IN THE GRAND COURT OF THE CAYMAN ISLANDS
CRIMINAL SIDE

INDICTMENT NO: 0068/2013 & 68A/2013

THE QUEEN

V

ANNIE RUTH CLARKE

Appearances:	**Mrs. Nicole Petit for the Crown**
	Mr. Steve McField for the Defendant
Before:	**The Hon. Mr. Justice Charles Quin Q.C.**
Submissions based on guilty plea heard:	**13th November 2014**
Delivery of Sentence Judgment adjourned based on notice of change-of-plea application, further submissions, requests for further reports:	**27th November 2014**
Change of Plea hearing, Evidence under oath from Psychiatrist, Directions:	**22nd and 24th September 2015**
Disposal and Delivery of Judgment:	**22nd December 2016**

HEADNOTE

Criminal Law –Arson *– Evidence of mental illness – s.158 of the Cayman Islands Criminal Procedure Code – Special Verdict – Assisted Out-Patient Treatment Order pursuant to s12 of the Mental Health Law.*

GRAND COURT - CAYMAN ISLANDS

JUDGMENT

INTRODUCTION

1. The unusual nature of this case required diligence, and care, from both counsel and from medical and other personnel – all of whom were critical in bringing this case to this conclusion today. Therefore, at the outset of this Judgment, this Court records its profound thanks to Senior Crown Counsel, Mrs. Nicole Petit who has been assigned to this case from its transmission to the Grand Court; Defence counsel Dr. Steve McField; Psychiatrists Dr. Marc Lockart and Dr. Arline McGill; Dr. Gary Starkman, Neurologist; Psychologist, Dr. Alexandra Bodden; and Ms. Jhaneille Ennis and Ms. Natasha Williams of the Department of Community Rehabilitation (DCR). I must also include Defence counsel, Mr. John Furniss who had custody of this case in its initial stages and who, from the defendant's first appearance in the Grand Court, ensured that the Court was aware that the Defendant's Fitness to Plead was an issue and that a Mental Health Report was requested.

2. In addition, the unusual nature of this case demands that I set out matters in chronological order in some detail as this will assist in giving a clear understanding of the reasons for the decision taken by this Court.

THE ORIGINAL INDICTMENT

3. The indictment, filed on the 31st October 2013 charged the Defendant with three (3) counts of Arson contrary to s.267(2) of the Penal Code (2010 Revision) and the particulars read as follows:

i. *Count 1*: That the Defendant, on the 9th day of August 2013, at Tidyman Lane, North Side, Grand Cayman, without lawful excuse, damaged by fire a house known as 15 Tidyman Lane being the property of Annie Ruth Clarke (the defendant), intending to damage or destroy the said property and intending by the damage or destruction to endanger the life of another or being reckless as to whether the life of another would thereby be endangered.

ii. *Count 2*: That the Defendant, on the 7th day of October 2013, at Tidyman Lane, North Side, Grand Cayman, without lawful excuse, damaged by fire a house known as 15 Tidyman Lane being the property of Annie Ruth Clarke (the defendant), intending to damage or destroy the said property and intending by the damage or destruction to endanger the life of another or being reckless as to whether the life of another would thereby be endangered.

GRAND COURT CAYMAN ISLANDS

iii. *Count 3*: That the Defendant, on the 7th day of October 2013, at Tidyman Lane, North Side, Grand Cayman, without lawful excuse, damaged by fire an unnumbered house situated in front of the property known as # 15 Tidyman Lane being the property of Alvin Robert McLean, intending to damage or destroy the said property and intending by the damage or destruction to endanger the life of another or being reckless as to whether the life of another would thereby be endangered.

4. One month after the indictment was filed, that is, on the 29th November 2013, the defendant pleaded Not Guilty to all three counts and a 3-day trial was set to commence on the 14th July 2014.

5. Along with setting the trial date a Psychiatric Report was ordered by Henderson J. I will provide details of orders and other matters in the Chronology later on in this Judgment.

