procedure on obstruction, disruption, etc**
>
> **48.5**. –
>
> (1) This rule applies where the court observes …
>
> (a) in the … Crown Court, obstructive, disruptive … conduct, in the courtroom or in its vicinity, or otherwise immediately affecting the proceedings; ….. . .
>
> (2) Unless the respondent's behaviour makes it impracticable to do so, the court must –
>
> (a) explain, in terms the respondent can understand (with help, if necessary)_
>
> (i) the conduct that is in question,

(ii) that the court can impose imprisonment, or a fine, or both, for such conduct,

(iii) (where relevant) that the court has power to order the respondent's immediate temporary detention, if in the court's opinion that is required,

(iv) that the respondent may explain the conduct,

(v) that the respondent may apologise, if he or she so wishes, and that this may persuade the court to take no further action, and

(vi) that the respondent may take legal advice; and

(b) allow the respondent a reasonable opportunity to reflect, take advice, explain and, if he or she so wishes, apologise.

(3) The court may then_

(a) take no further action in respect of that conduct;

(b) inquire into the conduct there and then; or

(c) postpone that inquiry . . .

…

Postponement of inquiry

48.7

(1) This rule applies where the … Crown Court postpones the inquiry.

(2) The court must arrange for the preparation of a written statement containing such particulars of the conduct in question as to make clear what the respondent appears to have done.

(3) The court officer must serve on the respondent_ (a) that written statement; …

Procedure on inquiry

48.8 –

(1) At an inquiry, the court must-

(a) ensure that the respondent understands (with help, if necessary) what is alleged, if the inquiry has been postponed from a previous occasion;

(b) explain what the procedure at the inquiry will be; and

(c) ask whether the respondent admits the conduct in question.

(2) If the respondent admits the conduct, the court need not receive evidence.

(3) If the respondent does not admit the conduct, the court must consider_

(a) any statement served under rule 48.7;

> (b) any other evidence of the conduct;
>
> (c) any evidence introduced by the respondent; and
>
> (d) any representations by the respondent about the conduct.
>
> (4) If the respondent admits the conduct, or the court finds it proved, the court must_
>
> (a) before imposing any punishment for contempt of court, give the respondent an opportunity to make representations relevant to punishment;
>
> (b) explain, in terms the respondent can understand (with help, if necessary)
>
> (i) the reasons for its decision, including its findings of fact, and
>
> (ii) the punishment it imposes, and its effect; …
>
> (5) The court that conducts an inquiry_
>
> (a) need not include the same member or members as the court that observed the conduct; but
>
> (b) may do so, unless that would be unfair to the respondent.

33. These rules give effect to the common law requirements of procedural fairness and those which article 6.3 of the Convention guarantees to "anyone charged with a criminal offence": *In re Yaxley-Lennon*: [29]-[30].

Human rights

34. Section 6 of the Human Rights Act 1998 (HRA) provides that it is unlawful for a public authority, which includes a court, to act incompatibly with the Convention Rights. Article 10(1) of the Convention protects freedom of expression. It guarantees "the right to receive and impart information and ideas without interference by a public authority". Article 11(1) guarantees the "right to peaceful assembly". Articles 10 and 11 protect against measures such as arrest, prosecution, conviction and sentence or penalty. All of these are "interferences" or "restrictions": see *Kudrevičius v Lithuania* (2016) 62 EHRR 34 [100]; *Director of Public Prosecutions v Ziegler* [2021] UKSC 23 [2022] AC 408 [57].

35. Articles 10 and 11 are however both qualified rights. Article 10(2) provides that the exercise of the right to freedom of expression "carries with it duties and responsibilities" such that it "may be subject to such … restrictions or penalties as are prescribed by law and are necessary in a democratic society" in pursuit of one or more of certain specific legitimate aims. Article 11(2) provides that "no restrictions shall be placed" on the exercise of the right to freedom of assembly except "such as are prescribed by law and … necessary in a democratic society" in pursuit of some legitimate aim(s). A restriction or interference is only "necessary" for this purpose if it is proportionate to the importance of the aim which it pursues.

