

Robinson case highlights danger areas for journalists

The case in which right-wing activist Stephen Yaxley-Lennon was jailed for contempt of court highlights the major elements of which all journalists should be aware when reporting on crimes and trials.

Dame Victoria Sharp, President of the Queen's Bench Division of the High Court, and Mr Justice Warby, sitting in the High Court, found that Yaxley-Lennon - who used the name Tommy Robinson and is known for having founded the English Defence League - committed contempt in three ways.

First, he breached an order under section 4(2) of the Contempt of Court Act 1981 which postponed publication of reports of a trial at Leeds Crown Court, which was the second of a series of linked trials, until after the conclusion of all the trials.

Second, he published material which created a substantial risk that the course of justice in the trial in question would be seriously impeded, breaching the "strict liability rule" detailed in the 1981 Act.

Finally, the judges held, he also committed common law contempt by interfering in the administration of justice by aggressively confronting and filming defendants as they arrived at court.

The judges said contempt of court was principally a common law doctrine, the purpose of which was "to protect the integrity of civil and criminal proceedings by imposing appropriate penalties on those who interfere with, obstruct, impede or prejudice the due administration of justice, or expose the process to risk that these consequences will follow".

There were four elements of the law which were relevant in this case. These were:

1. Interfering with the parties on their way to and from court - which could amount to contempt at common law;
2. Creating and publishing images of people in the court, the court building, or its precincts - which was prohibited by section 41 of the Criminal Justice Act 1925, but could also amount to a contempt of court, thereby incurring a stiffer penalty, including a jail sentence;
3. Publishing material which tended to interfere with the administration of justice in particular proceedings, in breach of the strict liability rule detailed in sections 1 and 2 of the Contempt of Court Act 1981;

4. Breaching the restriction imposed on publication of reports of the specific trial by the trial judge under section 4(2) of the 1981 Act. The judges pointed out that the Act did not provide that publishing a report in breach of section 4(2) order amounted to contempt of court, but said that binding authority, in the decision in *R v Horsham Justices, ex p Farquharson* ([1982] QB 762 (CA)) held that the section created a new head of contempt, separate and distinct from the strict liability rule.

The court also took the opportunity to re-state the principle that court orders must be obeyed while they remain in force, even if it later emerges that they were wrongly made.

Robinson had sought at one point to argue that he could only be guilty of contempt if he was proven to have disobeyed an order which was "properly made" and that in fact the order in this case was not "properly made".

But the judges rejected that argument.

Dame Victoria said: "It is a fundamental principle of long standing that orders of the court must be obeyed whilst they remain in force; disobedience to an order will therefore amount to a breach, capable of amounting to contempt, even if on later examination it proves to have been wrongly made: see *Woodward v Earl Lincoln* (1674) 3 Swan App 626, 36 ER 1000, and other authorities cited in *Arlidge, Eady & Smith* at 7-173 and 9-230 to 9-235."

The argument was also "contrary to authority", because in *R v Horsham Justices, ex p Farquharson* the majority of the Court of Appeal had rejected a submission put for the appellant journalists that a court facing application to commit people for contempt could and should reconsider the decision to make a section 4(2) order.

Dame Victoria added: "We agree with the conclusion of the editors of *Arlidge, Eady and Smith* (at 7-319) that "the validity of a s 4(2) order cannot be made the subject of challenge in contempt proceedings based upon a breach".

The initial argument that the section 4(2) order was wrongly made was also "based on a misconception", Dame Victoria said, which had started with a passage in paragraph 4.5 of the Judicial College guidance, *Reporting Restrictions in the Criminal Courts* .

This read: "The subject matter of a postponement order under s 4(2) is fair, accurate, good faith and contemporaneous reports of the proceedings. Trial judges have no power under s 4(2) to postpone publication of any other reports, eg in relation to matters not admitted into evidence or prejudicial comment in relation to the proceedings. Likewise, courts have no power under s 4(2) to prevent publication of material that is already in the public domain. Such publications may incur liability for

contempt of court under the strict liability rule and the media bear the responsibility for exercising its judgment in such cases."

Dame Victoria went on: "As this passage correctly indicates, section 4(2) does not authorise the court to postpone reporting of material extraneous to the proceedings, such as comment."

But that point had no bearing on this case as the section 4(2) order did not purport to postpone anything other than reports of the proceedings.

It was also argued on Robinson's behalf that the passage from the guidance meant that material which was already in the public domain could not be the subject of a section 4(2) order, and that therefore it was legitimate for Robinson - or anyone else - to repeat anything about the trial which had entered the public domain as a result of reporting by others.

But Dame Victoria said: "That is not how we read what the guidance says, nor is this the law."

A section 4(2) order, she went on, operated to prohibit reporting of the proceedings to which it referred, from the time it was made until the end point identified in the order.

"The fact that there has already been reporting, or that matters that are later given in evidence have previously been made public in some other context does not debar the Court from making an order under section 4(2).

"Nor is there any implied public domain proviso to orders of this kind, permitting reporting of aspects of the proceedings so long as the facts in question have been publicised before. Indeed, previous reporting may be a reason for making an order."

She added: "We believe the point the Judicial College was striving to make was that a section 4(2) Order cannot prevent the publication of information in the public domain which is not or does not purport to be a report of the relevant proceedings. That has no bearing on the issues arising in this part of the case."

Attorney General v Stephen Yaxley-Lennon

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Queen's Bench Division, Divisional Court: Dame Victoria Sharp, President; Mr Justice Warby

Hearings: July 4 and 5; Reasons: July 9

Andrew Caldecott QC and Aidan Eardley, instructed by Government Legal Department, for the applicant; Richard Furlong, instructed by Carson Kaye Solicitors, for the respondent.

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