THE AMENDED INDICTMENT

6. However, on the 14th July 2014, the fixed trial date, the Crown advised the Court (Brooks J Actg.) that, based on discussions between counsel, the Crown would accept guilty pleas to "being reckless only", following on which defence counsel, Mr. John Furniss, asked for the defendant to be re-arraigned. The Defendant then entered guilty pleas to all three Amended counts which read as follows:

i. *Amended Count 1*: That the Defendant, on the 9th day of August 2013, at Tidyman Lane, North Side, Grand Cayman, without lawful excuse, damaged by fire a house known as 15 Tidyman Lane being the property of Annie Ruth Clarke (the defendant), ~~intending to damage or destroy the said property and intending by the damage or destruction to endanger the life of another or~~ ***being reckless*** as to whether the life of another would thereby be endangered.

GRAND COURT - CAYMAN ISLANDS

ii. *Amended Count 2*: That the Defendant, on the 7th day of October 2013, at Tidyman Lane, North Side, Grand Cayman, without lawful excuse, damaged by fire a house known as 15 Tidyman Lane being the property of Annie Ruth Clarke (the defendant), ~~intending to damage or destroy the said property and intending by the damage or destruction to endanger the life of another or~~ ***being reckless*** as to whether the life of another would thereby be endangered.

iii. *Amended Count 3*: That the Defendant, on the 7th day of October 2013, at Tidyman Lane, North Side, Grand Cayman, without lawful excuse, damaged by fire an unnumbered house situated in front of the property known as # 15 Tidyman Lane being the property of Alvin Robert McLean, ~~intending to damage or destroy the said property and intending by the damage or destruction to endanger the life of another or~~ ***being reckless*** as to whether the life of another would thereby be endangered.

7. Brooks J Actg. then set the 2nd September 2014 to hear submissions for sentencing, on the condition that further Mental Health Reports were provided.

GRAND COURT CAYMAN ISLANDS

SUMMARY OF FACTS

8. On the 9th August 2013 a neighbour of 15 Tidyman Lane saw smoke coming from that house, which is a five-bedroom house with 3 ½ bathrooms. The neighbour reported the matter at 11:22 a.m. The police and fire brigade responded quickly, attended the location at 11:30 a.m. and the fire fighters were able to extinguish the fire.

On the same day the Defendant made a statement under caution, admitting that she was the one who set fire to her home on the 9th August 2013. She explained that she was going through some emotional problems. She stated that she was hearing things in the air conditioning and in the ceiling fan. The Defendant had actually taken out the ceiling fan. The Defendant told the police that she thought her husband wanted to kill her and the Defendant also said she thought her house was evil. Fortunately, on this occasion, there was very little damage.

9. On the 7th October 2013 at around 4 p.m. the Defendant was cleaning up debris from around the main house. The Court notes that there are four houses on the Defendant's property – three of which are built of wood, with main house made of concrete. The Defendant was seen making multiple trips to a shed located at the rear of the main house, and, on the last trip, she was observed with a pink can in her possession. The Defendant was observed as she aimed the can to the bottom of the door, and, shortly afterwards, flames and smoke were observed. The Defendant was observed squirting a stream of liquid in through the window of the front of the main house. Like on the 9th August 2013 the fire brigade arrived shortly after the fire had been started. Again they extinguished the fire but, on this occasion, the roof of the main house was severely damaged.

GRAND COURT – CAYMAN ISLANDS

10. On the 10th October 2013 the Defendant was interviewed but, on this occasion, she stated that she had no knowledge of the circumstances surrounding the fire at her home. On the same day the Defendant was formally charged with three counts of Arson, and when she was cautioned she said, "No utterance."

HISTORY AND CHRONOLOGY

11. The unusual nature of this case, the different courses taken by both counsel and the defendant, and the final course taken by this Court, demand that I address matters in chronological order, as they transpired, as follows:

i. *18th October 2013*:

(a) First Grand Court Mention

(b) Defendant was remanded to custody from the Summary Court.

(c) No Indictment filed.

(d) Defence counsel (Mr. John Furniss) advised that a Fitness-to-Plead (FTP) report had been requested. The Court's file held information from Marion Medford which stated that the Defendant is scheduled to see Dr. McGill on the 14th October 2013 @ 11:30 a.m. and on the 28th November 2013 at 11 a.m.