Analysis

(1) *Conduct: seriousness*

36. Before the judge the appellant did not dispute that the proceedings had been disturbed in the way alleged in the Charge. He did complain that he had not been warned that his behaviour might be a contempt nor asked to turn the music down before he was arrested and brought before the court. Those points have been reiterated before us. Clearly, however, they have no bearing on whether or not the appellant's conduct had the effects alleged. On this appeal it has been argued that the conduct of the appellant's case was prejudiced by the speed with which the proceedings were progressed. But it has not been suggested nor can we identify any reason to suppose that the appellant might have developed any plausible basis for contesting this first factual ingredient of the Charge. We can and should therefore proceed on the basis that the appellant's conduct and its impact on the proceedings were both as found by the judge.

37. The written grounds of appeal and skeleton argument maintained that only a "gross" interference with justice can amount to a contempt in the face of the court. The argument relied on passages in the judgments of Lord Denning MR and Lawton LJ in *Balogh* which in turn drew on a passage in Blackstone's Commentaries. As we understood it, the thrust of the contention was that only some extreme or egregiously unacceptable behaviour would qualify. This point was not pressed in oral argument. Rightly so, in our view. This was clearly not part of the essential reasoning behind the decision in *Balogh*. Nor do we believe that the word gross was intended to or does identify a threshold of seriousness such that, for instance, a moderately serious disturbance of proceedings is not actionable but must be tolerated.

38. We agree that the law of contempt incorporates a threshold of gravity. In two cases cited to us on this appeal the Supreme Court has described criminal contempt as "conduct which goes beyond mere non-compliance with a court order or undertaking and involves a serious interference with the administration of justice": see *Director of the Serious Fraud Office v O'Brien* [2014] AC 1246 [39] (Lord Toulson JSC) applied in *Attorney General v Crosland (No 1)* [2021] UKSC 15, [2021] 4 WLR 103 [23]. In neither case was this passage part of the essential reasoning of the court but we accept Mr Waterman's submission that it accurately states the law. We do not, however, consider that it assists the appellant.

39. A similar threshold test is set by statute for the imposition of strict liability for contempt by publication, namely "a substantial risk that the course of justice in the proceedings in question will be seriously impeded or prejudiced" (Contempt of Court Act 1981, section 2(2)). The application of that test was considered by the House of Lords in *Attorney General v English* [1983] AC 116. At 141 Lord Diplock observed that "serious" is "an ordinary English word" and that he did not consider that "any attempt to paraphrase it is necessary or would be helpful." We respectfully agree. We would however make two observations. First, we do not consider that in *O'Brien* or *Crosland* the Supreme Court was using the word "serious" as synonymous with "grave". Secondly, we note that significant disruption of proceedings by in-court activity is a well-recognised category of contempt in the face of the court (see the cases cited at [23] above). The same principle must apply where equivalent disruption is caused by similar behaviour outside court.

40. We have no doubt that on the facts as found by the judge the threshold was crossed in this case. It hardly needs stating that it is of vital importance that all concerned in a criminal trial should be able to concentrate on the evidence and argument in the case without outside interference. This is all the more important where defendants are being tried by jury on a serious criminal charge. By playing the music as he did the appellant created a real and substantial risk of interference with the course of the trial before HHJ Reid. There was actual interference of that nature, and it occurred at one of the more critical points in the proceedings. The interference represented a significant actual impediment to the progress of proceedings and it created a risk of further prejudice that was not remote or insubstantial. Here, there was a risk that the defendant or the jury or both would be significantly distracted by the appellant's intervention.

