

ENGLAND AND WALES / JUDGMENT

R v Simon Dalziel Garnett

COURT

IN THE COURT OF APPEAL (CRIMINAL DIVISION)

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IN THE COURT OF APPEAL (CRIMINAL DIVISION)

ON APPEAL FROM THE CROWN COURT AT WARWICK

HHJ Matthew Walsh

23S51057423

Royal Courts of Justice

Strand, London, WC2A 2LL

Date: Wednesday 3

rd December 2025

Before :

LADY JUSTICE MAY
MR JUSTICE JAY
and
HIS HONOUR JUDGE LUCRAFT KC
(Sitting as a Judge of the CACD)

Between :

REX
- and -
SIMON DALZIEL GARNETT

-----MR N HAMMOND appeared on behalf of the Appeal.
MR M LIDDIARD appeared on behalf of the Crown.
-----Computer Aided Transcript of Epiq Europe Ltd,
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JUDGMENT

(Draft for Approval) WARNING: reporting restrictions may apply to the contents transcribed in this document, particularly if the case concerned a sexual offence or involved a child. Reporting restrictions prohibit the publication of the applicable information to the public or any section of the public, in writing, in a broadcast or by means of the internet, including social media. Anyone who receives a copy of this transcript is responsible in law for making sure that applicable restrictions are not breached. A person who breaches a reporting restriction is liable to a fine and/or imprisonment. For guidance on whether reporting restrictions apply, and to what information, ask at the court office or take legal advice. The provisions of the Sexual Offences (Amendment) Act 1992 apply to these offences. Under those provisions, where an allegation has been made that a sexual offence has been committed against a person, no matter relating to that person shall during that person's lifetime be included in any publication if it is likely to lead members of the public to identify that person as the victim of that offence. This prohibition applies unless waived or lifted in accordance with section 3 of the Act. We shall refer to the complainants in this case as "C1", "C2", "C3" and "C4". Approved Judgment Lady Justice May: Reporting Restrictions 1. The provisions of the Sexual Offences (Amendment) Act 1992 apply to these offences. Under those provisions, where an allegation has been made that a sexual offence has been committed against a person, no matter relating to that person shall during that person's lifetime be included in any publication if it is likely to lead members of the public to identify that person as the victim of that offence. This prohibition applies unless waived or lifted in accordance with section 3 of the Act. We shall refer to the complainants in this case as "C1", "C2", "C3" and "C4".

Introduction

2. This appeal, brought with leave of the Single Judge, concerns the making of a sexual harm prevention order ("SHPO"). On 7 August 2024, having pleaded guilty before Coventry Magistrates' Court to eight counts of voyeurism, the appellant was committed to the Crown Court for sentence. On 30 September 2024 in the Crown Court at Warwick, the appellant was sentenced to 15 months' imprisonment and made subject to a SHPO for 5 years. There was a further order for forfeiture and destruction of all electronic items associated with the offending. We need say no more about the 15-month prison sentence or the order for forfeiture of electronics as neither is challenged on this appeal. The appeal is solely directed at the SHPO. Facts of the offending 3. 4. The appellant's offending came to light when C1, who was a colleague and long-term friend of the appellant's, discovered that the appellant had been videoing him secretly when he was staying with him. On 19 February 2022, C1 was staying at the appellant's home as he often did. They had some food and drink and watched a film before going to bed. C1 slept in the appellant's spare room as usual. In the morning the appellant put some pornography on for C1, as he often did, before checking that the shower was in good order. C1 went into the shower and in the course of bathing he performed a sex act upon himself in private. He then noticed a clock radio on the opposite