(e) Mention set for the 1st November 2013.

ii. *1st November 2013*:

(a) An email from Marion Medford at the HSA advised that, in relation to the FTP Report being prepared, the Defendant was seen on the 14th and the 24th October 2013 and is scheduled to be seen again on the 15th November 2013.

(b) Mention set for the 22nd November 2013 when counsel will be able to advise the Court on the progress of/completion date for, the FTP report.

(c) Re Bail Application discussions:

a) A formal bail application *not* made today but Defence counsel advised the court that he was preparing to do so.

b) Defence counsel also advised the court that the he would need to locate a new address for the Defendant to reside, if granted bail, as the one he now has would not be approved by the Crown.

c) Defendant (herself) told the Court that it was "bullshit" to object to the address provided and the disapproval of the address was "not a valid reason" to deny her bail. She said Cayman is a small place and anywhere could be considered within close proximity to another.

d) The Crown – whilst noting that the Crown was not advised that she would need to speak to issues relating to a bail application today – told the Court that the Crown's objection would be based on the facts that:

a. Arson is a very serious offence and there are three such charges against this Defendant, with the offences committed over a period of time;\

b. The Defendant had given "*hearing voices in her head*" as the reason for committing these offences and therefore, it is important to see what is contained in the completed FTP report.

iii. *22nd November 2013*:

(a) The FTP report is still being prepared in relation to the Defendant and the Court orders that every effort is to be made to have the report before the Court within seven (7) days.

(b) Mention set for the 29th November 2013.

iv. *29th November 2013*:

(a) The defendant arraigned and pleads Not Guilty.

(b) 3-day trial set to commence on the 14th July 2014 with a PDH date set for the 2nd May 2014.

(c) The Court[1] grants bail to the Defendant on the following terms:

a) Recognizance: $500.00

b) Surety: Must be the defendant's son – with no deposit required.

c) The defendant is not to be found within 100 feet of Tidyman Lane

d) The defendant is to take her medication as described by Dr. Arline McGill faithfully;

e) Defendant is to take her medication in the presence of and under the observation of her son and any failure to do so will be a breach of this bail condition;

[1] Before Henderson J.

f) The defendant, upon release, is to go to Dr. McGill and report thereafter to Dr. McGill as the doctor requires.

v. *2nd May 2014*:

(a) PDH adjourned for the Crown and Defence to have further discussions.

vi. *14th July 2014*:

(a) Counsel explain that the Crown will accept pleas to "being reckless" and Defendant re-arraigned and pleaded GUILTY (to being reckless) on all 3 counts.

(b) Social Inquiry Report (SIR) ordered.

(c) The Court orders that Dr. Arline McGill updates the "Psychiatry Report" dated the 22nd November 2013, and provides the updated report to the Court by the 2nd September 2014.

(d) MFS set for TUESDAY the 9th September 2014.

vii. *5th September 2014*:

(a) The MFS date is changed[2] from the 9th September 2014 to the 1st October 2014 in order to await all reports.

[2] Owen J Actg.

viii. *26th September 2014*:

(a) Both counsel request that the MFS date be moved from the 1st October 2014 to the 30th October 2014 in order to allow time for further discussions of the Psychiatric report recently received.

ix. *13th November 2014*:

(a) MFS heard and delivery of Sentence Ruling set for the 27th November 2014.

x. *27th November 2014*:

(a) Sentence Ruling was set for delivery today and the Court's Ruling[3] was prepared in Draft form only, based on further queries the Court had for counsel.

(b) Defence counsel advised that the Defendant wishes to adjourn her Sentencing in order to change her plea (to Not Guilty)[4].

(c) Defence counsel stated "*it may be advisable for [the Defendant] to speak with a different attorney regarding her change of plea*" but Defence counsel remained committed to guiding the process through to the Defendant's change of attorney.

[3] Quin J
[4] On the 29th November 2013 the Defendant pleaded Not Guilty to "intending to damage or destroy…" and on the 14th July 2014 the defendant pleaded guilty to "being reckless" in relation to the three counts of Arson.

(d) Defence counsel stated that the Defendant's "mental history" had always remained a concern and the Court stated that after reading Dr. McGill's FTP report it had unanswered questions and "*the report requires clarification*."

(e) I ordered that the Court is to make an appointment for the Defendant to meet with Dr. Lockhart for the preparation of a Psychiatric Report.