(2) *State of mind: specific intent*

41. The Charge alleged that the appellant intended to disrupt the proceedings. Having heard him give evidence, the judge found that he did. It is only in limited circumstances that an appeal court will interfere with findings of fact made after a trial. There is a high threshold test. This has been put in various ways, including "plainly wrong", "[a] decision … that no reasonable judge could have reached" and "rationally insupportable". This approach applies equally to an appeal against an order for committal for contempt, notwithstanding that the criminal standard of proof applies: see *Business Mortgage Finance 4 plc v Hussain* [2022] EWCA Civ 1264, [2023] 1 WLR 396 [98]-[99] and *Deutsche Bank AG v Sebastian Holdings Inc* [2023] EWCA Civ 191, [2023] 1 WLR 1605 [53]. The considerations that underlie appellate caution in this respect apply with particular force when an appeal involves a challenge to the judge's assessment of the credibility of a witness: *Deutsche Bank* [54].

42. The judge's ruling appears on its face to contain a properly reasoned explanation of why he rejected the appellant's evidence and concluded that the appellant had intended to disrupt the trial. The judge had an evidential basis on which to make such findings. The grounds of appeal do not challenge either of these propositions nor do they suggest that any of the tests we have mentioned is satisfied in this case. Instead, Mr Waterman rests his challenge to this part of the judge's decision on the contention that the finding cannot stand because procedural unfairness renders it unsafe. We will come to that shortly.

43. There is however a prior issue, namely whether specific intent is an ingredient of this species of contempt of court. In our judgment the answer is clear on principle and on authority. In a case alleging contempt in the face of the court by disruption of the proceedings the presence or absence of an intention to disrupt or otherwise interfere with proceedings may be relevant to penalty but it is not material to the issue of liability.

44. The appellant's grounds of appeal and skeleton argument acknowledged what is said on this issue in Archbold (see paragraph [26] above) but submitted that the position was "unclear". It was suggested that *Balogh* is authority that specific intent is required. We see nothing in that case which supports such a contention. Indeed, the point did not arise for decision in *Balogh* where the alleged contemnor had freely admitted intending to disrupt proceedings and taking preparatory steps to that end. Balogh's appeal succeeded because his aims had been thwarted by the police with the result that his conduct fell short of the actus reus and did not even amount to an attempt.

45. In support of his contention that specific intent is or may be an essential ingredient of the species of contempt with which we are concerned in this case Mr Waterman referred to *Attorney General v Times Newspapers Ltd* [1992] 1 AC 191, *Attorney General v Davey* (above), *Attorney General v Dallas* [2012] EWHC 156 (Admin), [2012] 1 WLR 991 and *Dallas v UK* (Application No.38395/2), [2016] ECHR 174. We do not accept that any of these cases advance the appellant's case on this issue.

46. *Attorney General v Dallas* is Divisional Court authority for the proposition that a knowing and deliberate breach of a court order is sufficient to prove the mens rea of contempt. That is the interpretation which the Divisional Court put upon the case in *Solicitor General v Cox* at [77] after a comprehensive analysis of the relevant authorities including (but not limited to) *Davey* and *Dallas v UK*. We agree with the conclusion and with the court's analysis, which we adopt. It is unnecessary to reiterate it here.

47. *Solicitor General v Cox* is Divisional Court authority for the proposition that specific intent is not an ingredient of contempt by deliberately taking and publishing unauthorised photographs of court proceedings in breach of the criminal law and thereby seriously interfering with the administration of justice. At [69] to [70] of *Cox* the court summarised the law in this way: "It is sufficient mens rea that the acts must be deliberate and in breach of the criminal law or a court order of which the person knows. No specific intent is required beyond that."

48. In *Attorney General v Crosland (No 1)* at [28] the Supreme Court cited *Cox* with approval as authority for the proposition that upon an application to commit for breaching the embargo on disclosure of a draft judgment "it is not necessary for the applicant to prove an ulterior intention to interfere with the administration of justice."

