



Neutral Citation Number: [2021] EWCA Crim 35

Case No: 2020/02897/B5

IN THE COURT OF APPEAL (CRIMINAL DIVISION)
ON APPEAL FROM THE CENTRAL CRIMINAL COURT
HHJ RAFFERTY QC
T/2020/0034

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 22/01/2021

Before :

LADY JUSTICE MACUR
MR JUSTICE BRYAN
and
MRS JUSTICE STACEY

Between :

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- and -
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Applicant

Respondent

Mr P Ratliff (instructed by CPS) for the Crown
Mr D Squires QC and Ms J Buckley (instructed by Birnberg Peirce) for the Respondent

Hearing date: 13 January 2021

FINAL

MACUR LJ:

1. The Registrar refers this application for permission to appeal the preliminary ruling made by HHJ Rafferty QC on 22 October 2020 to the effect that the notification requirements imposed by s48(4C) and (7) of the Counter Terrorism Act (“CTA”) 2008 applied to the various vehicles driven by the applicant in the course of his employment as an agency lorry driver.
2. The applicant is represented by Mr Squires QC and Ms Buckley. The respondent is represented by Mr Ratliff.
3. The applicant is a registered terrorist following his conviction in 2005 for two counts of possessing an article intended for a terrorist purpose contrary to s57 Terrorism Act 2000. He was sentenced to 15 years’ imprisonment, reduced on appeal to 10 years’ imprisonment. Subject to the applicant’s arguments that we refer to below, there is no issue but that the applicant is subject to notification requirements for the period of 15 years’ from the date of his release from prison in September 2010. From April 2019 these requirements were extended to include the requirement to notify the police of relevant information concerning motor vehicles *“of which the person is the registered keeper of, or acquires a right to use (whether routinely or on specific occasions or for specific purposes) on the date on which notification is made.”* (CTA 2008 s47(2)(ga)) and any changes to that information (CTA 2008 s48).
4. On 12 August 2019, the applicant registered with an employment agency, Mercury Recruitment Network, to work as an HGV driver. He accepted work with Serco, driving refuse lorries on behalf a Local Authority. The applicant was liable to be allocated the vehicle or vehicles he was to drive at the beginning of his shift. He was entitled to drive only the allocated vehicle(s), during working hours and for the purposes of his work. There were more than 20 vehicles in Serco’s fleet. He had no actual information regarding the use or storage of the vehicles thereafter, or which other employees might drive them.
5. He faces an indictment with 9 counts which allege that, between 15 August and 11 October 2019, he failed to comply with notification requirements in relation to the use of refuse vehicles during his employment, in violation of the notification requirements contrary to s54(1) and (4) CTA 2008. His trial is listed to proceed on 24 May 2021.
6. The following statutory provisions are relevant to the issue in question.

S.47 (1) CTA 2008 provides:

“A person to whom the notification requirements apply must notify the following information to the police within the period of three days beginning with the day on which the person is dealt with in respect of the offence in question.”

The relevant information in this case is identified in s47(2)(ga), namely:

“identifying information of any motor vehicle of which the person is the registered keeper, or which the person has a right to use (whether routinely or on specific occasions or for specific purposes), on the date on which notification is made;”

7. Notification of any changes to the information are stipulated in s48 (4C) – (4E):

“4C) If a person to whom the notification requirements apply becomes the registered keeper of, or acquires a right to use, a motor vehicle the identifying information of which has not previously been notified to the police, the person must notify the police of the identifying information of that motor vehicle.

4D) If there is a change in the identifying information of a motor vehicle previously notified under this Part, the person must notify the police—

(a) that there has been a change, and

(b) of the new identifying information of the motor vehicle.

4E) If a person to whom the notification requirements apply ceases to be the registered keeper of a motor vehicle the identifying information of which the person has notified, or ceases to have the right to use such a motor vehicle, the person must notify the police that the person is no longer the registered keeper of the motor vehicle or no longer has the right to use it.”