(f) Mention set for the 6th February 2015 to:

a) Allow the Defendant time to obtain new counsel. (Transfer of legal aid was today authorised but, of course, subject to the decision of the Hon. CJ.)

b) Allow Dr. Lockhart time to complete a Psychiatric Report;

c) Allow the Defendant to change her plea, should she wish to do so as advised by her (new) counsel; or

d) Set a date to continue the MFS hearing against the background of the new Psychiatric Report, should the defendant no longer wish to change her plea.

GRAND COURT - CAYMAN ISLANDS

xi. *6th February 2015*:

(a) Psychiatric report awaited and hearing date changed to the 20th February 2015.

xii. *20th February 2015*:

(a) The Court was advised that the Psychiatric report is ready but certain matters affected the timeous handover of the Report to the Court.

(b) Mention set for the 13th March 2015.

xiii. *13th March 2015*:

(a) First day Mr. Steve McField appeared to come on record and counsel requested time from the court[5] to allow for the handover of the papers and for defence counsel to review same.

(b) Mention set for the 27th March 2015.

xiv. *27th March 2015*:

(a) Today Mr. McField stated that now that he has read and discussed the Psychiatric Report, he would like to "make a certain application" but would need time to have discussions with the Crown.

(b) The Court asked that the Psychiatric Report be sent to the Crown.

(c) Mention set for the 10th April 2015.

xv. *10th April 2015*:

(a) Defence counsel today sought to confirm that the Court had seen the psychiatric report and the Court confirmed that it was on file.

[5] McMillan J Actg. (as he then was)

(b) Defence advised that he had had discussions relating to the defendant's change of plea and the Crown has requested written submissions.

(c) Timetable for exchange of submissions re Change of Plea hearing is as follows: 24th April (Defence submissions); 1st May (Crown's submissions is response)

(d) Change of Plea application set for Thursday the 21st May 2015.

xvi. *15th May 2015*:

(a) As the timetable deadlines have not been met by counsel, (as per emails provided to the Court), it is agreed between counsel that the 21st May 2015 for the Change of Plea hearing should be vacated and this case listed for Mention to set a new date for the Change of Plea hearing.

(b) Mention set for FRIDAY the 29th May 2015 to:

a) Set a new timetable for the exchange of documents;

b) Set a new Change of Plea hearing date.

xvii. *29th May 2015*:

(a) As deadlines were not met by counsel new timetable deadlines were again set as follows:

a) On or before the 3rd July 2015, the Defence is to file and serve its Application and Skeleton;

b) On or before the 31st July, the Crown's Response is to be filed and served;

c) Change of Plea 2-hour hearing set for Thursday 3rd September 2015 in Open Court.

xviii. *3rd September 2015*:

(a) Today, defence counsel still was not ready and had not served any documents on the Crown.

(b) Defence counsel advised the court of his ill health and asked for pardon for the delay.

(c) I invited counsel to ask for additional counsel to assist him with this matter as it must now be heard.

(d) New timetable deadlines were set as follows:

a) On or before the 11th September 2015, the Defence is to file and serve its Application and Skeleton;

b) On or before the 16th September, the Crown's Response is to be filed and served;

c) Change of Plea hearing set for Tuesday the 22nd September 2015 – 2-hour hearing in Open Court.

GRAND COURT CAYMAN ISLANDS

xix. *22nd September 2015*:

(a) Change of Plea hearing began.

(b) It is important to fully understand the difficulties with this unusual case, and, therefore, the I now record the evidence of the "responsible medical doctor", Dr. Lockhart, and the exchanges between Dr. Lockhart and the Court on the 22nd and the 24th September 2015. Court's note of the hearing is as follows:

- *"The court said its preliminary view is to accede to the application to vacate the guilty plea but "I am concerned about her mental capacity and her ability to face a trial." The court then discussed the possibility of the defence raised by Dr. Lockhart in his report relating to "automatising" which means the actions are involuntary and show a lack of mens rea. The Court said "I hope we can put our minds together because does automatizing mean that the criteria for insanity has been met? Discussions between counsel and the Court continued "she did it, she did the act, but if we go to trial where do we end up with her? Is it that we end up with a special verdict? She clearly was there. But who would start a fire in their own home. Dr. Lockhart, based on his discussions with her, has concluded that she started it. Counsel and the court then discussed s.47 of the CPC:*
    - *"47. Without prejudice to sections 158 and 159, when in the course of any trial or preliminary inquiry the court has reason to suspect that the accused person is of unsound mind so that he is incapable of making his defence, the court **shall inquire into the fact of such unsoundness** and for this purpose may receive evidence and may postpone the proceedings and remand the accused person for a medical report."*
- *The court, referring that process of putting the defendant before a jury said, "but we don't want to turn this into a cause célèbre. The then said, "I was about to sentence her" – before the change of plea discussions – "but does she know what she is doing?" Counsel and the court noted the fact that the defendant did go to the police and admitted setting the fire.*
- *The Court then noted from Dr. Lockhart's report that "she was acting involuntarily" which means a failure to understand and this could be her possible defence. The court said, "if anything, she must be next door on fitness to plead... on the knife edge... The arson is of her home and her brother's home. She clearly has a mental problem. I cannot imagine a great public outcry not to prosecute in a case such as this "what is the point of getting a conviction against this woman?" – provided we can put in place what is needed to ensure that there is very little chance of repeating the offence."*

- *Discussions continued on the defendant's age (56), mental health, her 13 years' in the civil service and the fact that others have been medically boarded.*
- *Discussions then focused on the "legal quagmire" now faced by the court as "we are reading "fit to plead" but this does not reconcile with the body of the email." In the face of all this the Court was sure that it had a legal discretion.*
- *The court said "I have Dr. McGill's and Dr. Lockhart's reports and two things trouble me: First, I am not sure that she [the defendant] fully understood the charges; and secondly, the automatizing aspect i.e. the committing of an involuntary act. So I would not close out further submissions on the guilty plea and I would invite supplementary evidence from Dr. Lockhart and invite Dr. Lockhart to Court on Thursday the 24th September at 10 a.m.*
- *Defendant bailed to the 24th September 2015."*

xx. <u>*24th September 2015*</u>:

(a) Change of Plea hearing continued.

(b) Court's note of the hearing is as follows:

- *"Dr. Lockhart was sworn in the witness box and the Court opened with, inter alia, "these are charges of the most serious kind. I was going to allow the change of plea (to not guilty) but it is apparent to the Court that she may not have fully understood the implications. The court then addressed Dr. Lockhart and said, "you say that at the time of the arson she was unable to restrain her behavior and that it was almost an involuntary act, i.e. automatism. The court then said, "The Crown has one major concern that, with this diagnosis the main concern is that Ms. Clarke presents a danger to herself and to the public."*
- *Dr. Lockhart said, inter alia, it is difficult at times to assess the risk of recidivism when a person engages in pyromania. Sometimes we can use previous history but there is no previous history here. We look at history of mental illness and compliance with mental treatment. My view is that once she is mandated to continue her treatment there will be improvement.*
- *Dr. Lockhart said a large percentage of persons charged with arson have a psychiatric history. Usually there are many aspects, including alcohol in relation to fire-siding behavior.*
- *The court said, if we accept the guilty plea then treatment must be injected into the solution.*

- *Dr. Lockhart then said that that would be possible "as my understanding is that she has been compliant with medication and treatment." Dr. Lockhart also said "a level of monitoring would be ideal and the factors we would look at are (and then some factors were listed)."*
- *Court said: "You said there can be sometimes several triggers, have you identified the trigger?" and Dr. Lockhart responded: "alcohol, psychiatric conditions, neurological conditions, catalepsy, narcolepsy and reported seizure disorders." He added "any proposed treatment plan would target the alcohol and psychiatric conditions. Her son is her guardian... she no longer resides in the area... she would not return to that house or that area."*
- *Court: "Is she able to choose legal representation?'*
- *Dr.: "Yes. She understands the judge, the prosecutor"*
- *Court: Is it that she would not be able to participate in her defence? Can she challenge witnesses.*
- *Dr.: No – is my professional opinion.*
- *Defence counsel then asked Dr. Lockhart to confirm that the defendant is steadily on a programme where she is being seen by a psychiatrist and therapist and this was confirmed by Dr. Lockhart.*
- *Question: Would she fall into a group of persons with cognitive difficulties?*
- *Dr.: She would not be helpful in remembering all the things necessary to put forward her defence. The best result for someone of this capacity is one where she could have continued mental treatment. This is a very complicated case. I spent a lot of time with Ms. Clarke. I don't want to belabour the point but it is it is important that she continues her treatment and supervision at home.*
- *Court: I am minded to accede to the application to vacate the trial date. I see that we are moving towards a special type of disposal. The Court will ask that you identify special service providers to monitor her so that the triggers (for her automatizing etc.) can be addressed. Dr. Lockhart is asked to draft an Order for medical recommendations for this close monitoring by the 21st October 2015, as, as a pre-condition to sentence the Court would also seek to ensure the protection of society."*

