Publishing material which breaches reporting restrictions is contempt

Anyone who publishes material which breaches a reporting restriction order will be committing a contempt if he or she does so having foreseen that they might be breaching such an order, High Court judges have held.
It was not necessary for the individual to have knowledge of the actual terms of the order, said Dame Victoria Sharp, President of the Queen's Bench Division of the High Court, and Mr Justice Warby.
The declaration came in their detailed reasons for their finding that former English Defence League leader Tommy Robinson - real name Stephen Yaxley-Lennon - was in contempt of court when he broadcast video footage from outside a trial at Leeds Crown Court in May 2018.
Dame Victoria, who gave the court's judgment, said that in Attorney General v News Group Newspapers ((1984) 6 Cr App R 418, 420) Lord Justice Stephen Brown had observed that there was "a strict duty of care placed upon those who publish news items relating to trials to ensure that they do not run the risk of interfering with the course of justice".
She went on: "That was in a different context, but we believe it is consistent with principle and with the gravamen of this form of contempt of court, which is culpable interference with the due administration of justice."
An order under section 4(2) of the Contempt of Court Act 1981 was addressed to the public at large.
A rule that only those who published with actual knowledge of the terms of a reporting restriction order could be penalised for breaching it would pose the serious risk that such orders would be ineffectual.
"It would be impracticable to impose responsibility on the court to ensure that everybody who is intended to be bound had actual knowledge of the terms of an order, and it would create a perverse incentive for reporters to avoid acquiring actual knowledge," Dame Victoria said.
These practicalities were reflected in the Criminal Practice Directions 2015, which required court staff to help those who asked, but placed the duty of inquiry on those who wanted to report cases.
The two judges also rejected the argument put on Robinson's behalf that it would be "problematic" to import the law of recklessness into the law on section 4(2) contempt when there was no central registry of such orders and no easy way to check on them, and that this had the potential for serious and important adverse consequences for media organisations generally.
Dame Victoria said: "We disagree. Breaches of these orders by media organisations are extremely rare. This is doubtless because professional journalists reporting on legal proceedings are generally well-informed, careful, and well-advised, and because the Court is ready to provide copies of RROs (orders) when asked."
She went on: "A person who publishes material in breach of an RRO will be guilty of contempt if he or she foresees the possibility that the publication may be a breach of such an order, but proceeds with publication, taking an unreasonable risk.
"Someone who knows or suspects that an order is in place but does not know its terms is clearly put on inquiry. If the person makes no inquiry, or fails to take

reasonable steps to find out what the terms are, it will ordinarily be easy to infer subjective recklessness."
The court was entirely satisfied that Robinson knew that there was an order restricting reporting of the trial.
It was also unnecessary to establish a specific intent to interfere with the administration of justice in
order to prove contempt by breaching a section 4(2) reporting restriction, Dame Victoria said.
"We do not see any principled basis for importing such a requirement, in a context in which the court has made an order addressed to anyone who might wish to report the proceedings, for the express purposes of avoiding a substantial risk of prejudice to the administration of justice in those proceedings."

> *Attorney General v Stephen Yaxley-Lennon*
> *Neutral citation: [2019] EWHC 1791 (Admin)*
> *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.*

Media Lawyer, July 11, 2019