S.48 (7) (a – c) specifies the notification period:

“Notification under this section must be made—

(a) in a case to which subsection (4C) applies, before the earlier of the following—

(i) the end of the period of three days beginning with the day on which the person becomes the registered keeper of the motor vehicle or acquires a right to use it, or

(ii) the first occasion on which the person uses the motor vehicle by virtue of being its registered keeper or having a right to use it,

(b) in a case to which subsection (4D) applies, before the earlier of the following—

(i) the end of the period of three days beginning with the day on which the identifying information changes, or

(ii) the first occasion on which the person uses the motor vehicle after the identifying information has changed,

(c) in any other case, before the end of the period of three days beginning with the day on which the event in question occurs (and, where subsection (3) applies, that is the day with which the period referred to in paragraph (a) or (b) (as the case may be) of subsection (3) ends).”

S.50 (2) provides for the method of notification:

“Notification must be made by the person -

(a) attending at a police station in the person's local police area, and

(b) making an oral notification to a police officer or to a person authorised for the purpose by the officer in charge of the station.

(3)...

(4) The notification must be acknowledged.

(5) The acknowledgement must be in writing, and in such form as the Secretary of State may direct.

(6) The person making the notification must, if requested do so by the police officer or person to whom the notification is made, allow the officer or person to –

(a) take the person's fingerprints,

(b) photograph any part of the person, or

(c) do both these things,

for the purpose of verifying the person's identity”

S.54(1) and (4) detail the offence:

“A person commits an offence who—

(a) fails without reasonable excuse to comply with—

- section 47 (initial notification),*
- section 48 (notification of changes ...*

(2) A person guilty of an offence under this section is liable—

(a) on summary conviction, to imprisonment for a term not exceeding 12 months or a fine not exceeding the statutory maximum or both;

(b) on conviction on indictment, to imprisonment for a term not exceeding 5 years or a fine or both.

(4) A person—

(a) commits an offence under subsection (1)(a) above on the day on which the person first fails without reasonable excuse to comply with—

- section 47 (initial notification),*
- section 48 (notification of changes*

(b) continues to commit it throughout any period during which the failure continues.

8. The explanatory notes to the Counter-Terrorism and Border Security Act 2019, which amended the 2008 Act in relevant respects, “provide background

information on the development of policy”. In describing the overview of the Act, it is said (second bullet point) that *“The measures in Part 1 of the Act will, amongst other things, strengthen ...the powers for managing terrorist offenders following their release from custody.... (third bullet point) strengthen the powers of the police to prevent terrorism and investigate terrorist offences.*

9. A preparatory hearing took place on 9 September 2020 during which the applicant sought a ruling that the notification requirement in respect of motor vehicles did not apply in relation to the vehicles he drove as part of his work; alternatively, that the application of the legislation to his case was (a) not in accordance with the law and (b) violated the principle of legality.
10. The judge’s ruling is to be found in paragraphs 37 to 52 of her judgment. In summary, she had regard to the explanatory notes to the CTA 2008 and Counter-Terrorism and Border Security Act 2019 in arriving at her decision and she ruled that: (i) the acquisition of “a right to use” a vehicle is fact specific; (ii) an individual’s “right to use” a vehicle may be circumscribed; (iii) the facts in this case indicate that, at the latest, immediately before he commenced to lawfully drive them as directed in the course of his employment, the applicant had acquired the right to use the vehicles; (iv) disputed questions of fact as to impracticality or impossibility of notification may go to the defence of reasonable excuse but not the applicability of notification requirements; (v) the notification requirements may be onerous in particular cases but are part of a legislative scheme intended to ensure the efficacious oversight of relevant terrorist offenders; (vi) there is no ambiguity in the statutory notification scheme. The provisions met the dual test of accessibility and foreseeability. The statutory scheme was published and comprehensible as evidenced by the applicant’s previous compliance; and (vii) any interference with the applicant’s Convention rights were justified.
11. The grounds of appeal are framed in terms:
 - (1) The Judge erred in finding that the notification requirements, under s48(4C) and (7) CTA 2008, applied to the vehicles that the applicant drove as part of his work on the basis that *“he acquired a right to use [the] vehicles at the very latest before he drove them”*. She erroneously concluded that it was not necessary for the Crown to identify the specific date on which it was alleged that the applicant acquired a right to use those vehicles and thus when he breached the notification requirements. This gives rise to legal uncertainty. The applicant would not be aware when they had “acquired the right to use” a vehicle for which notification was required.
 - (2) The Judge erred in finding that the principle of legality was not violated in this case. The Judge did not identify any express words in the statutory provisions or provide reasons as to why the notification requirements override the applicant's fundamental rights at common law (and under the European Convention on Human Rights (“ECHR”)), namely his ability to engage in work of his choosing.