49. We do not consider this principle is or can sensibly be confined to cases in the categories we have mentioned so far. That is not the way the court approached the matter in *Cox.* It treated the facts of *Dallas* and *Cox* as examples of "acts which fall into the broad category of contempt in the face of the court or contempts closely related to such contempt": see [66]. In *Re Yaxley-Lennon (No 2)* [2019] EWHC 1791 (QB), [2020] 3 All ER 477 [88] the Divisional Court held that specific intent was not an ingredient of contempt by "direct interference with the administration of justice" by filming outside court in breach of section 41 or by aggressively confronting defendants as they approached the court in such a way as to risk prejudice to their participation in their trial and to challenge the dignity of the court as an institution.

50. In our judgment the application of the same approach to cases of contempt in the face of the court generally and to related forms of contempt is justified by the need for coherence in the law and by the underlying rationale set out by Ouseley J in paragraphs [70]-[71] of *Cox* (the passage cited by Archbold):

> The intent required cannot depend on the foresight, knowledge or understanding which the ignorant or foolish might have of the ways in which his acts risk or actually do interfere with the administration of justice. The ignorant and foolish, who are unaware of the law or who read prohibitory notices but do not understand their purpose, and do not realise the risks which their acts may create for the trial or other court process, and who may

> be right when they say that the risk or the actual harm was not what they ever intended, could not be dealt with at all for contempt in the face of the court. Yet they may cause the most serious harm. A defence that the contemnor is not guilty because he did not realise what could happen, and intended no interference, would put the court proceedings at greater risk the more ill-informed the contemnor was prepared to say he was, or actually was. The power of the court to react swiftly to acts of this sort, which risk interference with the administration of justice, cannot be dependent on any further specific intent to interfere with the course of justice, without creating a serious risk of neutering the court in the exercise of its powers when it may need them the most.

51. To this may be added the decision of this court in *R v Huggins* (above) which is directly in point. That was a case of contempt in the face of the court by way of an outburst of shouting from the public gallery which disrupted proceedings in the Crown Court at the time of sentence. On appeal it was argued that this was not a contempt because there was no intention to disrupt proceedings. The court rejected this argument. Moses LJ, giving the judgment of the court, said at [14]:

> We find no authority, still less any support, for the proposition that in order to prove a contempt it must be proved that the alleged contemnor intended to disrupt the proceedings. On the contrary, the description of the nature of a contempt given by Lawton LJ in *Balogh* at p 93 demonstrates the opposite.

We agree. The present case is indistinguishable on its facts.

52. *Attorney General v Times Newspapers* does not assist. First, the question of mens rea did not arise for decision in that case. By the time the case reached the House of Lords an intention to interfere with or obstruct the course of justice had been conceded; the remaining issue was whether the defendant's conduct amounted to the actus reus of contempt. Secondly, the court was concerned with a different species of contempt, namely third-party action which interferes with the administration of justice by defeating or undermining the purpose of an order made by the court against a party.

(3) *Fairness*

53. The submissions on this aspect of the appeal lay emphasis on authorities from *Balogh* onwards which highlight the need for caution in the exercise of the summary jurisdiction. The cases identify principles that should guide a judge in deciding whether and if so how to proceed where there is a prima facie case of contempt in the face of the court. These include avoiding undue haste or precipitate action. The judge should give himself time for reflection, ensure the alleged contemnor knows the case against him, consider allowing him a cooling-off period and an opportunity to take advice, and to apologise; the judge should also consider whether to adjourn or refer the case to another judge or both: see, for instance, *R v Moran (Kevin John)* (1985) 81 Cr App R 51, at 53, *R v Hill* (above), and *R v Phelps (Steven Stanley)* [2009] EWCA Crim 2308, [2010] Cr App R (S) [12].