side of the bath placed so that it faced the shower. C1 thought that was strange and investigated the clock. He saw two tinted red LED lights and what he discovered to be a camera lens. He realised it was a spy camera. He panicked and hid it in his wash box and he found another spy camera in the spare bedroom hardwired to the Wi-Fi. C1 made his excuses and left. He then realised he had forgotten his coat and went back. In the short time he had been gone the appellant had realised the clock camera was missing. He asked C1 if he had seen it. Knowing that he had been caught the appellant admitted filming C1, saying it was just cheap thrills and a bit of voyeurism and he should not have done it. C1 drove off with the appellant imploring him to come back so that they could destroy any memory card together. Later C1 looked at the memory card. He discovered 30 clips and went through some of them. Some contained videos of men showering, some of the men he thought may have been work colleagues. He eventually found the video of the recording earlier that day of him in the shower confirming to him that he had been recorded. There were videos of C1 on five separate clips taken on different occasions. Approved Judgment 5. 6. In March 2022, feeling pressurized by messages sent by the appellant, C1 called a support helpline and they advised him to call the police, which he did. The matter was investigated. Another work colleague (C2) was forewarned by C1 that he too had been secretly filmed. C2 worked and socialised with the appellant and knew him well. He had stayed at the appellant's home and at his holiday home in Bulgaria. He too had found pornography playing in his room when he stayed with the appellant. He was able to confirm to the police that two of the clips on the memory card were of him in the appellant's bathroom. C3 also worked with the appellant. He thought they were friends. Although C3 had taken various other jobs he and the appellant had kept in touch. C3 returned to the company where the appellant worked in August 2022. He was alerted by the police in May 2024 and explained the find. He recognised himself in a screenshot and was told that it had been taken from a video showing him masturbating in a bedroom at the appellant's house whilst pornography was played on the TV in the background. C4 was another work colleague. He had known the appellant since 2014 or 2015. He went on nights out with him and stayed over from time to time. He also went to Bulgaria on an occasion in 2019. On one occasion he and the appellant met up and he decided to stay for the evening. The appellant had made some cannabis cookies and had pornography on in the kitchen and living room as well as in the room where C4 was staying. C4 was affected by what he had taken but he did notice a light flash visible in the wardrobe mirror making him think he was being videoed or photographed but he did not do anything about it. When the police spoke to him in May 2024, they showed C4 some stills from a video taken that night of him masturbating in his room. Sentencing and the imposition of a SHPO 7. 8. 9. The appellant was aged 52 at sentence and of previous good character. There was a pre-sentence report which we have read. We have also seen the Prosecution Sentencing Note. The Sentencing Note dealt exceptionally briefly with the proposed SHPO stating only "SHPO pending for today". There was nothing in the Prosecution Sentencing Note explaining what the proposed terms of the SHPO were or why in this case they were said to be necessary and proportionate. Very little more appears from the transcript of the hearing, where prosecuting counsel in opening dealt with the proposed SHPO like this: "In ancillary

terms... A sexual harm prevention order has been put on the system at Q1, and I don't know whether your Honour's had a chance to have a look at that. THE JUDGE: I haven't yet, but I shall." There was nothing more from the prosecution about necessity or proportionality. Mr Liddiard simply notified the judge that he had removed two paragraphs from the draft order as they were "irrelevant". When he stood up to mitigate Mr Hammond, for the appellant, went straight to the draft order, reminding the judge of the correct test i.e. necessity and proportionality before pointing out that the proposed terms of the draft related to Internet based offending which was not the nature of the voyeurism offences here. When the judge Approved Judgment turned to Mr Liddiard for clarification, he sought to justify the terms of the proposed order by pointing out that the appellant had retained images, saying that what the order sought to do was to tackle "retention of information and storage of information". No more was said about the order or its terms before the judge turned to sentence. Having passed the term of imprisonment to which we have referred the judge moved to the SHPO saying this: "I am prepared to make the sexual harm prevention order in the terms set out on the digital case system at Q1, and I do that for five years. In my judgment, although the terms are often associated with offending which is committed on the internet, the purpose of this sexual harm prevention order is designed to prevent any images being uploaded to the internet, and it is not possible to short-circuit the terms of an order. They have to be lengthy and comprehensive, and each of those -- having carefully considered them -- are necessary and proportionate in the circumstances." Grounds of Appeal 10. 11. In his written Advice accompanying the grounds of appeal Mr Hammond contended that the imposition of the SHPO in its entirety was not necessary or proportionate; the majority of the restrictions concerned use of the Internet, yet the appellant's offending had not involved the Internet in anyway. Today, in oral submissions, Mr Hammond informed us that he and Mr Liddiard had spoken and had agreed that four of the provisions in the SHPO might remain. In further discussion we ascertained that the need to restrict retention of information and the storage of information was adequately covered by two of the current clauses. Discussion and conclusion 12. The power to make an SHPO is contained in section 345 of the Sentencing Act 2020, with the requirements to be satisfied upon exercise of that power, being set out in section 346: "346. Exercise of power to make sexual harm prevention order Where a sexual harm prevention order is available to a court, the court may make such an order only if satisfied that it is necessary to do so for the purpose of— (a)protecting the public or any particular members of the public from sexual harm from the offender, or (b)protecting children or vulnerable adults generally, or any particular children or vulnerable adults, from sexual harm from the offender outside the United Kingdom." 13. An offence of voyeurism in respect of which a sentence of imprisonment is imposed is a sexual offence within Schedule 3 to the Sexual Offences Act 2002 (see paragraph 34 of Schedule 3) and accordingly engages the court's power to make an SHPO under section 345. The question then arises as to whether in the particular case the requirements of section 346 of the Sentencing Act 2020 have been met. In the Approved Judgment well-known case R v Parsons & Morgan [2017] EWCA Crim 2163, a different constitution of this Court said at [5]: "At the outset, we underline the following: i)First, as with SOPOs, no order should be made by way of SHPO

