IMPORTANT NOTE: at the hearing of those application, reporting restrictions were imposed, as explained in paragraphs 1 and 30 of the judgment. The court has subsequently been informed that the applicant has pleaded guilty to a number of the offences charged in the indictment, and has been sentenced to a community order. The proceedings in the Crown Court are therefore at an end. Having considered written submissions, and having regard to the important principle of open justice and the terms of s37(8) of the Criminal Procedure and Investigations Act 1996, the court is satisfied that it is no longer necessary for the judgment to be anonymised. The reporting restrictions are discharged. This judgment may accordingly be published without anonymisation.

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IN THE COURT OF APPEAL

CRIMINAL DIVISION

ON APPEAL FROM THE CROWN COURT AT MANCHESTER

HIS HONOUR JUDGE FIELD KC T20230525

CASE NO 202402381/B1

[2024] EWCA Crim 1673

Royal Courts of Justice
Strand
London
WC2A 2LL

Wednesday, 11 September 2024

Before:

THE VICE-PRESIDENT OF THE COURT OF APPEAL, CRIMINAL DIVISION
LORD JUSTICE HOLROYDE
MR JUSTICE HOLGATE
MR JUSTICE ANDREW BAKER

REX
v
HABIB AHMED

INTERLOCUTORY APPLICATION UNDER ss31/35 CRIMINAL PROCEDURE AND INVESTIGATIONS ACT 1996

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MR R KHERBANE appeared on behalf of the Applicant Defendant
MISS A MATHEWS appeared on behalf of the Respondent Crown

J U D G M E N T
(Approved)

1. THE VICE-PRESIDENT: This is an application for a short extension of time to apply for leave to appeal against orders made at a preparatory hearing. By virtue of section 37 of the Criminal Procedure and Investigations Act 1996 no report of these proceedings should be published in the United Kingdom. At the conclusion of this judgment we shall hear any submissions as to whether to vary that statutory reporting restriction. The applicant's name has been anonymised in the listing of this hearing and we shall refer to him by the randomly chosen letters "ADN".
2. In 2008 the applicant was convicted of offences contrary to sections 11 and 57 of the Terrorism Act 2006 of being a member of a proscribed organisation, namely Al-Qaeda, and possession of articles for a purpose connected with terrorism. He was sentenced to a substantial term of imprisonment.
3. Having been released on licence in 2011 he was recalled to prison for breach of his licence conditions. He was re-released in early 2013 and his licence expired in 2016. The applicant remains subject, until April 2027, to the notification requirements which are imposed on registered terrorism offenders ("RTOs") by the Counter Terrorism Act 2008, including requirements which came into force in April 2019 when the 2008 Act was amended.
4. It is alleged by the prosecution (the respondent to this application) that the applicant has breached his notification requirements in various ways. The applicant has been charged on an indictment which contains 10 counts alleging offences contrary to sections 48 and 54 of the 2008 Act. The applicant denies all the offences.
5. Section 47 of the 2008 Act imposes initial notification requirements which arise when an RTO is dealt with in respect of a relevant offence. These include a requirement to notify "all contact details on the date on which notification is made" - see section 47(2)(fa). The

phrase "contact details" is defined by section 60 as meaning "(a) telephone numbers (if any) and (b) email addresses (if any)."

6. By section 47(2)(ga) there is also an initial requirement to notify "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. Section 48 imposes requirements to notify changes in the details initially given. So far as is material for present purposes the section provides as follows:

> "**48. Notification of changes: general**
> ...
>
> (4A) If there is a change in the contact details of a person to whom the notification requirements apply, the person must notify the police of the new contact details.
>
> (4B) If a person to whom the notification requirements apply ceases to use contact details which the person has previously notified under this Part, the person must notify the police of that fact.
>
> (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."

8. By section 54(1) it is an offence for a person subject to the notification requirements to fail without reasonable excuse to comply with them.
9. A preparatory hearing was held on 21 February 2024 before His Honour Judge Field KC in the Crown Court at Manchester Crown Square. A number of legal issues were identified as requiring rulings in advance of the trial.

10. On 6 June 2024 the judge heard submissions and announced his decisions. He set out his reasons in writing in a careful ruling dated 18 June 2024.

11. The present application is for an extension of time of three days to apply for leave to appeal against four aspects of that ruling. We shall identify and consider each of the four points in turn. We take into account all the submissions addressed to us by Mr Kherbane for the applicant and Miss Matthews for the respondent.

12. Count 3 charges the applicant with failing to notify the police that he had acquired a right to use a particular vehicle. It was and is submitted on his behalf that in order to prove that offence the prosecution must prove that the defendant had "practical access" to the vehicle concerned. Mr Kherbane relies on the decision of this court in R v R [2021] EWCA Crim 35, [2021] 4 WLR 10. At paragraph 16 of the judgment, the court said this:

> "We are satisfied that 'a right to use' is aptly construed to denote the control, management, or operation of the vehicle in question ... 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."