12. The Respondent supports the ruling of HHJ Rafferty QC. That is, the time when “a right to use” a vehicle arises is fact specific. The prosecution would be required to prove the timing of the acquisition of a right to use a vehicle on objective evidence, which would include that he drove it, and so had such a right immediately prior to doing so. The language of the statute is clear, and it obviously applied to the applicant. The language of the 2008 Act did not violate the applicant’s Convention rights but, if it did so, such infringement was ‘*in accordance with the relevant law*’.

Determination and Analysis.

13. Mr Squires QC appeared reluctant to make submissions as to the meaning of the term “a right to use” in the context of the statutory scheme and in the circumstances of this case despite our repeated invitation for him to do so, other than by reference to what he asserts is the “lack of a legal coherent way for this Defendant to ‘acquire’ a right to use” a motor vehicle in order to fulfil the notification requirements. That is, he submits that the statute must be interpreted to avoid absurdity, and which is achieved if the applicant is found to have acquired only a “conditional permission” to lawfully use the vehicle and, consequently, was not subject to the notification requirements.
14. We are not at all persuaded by this argument. The acquisition of “a right to use” is the trigger for the notification requirements, and not the other way around. It cannot be an answer to the issue of statutory construction that was before HHJ Rafferty QC, and now before us, and which is of wider application to registered terrorist offenders, that by reference to the postulation of scenarios of inconvenience or onerous requirements that may undermine this applicant’s ability to work as an agency driver, that we may ignore the clear intent and, as we find the clear and unambiguous words used in the statutory text in ss.47 and 48, as indicated above.
15. Mr Squires QC establishes no reason to depart from the canon of statutory construction which requires the court to adopt “the plain meaning rule” in the absence of any ambiguity in the relevant statutory terms. We are satisfied that the scenarios, which are somewhat selective, do not provide relevant interpretative criteria that point away from the plain meaning of the words. The text of the statutory provision is the starting point and neither judges nor prospective defendants are at liberty to ignore the plain meaning of the words that parliament has used. See *Williams v Central Bank of Nigeria [2014] UKSC 10*.
16. We are satisfied that “a right to use” is aptly construed to denote the control, management, or operation of the vehicle in question. See *Nichol v Leach [1972] RTR 416*. This will be fact specific, but we are in no doubt that by the time an individual commences to drive a vehicle, then if s/he does so lawfully with the consent of the registered keeper, that they demonstrate their right to use the same and that that right must have been acquired at some point beforehand.