GRAND COURT CAYMAN ISLANDS

ANALYSIS

12. The Crown submits that although they accept that the Defendant did not intend to cause damage to any persons, the direction of the wind, particularly in relation to the second and third counts, meant that other houses were threatened and people could have been in danger. Accordingly, the Crown submit that the Defendant was reckless and the life of another could have been endangered.

13. The Defence submits that this is a very unusual case because the Defendant on both the 9th August and the 7th October proceeded to set fire to her own house. Defence counsel submits that the Defendant was experiencing grave personal and marital problems.

14. Defence counsel refers to a report dated the 4th September 2014 from Psychiatrist Dr. Arline McGill. The report confirms that the Defendant has neurological illnesses with signs of dysthymia and amnesia.

15. The Court has been greatly assisted by an in-depth Social Inquiry Report (SIR) dated the 26th September 2014.

16. The SIR reveals that the Defendant has little or no recollection of setting her home on fire. However, the Defendant has stated to the Probation Officer that she is very sorry about the impact her actions may have had on her neighbours and her children. The Defendant states to the Probation Officer that she was going through some emotional problems and that she was hearing things through the air conditioning unit and the ceiling fan and consequently she thought her house was evil. The Defendant also thought that her husband, from whom she is now separated, wanted to kill her and she thought that he had taken away some of her valuable items.

GRAND COURT - CAYMAN ISLANDS

17. The SIR reveals the fact that the Defendant has struggled to deal with the traumatic deaths of her two brothers, as one died in a motorcycle accident and the other died by suicide. The Probation Officer states that the trauma experienced by the deaths of her brothers along with a past abusive marriage, have taken a toll on her emotionally and on her ability to function normally.

18. The findings of the LS/CMI – the Risk Assessment Tool – indicate that the Defendant's overall risk of reoffending is low. She has been a civil servant and has contributed positively to society. Her family members all state that these offences are out of character.

19. The Court has also been greatly assisted by the Psychiatric Reports of Dr. Arline McGill and Dr. Marc Lockhart.

20. The Court is most significantly grateful to Dr. Marc Lockhart for the further *viva voce* evidence provided to this Court under oath on the 22nd and 24th September 2015, and the further information provided to the Court for the making of an Order pursuant to s. 12 of the Mental Health Law (2013 Revision) (as read with s.2 of the Law) which deals with the making of an Assisted Out-Patient Treatment Order. Section 12 of the Law states:

GRAND COURT - CAYMAN ISLANDS

"12. (1) *Where, following a period of hospitalization, a patient is unlikely to participate in treatment voluntarily or does not comply with recommended treatment, the responsible medical officer may make an assisted outpatient treatment order in relation to that patient.*

(2) An assisted outpatient treatment order allows the responsible medical officer to provide treatment, with or without the patient's consent.

(3) An assisted outpatient treatment order shall be made for a fixed time not exceeding one year and may be renewed as often as necessary to achieve its intended objective.

(4) The responsible medical officer shall inform the Mental Health Commission of the making of the order as well as providing the reasoning and evidence relied upon.

(5) If the patient violates an assisted outpatient treatment order, a constable shall take such person into protective custody and with all reasonable despatch bring him before a government medical doctor.

(6) The medical doctor shall examine the person referred to in subsection (5) and if he considers that that person should be further detained he shall direct that he be detained in a hospital or other place of safety able to receive and care for him [her], there to await the decision of a medical officer who may make an observation order under section 8.