54. These are all points that should be borne in mind. Their status is however that of guidance not rigid rules. They are factors for the judge's consideration and call for the exercise of a judgment that takes account of all the circumstances of the particular case. Moreover, to adapt the point made by the court in *Wilkinson v S* at [19], it is necessary to distinguish between good practice and the fundamental requirements of fairness. Compliance with Part 48 of the Criminal Procedure Rules is likely to be enough to meet those requirements. And strict compliance is not essential; a departure from Part 48 will not necessarily undermine the overall fairness of the process. That is clear from *Yaxley-Lennon (No 1)* where this court held that the right approach to Crim PR 48 was the one identified by the Court of Appeal in *Nicholls v Nicholls* [1997] 1 WLR 314, 327:

> (2) As long as the contemnor had a fair trial and the order has been made on valid grounds the existence of a defect either in the application to commit or in the committal order served will not result in the order being set aside except in so far as the interests of justice require this to be done.

55. The fairness of the proceedings in this case has been impugned on four grounds. It is said that the appellant was not afforded (1) adequate time and facilities to prepare his defence; (2) an opportunity to examine the witnesses against him and confront his accuser; (3) a fair opportunity to make his case; (4) an impartial tribunal. The appellant's submissions draw upon the requirements of article 6 and the common law. For the purposes of this case we do not consider that there is any material difference between the two: see *R v Dodds* [2002] EWCA Crim 1328, [2003] 1 Cr App R 3 [13].

56. In our judgment the first phase of the proceedings was amply justified and involved no arguable impropriety or unfairness. The judge had observed the noise and the disruption. For the reasons we have given, it was serious enough to justify the initiation of contempt proceedings. It had taken place relatively early in the court day. There was reason to fear that it would continue or be repeated if nothing was done; there had plainly been audible music on previous occasions. The judge was bound to do something. He was entitled to take immediate steps to procure the appellant's arrest and detention. He was right to bring him before the court promptly for a first appearance.

57. At that first appearance the appellant was given the opportunity to seek legal advice, as required by CrimPR 48.5(2)(a)(vi) and he took it. The record does not disclose what else the appellant was told by the judge on that occasion but there has been no allegation of non-compliance with the other requirements of rule 48.5(2)(a). We infer from what happened later that the appellant was told that he could apologise. At all events, the matter was then postponed as contemplated by Crim PR 48.5(3)(c). Several hours passed for the appellant to reflect on the matter before the case came back to court. The appellant was provided with a clear written statement complying with CrimPR 48.7. He was afforded the services of experienced Counsel who is a criminal specialist and at whom no criticism has been levelled. He was allowed an opportunity to reflect, take advice and decide whether to explain or to apologise for his behaviour, as required by rule 48.5(3)(b). We can see no grounds for complaint about the fairness of this part of the process.

58. By the time the matter came back before the judge at the end of the court day the appellant had been able to give instructions to his legal team. He had the benefit of their advice and of representation by Counsel. He had the chance to accept the case against him and to apologise, or to deny the allegations in the Charge. He elected not to apologise, and to deny contempt. That, on the face of it, was a free and informed choice. The appellant then had the opportunity to advance through Counsel all or any of the four procedural points that are now advanced on his behalf under this ground of appeal. He could have sought more time in which to consider his position and to identify points of fact or law on which to challenge the proceedings against him. He could have submitted that the case should be passed to another judge. In the event, none of the present grounds of challenge was advanced. Counsel expressly confirmed, on instructions, that the appellant did not want further time. Again, this appears to have been an informed choice.

59. The question of whether more time should be taken over the matter was one for the judge to consider independently of the fact that Counsel (on instructions) was not seeking further time. But the judge was, in our judgment, entitled to take the view that there was no good reason to adjourn the matter. The appellant was apparently asserting the right to do the same again. The issues were straightforward. It was legitimate to conclude that justice permitted and required a prompt investigation and conclusion.