17. The acquisition of that right may, in accordance with the provisions of s. 47(2)(ga), be for a specific purpose or occasion in the future, which means that the right to use is conditional and may be subsequently revoked, but this does not diminish the nature of the right to use nor, therefore, the obligation of notification requirements, subject to reasonable excuse. The ability to confer “a right to use” in advance further detracts from Mr Squires QC’s arguments of ‘absurdity’ of the scheme as it applies to those in a similar position to the applicant, and otherwise ‘impossibility’ of notification of acquisition of right to use or change of details. Testing the submissions he advanced readily enabled this court to explore why an employer such as SERCO may not explicitly confer upon any agency worker a right to use, as defined above, for the use of employment one of a pool of specific vehicles in advance. In these circumstances, the ability to meet the notification requirements, is not rendered “impossible” before the ‘defendant’ commences to use such a vehicle.
18. The timing of the acquisition of “a right to use” a motor vehicle, which determines the appropriate notification period, is a question of fact that must be established by the prosecution as a relevant ingredient of the offence. In the absence of either documentary evidence or other objective evidence of a right to use the motor vehicle, the prosecution must fail.
19. If such evidence exists, it fixes the time frame for compliance, subject to “reasonable excuse” and must logically be within a defendant’s knowledge. It is untenable to suggest that if the objective evidence establishing a right to use a motor vehicle cannot be established prior to use of the motor vehicle, a defendant may legitimately avoid notification requirements. As Mr Ratliff reminds us, the offence is a continuing offence (see s.54(4)(b) above).
20. In any event, the inherent difficulties of the necessary notification procedure as may become obvious upon analysis of evidence in this case, does not render the clear words of the statute “absurd” but may, although not necessarily will, provide a reasonable excuse for failing to notify the relevant authorities prior to driving the vehicle if no reasonable alternative working practices could be devised, depending on the particular circumstances of the case and will be for a defendant to establish on the balance of probabilities.
21. It follows that we agree with the judge’s findings in this regard and see no merit in the draft first ground of appeal.
22. The second draft ground of appeal is dependent upon an assertion that the text of the relevant statutory provisions is insufficiently precise to legitimise the interference with the applicant’s fundamental rights to undertake employment of his choosing. Mr Squires QC cites *R (Secretary of State for the Home Office) v Simms [2000] 2 AC 115* in support of this principle, and specifically Lord Hoffman at 131:

“Fundamental rights cannot be overridden by general or ambiguous words. This is because there is the great risk that the full implications of their unqualified meaning may have passed unnoticed in the democratic process”

23. Mr Squires QC conceded before us that the words in question are not general and ambiguous but, he submits, the application of the text is so demonstrably impractical or misunderstood in application, that the same principle must arise; that is, parliament could not have foreseen the consequences that would ensue, and it must therefore be presumed that it “passed unnoticed in the democratic process”. We reject this argument
24. We are satisfied that the clear intent of the statutory scheme in issue in this case, and the specific reason for their inclusion, can be readily derived from the explanatory notes to the relevant statutes, as indicated above. This is not a case of democratic default. The notes identify the “clear mischief” which the relevant provisions are designed to remedy. Further, for the reasons we give above, there is no question of “doubtful criminality or doubtful penalisation”. The mistaken interpretation of the statutory requirements by police officers initially involved in this case do not establish otherwise.
25. The relevant notification requirements which are imposed upon a registered terrorist offender are predicated upon previous conviction(s) of specified terrorist offences. Interference by a public authority with the exercise of an individual’s right to respect for family or private life, may be justified if it is *“in accordance with the law and is necessary in a democratic society in the interests of national security, public safety...the prevention of disorder or crime, ...or for the protection of the rights and freedoms of others.”* (See Schedule 1, Article 8(2) of the Human Rights Act 1998.) Such justified interference is apparent in Sexual Harm Prevention Orders, Football Banning Orders, restraining orders and the like. In the circumstances and for the avoidance of doubt, even if we were satisfied that the notification requirements prevented the applicant from pursuing a line of employment of his/her choice, we consider the inability of a registered terrorist offender to drive HGVs without prior notification to the relevant authorities, to be a proportionate aim in the interests of national security.
26. It follows that in this respect we also agree with the ruling of HHJ Rafferty QC. The argument based upon the principle of legality is misconceived for the reasons given above.
27. Arguments concerning the sufficiency of details of the prosecution case against the applicant are disputed by Mr Ratliff. They are matters which may be dealt with in the case management process. We do not understand the basis of the applicant’s argument that he is hampered in his ability to prepare and present a case. In the light of the ruling made by the judge as to his ostensible ‘right to use’ the refuse trucks, he obviously seeks to advance reasonable excuse. These facts are within his knowledge.
28. In conclusion, we regard the proposed appeal to be without merit and refuse permission.