13. Before the judge, Mr Kherbane argued that proof of a right to use a vehicle required proof that the person concerned was lawfully entitled to drive the vehicle and had both an intention to use the vehicle and practical access to the vehicle. It was common ground that the applicant was at the material time insured to drive the car concerned, but it was submitted that he did not intend to drive it before he had given notification and that it was in any event currently in a showroom and not accessible to him. On those facts it was submitted the applicant would have a defence in law to the charge in count 3.

14. The judge disagreed. He ruled that the words of the statute are clear and unambiguous and that there was no justification for expanding them to include the additional features

of "a right to use" for which the applicant contended. He accepted that the fact that the applicant was insured to drive the car would not in itself prove the necessary "right to use". Permission or consent to use the car must also be proved. But, he said, the existence of a lawful right to use a vehicle was not to be determined by whether the person concerned had an intention to use it or by whether he had practical access to it. Evidence as to the extent to which the applicant had access to the car may be relevant to the question of whether he had control or management of it ,but was not on its own determinative of the issue which the jury would have to decide – namely, whether the applicant had a right to use the car.

15. Before this court, Mr Kherbane has not pursued his argument based on a suggested need to prove an intention to use the car. In Ground 1, he does however maintain his submission that a right to use a vehicle must at the least require practical ability to access the vehicle or to exercise control over it.

16. Like the judge, we do not accept that submission. We agree with the judgment of this court in R v R that a right to use connotes a right to control, manage or operate the vehicle concerned. But by explaining "use" in those terms, the court was not there importing any gloss on the statute. Reliance on that case does not assist the applicant, because none of the rights explained in R v R necessarily involves immediate access, or ready access, to the vehicle concerned. To take a common example, if the owner of a car gives his friend permission to use it, and insurance cover is arranged accordingly, the friend may be regarded as having a right to use the car even though he does not immediately have possession of the keys, or even though the car is not available to him at a particular time because the owner is driving it.

17. We are therefore satisfied that the judge's ruling on this first question of law was correct.

The words of the statute are clear and unambiguous.

18. Counts 8 to 10 charged failures to notify the police of certain contact details. A number of detailed submissions were made to the judge about the correct interpretation of the statutory requirement in this regard. Mr Kherbane relied on principles of interpretation stated by the Supreme Court in R (on the application of PACCAR Inc and others) v Competition Appeal Tribunal and others [2023] UKSC 28, [2023] 1 WLR 2594.

19. The judge ruled that the notification requirements are part of the system for managing terrorist offenders and are concerned with public protection and security. We respectfully agree. On that basis the judge held at paragraphs 41 to 42 of his ruling:

> "41 ... in my judgment, the requirement to provide contact details is not for the limited purpose of providing police officers with a means of communication with a RTO. That is certainly one purpose, but given that the statutory provisions are concerned with managing RTOs, preventing re-offending, preventing terrorism and detecting terrorist offences, this requirement shares those purposes and so 'contact details' must be defined with them in mind. This is entirely consistent with section 47(2)(fa) CTA 2008, which requires that 'all contact details' be notified at the time of initial notification, and not just those that the police might use to communicate with the RTO. It is also clear that whereas in sections 47(2)(d), 48(2) and 48(3), Parliament specifically limited the addresses that need to be notified (home addresses and addresses where an RTO may stay for a given number of days), no such limitation is in place in respect of contact details. This is almost certainly because Parliament did not want to limit them to a RTO's principal or main contact details and also because there was an awareness that it is very easy for (and commonly the case that) one individual will have several telephone numbers and email addresses that are all simultaneously in use for different purposes. The clear words of section 47(2)(fa) requires all of them to be notified and section 48(4A) just as clearly requires the notification of any change in such details.
>
> 42. The definition of 'contact details' in section 60 is, in my view,

> clear and unambiguous. Parliament gave the words an ordinary meaning. Given the context of the legislation, however, and the provisions of section 48(4B) (the requirement to notify the police when a contact detail ceases to be used), the notifiable contact details should be current, or 'live', telephone numbers and email addresses by which the RTO may be contacted by others and which the RTO uses to contact others. They must be in use or capable of being used for those purposes. I am satisfied that this does not produce an absurd result. On the contrary, such a result appears to me to be entirely consistent with the intention of Parliament."

20. Before this court, Mr Kherbane challenges two aspects of that ruling. In Ground 2, he maintains his submission that the notification requirement is limited to contact details which the police can use to contact the applicant. That, he argues, is the purpose of the statutory provision. The judge's wider interpretation, he submits, would require every RTO to notify every telephone number and email address to which he may have access and so would be arbitrary and unworkable. In Ground 3, he makes the related submission that the judge's reference to "details capable of being used" by a defendant is far too wide and again would produce unworkable and absurd results. The judge's ruling would also mean, he submits, that fulfilment of the notification requirement would involve a gross intrusion into the Article 8 rights and privacy of all of an RTO's family, friends and fellow workers, and of others whose addresses may be held by him.