60. The contention that the appellant failed to understand the nature of the proceedings is hard to accept. No evidence has been filed to support it. This is no more than a submission based on what the appellant said in his evidence about "a proper trial" at the Old Bailey: see paragraph [8] above. Read in context, we do not consider that the sentence relied on bears the weight that is placed upon it. The appellant had read the Charge which clearly stated the allegation and he had taken advice from his barrister who manifestly did understand the process. The judge spelled the point out when the statement relied on was made. The appellant's Counsel did not raise any objection to the fairness of the proceedings at that or any stage. In any event, it is plain from his evidence read as a whole, that the appellant understood the proceedings perfectly well. Even if however the appellant's understanding of the nature of the proceedings was at any stage imperfect to some degree we are not persuaded that this had any material impact on the way he gave his evidence or on the overall fairness of the process.

61. We are also unpersuaded by Mr Waterman's submission that the procedure adopted unfairly deprived the appellant of an opportunity to marshal evidence such as, for instance, witnesses to corroborate what the appellant told the judge about using his phone or speaking to passers-by in the park. These are matters that could have been explored at the time. We have been given no reason to doubt that they were. The contention that evidence of these kinds would or might have been available appears to us entirely speculative. No evidence has been filed to support it. Nor do we see that evidence of this kind would have been likely to affect the outcome of the proceedings.

62. In all these circumstances we are unable to see any merit in any of points (1) to (3).

63. As for point (4) (apparent bias) the test is the one identified in *Porter v Magill* [2001] UKHL 67, [2002] 2 AC 357 [103]: whether the fair-minded and informed observer, having considered the facts, would conclude that there was a real possibility that the court was biased. This ground of appeal cannot be sustained in so far as it complains that the judge was both witness and decision-maker. There is no doubt that a judge can,

as a matter of principle, determine a case of contempt based on facts the judge has observed. Whether that is a fair thing to do depends on the circumstances (see Stephenson LJ in *Balogh* at 90E). Here, there was no challenge to the judge's ability to decide the case impartially nor any suggestion that he might appear to be biased. As the proceedings unfolded it became clear that neither the appellant nor his Counsel was taking issue with the allegations of disruption. The defence case focused entirely on the issue of intent. For the avoidance of doubt, we do not consider that a dispute by an alleged contemnor as to events taking place in court in itself disentitles the judge in that court from dealing summarily with the alleged contempt. As we have explained, the court retains its summary jurisdiction to deal with contempt in such cases for sound reasons of principle. Be that as it may, here, the only allegations in respect of which the judge was a witness were undisputed. No fair-minded and informed observer could think there was a real possibility of bias on that account.

64. We are wholly unpersuaded by Mr Waterman's contention that aspects of the judge's questioning of the appellant would satisfy the *Porter v Magill* test. The fact that some of the appellant's replies were critical of the way the judge was conducting the public nuisance proceedings does not assist him on this appeal. A party does not disqualify a judge from dealing with his case by criticising him. There is nothing in the transcript or other circumstances of this case to support a suspicion that this judge's approach was affected by what was said about his own judicial conduct.

65. We therefore dismiss this ground of appeal. It follows that we are satisfied that the judge's findings on the issue of specific intent are safe.

(4) *Penalty*

66. The appellant submits that the judge erred in imposing a custodial sentence when the appellant "is said to have acted alone", and his conduct was peaceful, not abusive or intimidating, and did not involve any insult to the judge, nor any defiance of a warning. The facts of this case and the penalty imposed are compared and contrasted with those of *Morris* and *McDaniel* (above).

67. Comparisons with decisions in other cases are of limited assistance. The question for us is whether on the facts of this case the penalty was wrong in principle or manifestly excessive. The applicable principles are identified in recent authorities involving protest. They include the following: The law as to sanctions for contempt is sui generis; the custody threshold is not the same as it is in the criminal law generally; the court will take account of the conscientious motives of protestors when they are sentenced; but the quid pro quo for a relatively benign approach to sentence or penalty is a sense of proportion on the part of the offender; and the court will have regard to the extent to which a penalty is needed to deter future law breaking, and to further a dialogue with the defendant about the need to obey the law and respect the rights of others: see *McKendrick v Financial Conduct Authority* [2019] EWCA Civ 524 [2019] 4 WLR 65 [40] (Hamblen and Holroyde LJJ), *R v Roberts (Richard)* [2018] EWCA Crim 2739 [2018] 1 WLR 2577 [34] (Lord Burnett CJ), *Cuadrilla Bowland Ltd v Persons Unknown* [2020] EWCA Civ 9 [2020] 4 WLR 29 [97]-[98] (Leggatt LJ) and *Cuciurean v Secretary of State for Transport* [2021] EWCA Civ 357 [16]-[18] (Warby LJ).