(7) A patient or legal representative of a patient who is dissatisfied with the making of an assisted outpatient treatment order under this section may appeal to the Mental Health Commission and the Commission may affirm, revoke, vary or make such other order as it thinks fit."

GRAND COURT - CAYMAN ISLANDS

21. In the interests of this Defendant and in the overall interests of justice in the context of all the circumstances of this case, both counsel have made reference to s.158 of the Cayman Islands Criminal Procedure Code (CPC) 2013 Revision, which reads:

"***PART VII - Procedure Relating to Persons Found Insane***

158. Where, in any indictment, any act or omission is charged against any person as an offence and it is given in evidence [on his trial] for that offence that he was insane so as not to be responsible, according to law, for his actions at the time when the act was done or omission made, then, if it appears [to the jury before whom he is tried] that he did the act or made the omission charged but was insane as aforesaid at the time when he did or made the same, the [jury] shall return a special verdict that the accused was not guilty of the act or omission charged against him by reason that he was insane at the material time."

CONCLUSION

22. The Defendant has had a difficult and an emotionally turbulent time. She comes before the Court as a 47 year old single woman with no previous convictions. She clearly has worked hard and remained in steady employment for some time despite medical and mental issues.

23. However, it is clear to this court that the defendant's medical and mental issues have worsened over time to the point where, at the time of this offence, she was suffering from serious mental illness and mental impairment.

24. This court accepts that evidence of Dr. Lockhart, provided to this Court on oath on the 22nd and 24th September 2015 that the Defendant's serious mental illness and mental impairment included, but was not exclusive to, automatism and pyromania.

25. This court therefore accepts that this Defendant had no *mens rea* at the time of these offences and also that the Defendant is a person whose mental impairment is exacerbated by alcohol, psychiatric conditions, neurological conditions, catalepsy, narcolepsy and reported seizure disorders.

26. This court also accepts the findings of Dr. Lockhart that this defendant does not possess the cognitive capabilities to engage fully in a trial process because she would not be helpful in remembering all the things necessary to put forward her defence.

27. Therefore, upon this court identifying treatment of this defendant as paramount, the following orders are made in full and final disposal of this case:

GRAND COURT - CAYMAN ISLANDS

(a) That the defendant's guilty plea be set aside and this court herein invokes the power under s.158 of the CPC and the Court records a ***Special Verdict*** of Not Guilty against this defendant as there is clear and convincing evidence that ANNIE RUTH CLARKE is a person requiring treatment because she has serious mental illness or mental impairment and also was in this state at the time this offence was committed and therefore was "*not responsible according to law for [her] actions at the time when the act was done ... but was insane, as aforesaid, at the time ..*";

(b) That this ***Special Verdict*** is entered along with this court's Order that, pursuant to s.12 of the Mental Health Law, the defendant, for one year from today's date, is to be subject to an **Assisted Out-Patient Treatment Order** and this Court adopts the recommendations of the "responsible medical doctor" Dr. Lockhart, as follows:

a) The Defendant must:

a. Have the provision of medications under the primary management of Dr. McGill or other designated psychiatrist;

b. Have blood and urinalysis tests to determine compliance with prescribed medications;

c. Participate in counselling and abide by any recommendations made by her counsellor, Dr. Alexandra Bodden;

d. Participate, if recommended, in day or partial-day programmes;

e. Participate in any behavioural or psycho-educational programmes deemed suitable by the assigned probation officer;

f. Be employed or enrolled in a structured organized activity/vocational programme as required;

g. Participate in alcohol or substance abuse treatment if required;

h. Undergo alcohol or substance abuse testing;

i. Comply with any other services prescribed (including hospitalization) to treat her mental illness and to either assist the person in living and functioning in the community or to help prevent a relapse or deterioration that may reasonably be predicted to result in danger to self or others;

j. Have monthly visits with Dr. Lockhart;

k. Have weekly visits with Dr. Alexandra Bodden;

l. Have appointments with Ms. Natasha Williams of the DCR as ordered by the said Ms. Williams or other assigned officer of the DCR.

Dated this the 22nd December 2016

Honourable Mr. Justice Charles Quin Q.C.
Judge of the Grand Court