21. We are unable to accept these submissions. The judge was in our view correct to rule that, consistently with the clear words of the provision and the purpose of the legislation, the requirement is to notify those contact details which currently an RTO uses or may use to contact others, or by or at which others contact him. Obviously, questions of fact will arise in individual cases; but a person's contact details may include the details of others through whom he is or can be contacted. To take obvious examples: the contact details of a person may include the email address and/or phone number of his spouse or partner

or close friend; the contact details of a judge of this court may include the email address and/or phone number of his or her clerk; and the contact details of a barrister appearing before this court may include the email address and/or phone number of his or her chambers. We do not accept that this requirement imposes any onerous or unworkable obligation.

22. We turn to the final ground of appeal. It was submitted to the judge that if the jury were to be told that the applicant was subject to notification requirements because he was convicted in 2005 of being a member of Al-Qaeda, he would suffer irremediable prejudice and would thereby be denied a fair trial. Such evidence, it was submitted, was in any event irrelevant to the issues in the case and would therefore be inadmissible. Mr Kherbane argued that the jury should simply be told that the applicant was subject to a notification regime; should be directed not to speculate about the reasons why that was so; should not be given a copy of the indictment; and should not be told that witnesses who were police officers worked in a Counter Terrorism Unit.

23. The judge accepted that careful case management would be required but held that it would be wrong to eradicate the word "terrorism" from the proceedings and to mask the reason why the applicant was subject to strict notification requirements. If that were done, he held, the jury would lack the necessary basis on which to consider whether the applicant had a reasonable excuse for a particular alleged failure of notification, and there would in effect be an invitation to the jury to speculate. He ruled that the jury should be told the nature of the offences of which the applicant was convicted but not the details. In particular, said the judge:

> "I agree that the jury should not be told that the defendant was convicted of being a member of Al Qaeda or that the offence was

committed in 2005."

24. In Ground 4, Mr Kherbane submits that the judge in that ruling fell into an error which affects all the counts on the indictment. He points to the fact that the applicant had for many years complied with the notification regime and the absence of any suggestion that the failures now alleged are linked to any other criminality. He maintains his argument that no judicial direction could cure the prejudice which the applicant would suffer if the jury knew of his membership of Al-Qaeda in 2005, the same year as terrorist bombings in London. He further submits that the judge's proposed reference to a conviction of an unspecified terrorism offence would invite speculation and would, if anything, increase the prejudice for the applicant.
25. We reject the submission that the reason why the applicant was subject to the notification regime is irrelevant. Part of the prosecution case at trial will be that the failures of notification occurred, not because of innocent misunderstanding or oversight, but because the applicant did not take his obligations sufficiently seriously. In considering that issue, and in considering any defence of reasonable excuse for a failure to notify, we agree with the judge that the jury need to know that the notification requirements apply because the applicant was convicted of terrorism offences.
26. We cannot accept the suggestion that the jury should not be given a copy of the indictment. The applicant cannot be put in the charge of the jury, or the verdicts of the jury taken, if the terms of the charges are not made known to the jury; and it is unrealistic to suggest that the jury may be permitted to hear the words of the 10 counts but not to see them in writing.
27. In our view this ground relates to what is essentially an issue of case management, and no error of law can be said to arise. The precise terms in which the nature of the convictions should be explained to the jury, and the precise directions which should be given, may

perhaps be the subject of further submissions to the judge. But the judge was entitled to reach the conclusion he did as to the admissibility of the essential facts.

28. We have considered the explanation given for the delay in lodging the Notice of Appeal. If we had thought there was merit in the grounds of appeal, we would have been willing to grant the extension of time. As it is, however, no purpose would be served by extending time, because for the reasons we have given none of the grounds of appeal has any prospect of success.

29. The applications for extension of time and leave to appeal accordingly fail and are refused.

30. We have been assisted by submissions from counsel as to whether this judgment, which contains some points which may well arise in other cases, should be capable of being reported. We make these orders:

    1. Pursuant to section 37(4) of the Criminal Procedure and Investigations Act 1996 we order that the reporting restriction in subsection (1) of that section shall not apply to publication of the judgment of this court in its anonymised form.
    2. Pursuant to section 4(1) of the Contempt of Court Act 1981, in view of the substantial risk of prejudice to the interests of justice in the imminent trial of the applicant, if this judgment becomes available before or during the trial, we order that the anonymised judgment shall not be published until after the conclusion of the trial or further order.
    3. The prosecution must notify the Registrar of Criminal Appeals as soon as the trial is concluded so that appropriate steps can then be taken to publish the report.

Epiq Europe Ltd hereby certify that the above is an accurate and complete record of the proceedings or part thereof.

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