68. In our judgment the penalty imposed in this case complied with these principles and was just and proportionate. We accept that the features identified in Counsel's

submissions were absent. There was however a serious interference with the course of justice in the proceedings which the judge found to have been intentional. The judge was entitled to conclude that nothing other than a short period of committal would sufficiently mark the seriousness of the offence. The period of 14 days cannot be criticised. At the outset, the appellant declined to apologise and lost the opportunity to mitigate the penalty by admitting the contempt. He could have apologised after the finding against him. We do not accept that he was deprived of an opportunity to do so, as has been alleged. At no time has he shown either remorse or insight into the seriousness of his behaviour. The decision to suspend the committal order on conditions was a merciful one which prioritised the protection of the administration of justice over short-term punishment and represented a proper attempt to engage in the dialogue referred to by the court in *Roberts.* The conditions themselves were appropriate given the clear evidence of a risk that the appellant would repeat the same or similar conduct unless his freedom to do so was constrained.

(5) *Freedom of speech and assembly*

69. This ground of appeal raises three main questions: (a) whether the proceedings interfered with, restricted, or penalised the exercise of the rights protected by articles 10 and 11; and if so (b) whether the judge was obliged to conduct a case-specific assessment of whether the measure in question was justified; and (c) in any event, whether the measure was indeed justified. Again, these issues were not raised before the judge below. This court is however invited to exercise a "protective function" by considering the compatibility of the process and the finding of contempt with these Convention Rights. We accept that the questions are properly raised on this appeal. We do not, however, consider that the process, the finding, or the penalty were incompatible with the appellant's rights.

70. We do not consider it arguable that article 11 applies to this case. There was nothing in the nature of an "assembly". The judge rejected the appellant's evidence that he was trying to associate with others in the park. In any event, the contempt proceedings were not concerned with any such association. They were concerned, and only concerned, with the appellant's propulsion of intrusive noise from the park into the courtroom. In doing that the appellant acted alone. The relevant question is whether his conduct falls within the protection of article 10: see *Novikova v Russia* (Application Nos. 25501/07, 57569/11, 5790/13 and 35015/13) [91].

71. Article 10 goes beyond protecting freedom of speech. It extends to expression by way of pictures (see *Connolly v Director of Public Prosecutions* [2007] EWHC 237 (Admin) [2008] 1 WLR 276) and to "expressive acts" (see *Attorney General's Reference (No 1 of 2022)* [2022] EWCA Crim 1259 [81]). The relevant Convention Right however is to impart "information or ideas". In the cases we have mentioned, the activities under examination conveyed a clearly comprehensible message of disapproval or protest. Forms of expression that convey no meaningful information are likely to fall outside the scope of article 10: *R v Casserly* [2024] EWCA Crim 25 [37]. Here, the question that arises is whether the appellant was doing anything more meaningful than just making a noise. We think the answer to that question is no. It was not suggested to the judge, nor to us that the music itself contained any information. Indeed the court has never been told what music was being played. We have not had any clear explanation of how and to whom, on the judge's findings, the making of the offending noise could be said to convey a message of "solidarity" or to have "raised the alarm."