unless necessary to protect the public from sexual harm as set out in the statutory language. If an order is necessary, then the prohibitions imposed must be effective; if not, the statutory purpose will not be achieved. ii) Secondly and equally, any SHPO prohibitions imposed must be clear and realistic. They must be readily capable of simple compliance and enforcement. It is to be remembered that breach of a prohibition constitutes a criminal offence punishable by imprisonment. iii) Thirdly, as re-stated by NC (supra), none of the SHPO terms must be oppressive and, overall, the terms must be proportionate. iv) Fourthly, any SHPO must be tailored to the facts. There is no one size that fits all factual circumstances." 14. The maximum sentence for breaching requirements of an SHPO is 5 years' imprisonment. The possibility of a prison sentence for breach makes it particularly important that a court contemplating making an SHPO should examine the proposed terms with care in order to satisfy itself that the prohibitions contained in it go no further than are necessary and proportionate to "protect the public from sexual harm from the offender". This will involve considering each of the proposed restrictions against the background of the particular sexual offending which has given rise to the call for exercise of the power to make the order. In the case of each proposed prohibition or restriction the court must satisfy itself that the term is (i) necessary and (ii) proportionate. In many cases involving sexual offending these requirements will straightforwardly be met. But in every case where the prosecution seeks an SHPO, even in straightforward cases, the prosecution must be prepared to address the court as to the necessity and proportionality of each term sought. Otherwise, there is a risk that an order in usual or standard terms will be made without the court having properly considered whether each of those terms is strictly necessary and proportionate to the risk of further sexual harm having regard to the particular offending in the case before it. As the Court in Parsons pointed there is no one size that fits all factual circumstances.

15. We understand how the judge here reached the conclusion he did, when counsel had not taken him through each of the terms to explain why, given the acts of the appellant's offending, each was said to be necessary and proportionate. Although prosecuting counsel, when pressed, highlighted the storage of images as the behaviour which the order was intended to address, there was no explanation given as to why the order was nevertheless expressed in such broad terms, capturing behaviour that had nothing at all to do with storing images. Neither counsel sought to address the practical necessity for each of the terms in turn, including whether some could be separated out from the others so as to be more tailored to the particular nature of the appellant's offending and the risk which he presented. Approved Judgment 16. In making the order the judge referred to it being "designed to prevent any imaging being uploaded to the Internet". But there was no evidence that any images had been uploaded to the Internet or shared in any way with anyone else. Unlike many other sexual offences which come before the courts the appellant's voyeurism activities had nothing do with the Internet. The illicit recordings which he made appear to have been for the appellant's own private use and enjoyment. This behaviour was still a grave and shameful breach of trust against four victims whom he had called his friends,

wholly meriting the immediate sentence of imprisonment which the judge imposed.

However, as the offending did not involve sharing images or other misuse of the internet, we cannot see that the terms restricting the appellant's use of the Internet or access to social media were necessary and they should not have been ordered. This applies to paragraphs 1 to 6 and 9 to 13 of the order. We quash those paragraphs. 17. Paragraphs 7 and 8 are different. These prohibitions are in the following terms: "7. possessing any device capable of storing digital images (moving or still) unless: within three days of its acquisition, he notifies a police officer or accredited police staff from his local PPU that he possesses the item; and he makes the device immediately available to the police if they make a request to inspect it; and he does not delete images from such a device; [If the Defendant so requests, staff from his PPU are permitted (not obliged) to delete such images. It is likely that they will check the device before doing so.]

8. using remote electronic storage (commonly known as cloud storage) unless: within three days of the creation of an account for such storage, he notifies a police officer or accredited police staff from his local PPU of that activity; and he makes it immediately available, including by providing any usernames and passwords, to the police if they make a request to inspect it...."
18. We are satisfied, given the number of recordings and the period over which they were taken and stored, that each of these terms are necessary and proportionate. These are the clauses which counsel agreed between them shortly before the hearing. These prohibitions/restrictions will remain. The term of the order (5 years) is unchanged. For these reasons, the existing order will be quashed and replaced with a sexual harm prevention order for the same period of time and containing the two restrictions on storing digital images to which we have referred. Approved Judgment Epiq Europe Ltd hereby certify that the above is an accurate and complete record of the proceedings or part thereof. Lower Ground Floor, 46 Chancery Lane, London, WC2A 1JE Tel No: 020 7404 1400 Email: Rcj@epiqglobal.co.uk

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