72. If, however, the proceedings did interfere with, restrict, or penalise the exercise of the appellant's rights under article 11 and/or 10 we are satisfied that this was amply justified under the second paragraph of each article. The immediate aims of the contempt proceedings were to protect the administration of justice in the case that was then being heard by the court and to safeguard the rights of the defendants in that case. There was a broader aim of protecting other legal proceedings. These aims are not only legitimate they are of high importance. Orderly legal proceedings are one of the foundations of a democratic society. The importance of this consideration is all the greater when it comes to proceedings before a jury in which the liberty of the subject is at stake. On the judge's findings the noise generated by the appellant caused serious disruption to the proceedings. That in itself is enough to make it a contempt. It is also sufficient to make it necessary to interfere with the appellant's Convention Rights under articles 11 and/or 10, assuming those rights are indeed affected. We would adopt what Lord Reid said in *Attorney General v Times Newspapers Ltd* [1974] AC 273, 294E: "Freedom of speech should not be limited to any greater extent than is necessary but it cannot be allowed where there would be real prejudice to the administration of justice". Put another way, in a context such as the present "there is no such thing as a justifiable contempt of court": *Crosland (No 1)* (above) at [33].

73. In our judgment it is clear that contempt in the face of the court is an offence within the second of the three categories identified by the Supreme Court in *In re Abortion Services (Safe Access Zones) (Northern Ireland) Bill* [2022] UKSC 32 [2023] AC 505 [55]: proof of the ingredients of the offence will, without more, be sufficient to render a "conviction" proportionate. It was therefore not incumbent on the judge to conduct any fact-specific proportionality assessment before concluding that contempt had been committed.

74. Further, any such assessment would inevitably have led to the conclusion that the proceedings, findings and penalty in this case were necessary in a democratic society in pursuit of the legitimate aims we have identified and proportionate to the importance of those aims. The impact of the appellant's conduct was serious. The action taken was strictly relevant. Its sole and exclusive target was the communication of noise from outside the courtroom to those inside it whilst proceedings were in progress. It is that alone that was interfered with or restricted. The process did not impinge on the appellant's right to express in any other way, or at any other time and place, his support for the defendants or his views or feelings about the way the case against them was being dealt with by the court. Before embarking on a contempt hearing the judge explored whether the matter could be resolved by the lesser measure of an apology but the appellant showed defiance. The penalty imposed was limited, logically connected to the relevant aims, and it was legitimate for the judge to conclude that nothing less would achieve those aims.

Summary of conclusions

75. The conclusions we have reached may be summarised in this way:

(1) The judge personally observed disruption to proceedings in his courtroom caused by loud noise from outside. He became aware that the court next door had also suffered disruption. He saw and heard where the disruption was coming from and identified the appellant as its likely source.

(2) This was an interference with the administration of justice that was serious enough to justify proceedings for contempt. The judge was duty bound to take some action. He was entitled to deal with the matter himself by bringing the appellant into court and embarking on a summary process.

(3) The procedure the judge adopted complied with the requirements of fairness both at common law and under the Convention. There is no reasonable objective basis on which to question his impartiality.

(4) The judge was entitled to find the facts as he did. The *actus reus* was not in dispute. The appellant's conduct was plainly deliberate. A finding of specific intent was legally superfluous but in any event the judge's conclusions on that issue are unassailable.

(5) On the judge's findings the custody threshold was crossed. The period of committal was short and cannot be criticised. No complaint is made of the decision to suspend which was merciful. The conditions were legitimate. The judge was entitled to find it likely that unless restrained the appellant would engage in further disruption. Taken overall, the penalty imposed was suitably tailored to the appellant's past behaviour and the threat he posed and was just and proportionate.

(6) The proceedings were compatible with articles 10 and 11 of the Convention. We do not think they restricted with the appellant's freedom of assembly and we doubt they interfered with his right to freedom of expression. Assuming however that they did, the necessity and proportionality of the findings of contempt is sufficiently guaranteed by the law of contempt itself. It was therefore unnecessary for the judge to conduct a fact-specific proportionality assessment. Such an assessment would in any event have concluded that the measures taken were proportionate and justified. The penalty imposed also satisfies that test.

76. For the reasons given above, this appeal is dismissed.