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IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION
ADMINISTRATIVE COURT



No. CO/2184/2022
NCN: [2022] EWHC
3187 (Admin)

Royal Courts of Justice

Tuesday, 15 November 2022

Before:

LORD JUSTICE EDIS
and
MRS JUSTICE MAY

BETWEEN:

DIRECTOR OF PUBLIC PROSECUTIONS

Appellant

- and -

STANLEY

Respondent

MR J BOYD (instructed by the Crown Prosecution Service) appeared on behalf of the Appellant.

THE RESPONDENT did not appear and was not represented.

J U D G M E N T

MRS JUSTICE MAY:

Introduction

- 1 This is an appeal against the decision of District Judge (Magistrates' Court) Law ("the DJ") on 4 March 2022 refusing to impose a Knife Crime Prevention Order ("KCPO") pursuant to s.19 of the Offensive Weapons Act 2019 ("the 2019 Act").

- 2 On 3 February 2022, the Respondent pleaded guilty to the offence of having a bladed article with him in a public place contrary to s.139(1) and (6) of the Criminal Justice Act 1988 ("the CJA 1988"). The bladed article was a Rambo-type knife. On 4 March 2022, he appeared before the DJ and was sentenced. At the same time, the prosecution applied for a KCPO, but the application was refused as the DJ was not satisfied that the offence under s.139 of the CJA 1988 was a "relevant offence" for the purposes of s.19 of the 2019 Act. He concluded that s.19(10)(c) on its proper construction excluded the offence of having a bladed article in a public place.

- 3 The appellant ("the DPP") now seeks to appeal that decision. The Respondent having indicated that he did not intend to contest the appeal, he was, accordingly, not represented before us. We are grateful to Mr Boyd, counsel for the DPP, for his clear written and oral submissions which have greatly assisted us.

The factual background

- 4 I take the facts from the case stated. On 17 January 2022, the police received information that a group of youths armed with a metal pole and knives had tried to rob a delivery driver in East London. When police attended the scene the Respondent (then aged 19) was seen to

run and throw a large knife into a front garden in Corfield Road. He was arrested for having an offensive weapon contrary to s.1 of the Prevention of Crime Act 1953.

- 5 At his first court appearance on 3 February 2022 at Thames Magistrates' Court, the Respondent pleaded guilty to the offence of having a bladed article in a public place contrary to s.139(1) and (6) of the CJA 1988. On 4 March 2022, the Respondent appeared before the DJ and was sentenced to three months detention (wrongly recorded as imprisonment), suspended for 18 months with a condition of curfew between 1900 and 1700 hours for four months.
- 6 On the same occasion, the prosecution applied for a KCPO submitting that the offence under s.139 of the CJA 1988 was a "relevant offence" as "the defendant... who committed the offence had a bladed article with [him] when the offence was committed", satisfying the requirement under s.19(10)(c) of the 2019 Act.

The DJ's decision and his question for this court

- 7 The DJ disagreed that the requirement of s.19(10)(c) had been met. His reasoning appears in the case stated at paragraphs.8 and 14:

"8...as a matter of logic, it seemed to me that the offence could not be both the underlying offence and fulfil the requisite additional feature of involving the possession of a blade. To do so would be parasitic.

...

14. In my judgment, in accordance with principles of statutory construction, if Parliament had intended to add the words "or do the offence is one of possession of a bladed article contrary to s.139(1) and (6) of the Criminal Justice Act 1988" then it would have done so. My view was that s.19(10)(c) was intended to bring other non-violent offences (such as burglary, drug supply etc) within the definition of "relevant offence" if at the time of committing such an offence the defendant was in possession of a blade.

- 8 The end of his case stated the DJ posed the following question for our decision:

“Is a single offence of possession of a bladed article capable of being a ‘relevant offence’ within the meaning of s.19(1) and 10(c) of the Offensive Weapons Act 2019?”

The legal framework

9 The material parts of s.19 of the 2019 Act provide as follows:

“(1) This section applies where-

- (a) a person aged 12 or over (the ‘defendant’) is convicted of an offence which was committed after the coming into force of this section, and
- (b) a court dealing with the defendant in respect of the offence is satisfied on the balance of probabilities that the offence is a relevant offence.

(2) The court may make a knife crime prevention order under this section in respect of the defendant if the following conditions are met.

...

(4) The second condition is that the court thinks that it is necessary to make the order-

- (a) to protect the public in England and Wales from the risk of harm involving a bladed article,
- (b) to protect any particular members of the public in England and Wales (including the defendant) from such risk, or
- (c) to prevent the defendant from committing an offence involving a bladed article.

...

(10) For the purposes of this section an offence is a relevant offence if-

- (a) the offence involved violence,
- (b) a bladed article was used, by the defendant or any other person, in the commission of the offence, or
- (c) the defendant or another person who committed the offence had a bladed article with them when the offence was committed.”

- 10 Section 33(1) of the 2019 Act defines “bladed article” as an article to which s.139 of the CJA 1988 applies, and “harm” as including physical and psychological harm. The Offensive Weapons Act 2019 (Commencement No.2) (England and Wales) Regulations 2021 (SI 2021/762) brought Part 2 of the 2019 Act (sections 14 to 33) into force for a period of 14 months beginning on 5 July 2021 for the purposes of a pilot scheme. Under s.32 of the 2019 Act, the scheme applies in the Metropolitan Police district defined by regulation (2) and s.76 of the London Government Act 1963 as Greater London excluding the city of London, the Inner Temple and the Middle Temple, and including the geographical area concerned in this case.
- 11 The explanatory notes to the 2019 Act explain that its purpose was to address serious violence and in particular the increase in knife crime, gun crime and homicide. As regards knife crime, the police had sought a new type of court order which would assist in managing those at risk of knife crime in their communities. KCPOs were introduced by the 2019 Act for that purpose.
- 12 The intention was that KCPOs would be preventative in focus rather than punitive and targeted at those identified as being at high risk of being drawn into knife crime, providing them with the help and support they needed to turn away from serious violence and possession of knives. The rationale for creating KCPOs was to enable law enforcement bodies and the court to take tougher action against those involved in knife crime and to protect individuals from the harm caused by knife crime by acting to prevent future offending.
- 13 Section 30 of the 2019 Act provides the Secretary of State with a power to issue guidance to those entitled to apply for KCPOs (“Relevant Persons”) in relation to the exercise of their function. A Relevant Person must have regard to any guidance issued when exercising a

function to which the guidance relates. The Secretary of State has issued framework guidance and practitioners' guidance both dated July 2021 setting out considerations to be taken into account when applying for a KCPO, the process where such an application is made, the evidence that needs to be provided, and examples of requirements and prohibitions that may be included in an order.

14 The framework provides at paragraph 1.1:

“The Offensive Weapons Act 2019 (also described as ‘the Act’) received Royal Assent on 16 May 2019. The Act includes new legislative measures to control the sale of knives and corrosive substances, and it introduces new offences on their possession and use. It also restricts access to certain firearms. Separate statutory guidance will be issued, under section 66 of the Act, that relates to the implementation of Parts one, three, four and five of the Offensive Weapons Act 2019.

Part two of the Offensive Weapons Act 2019 introduces Knife Crime Prevention Order (KCPOs). These civil orders are designed to, with the approval of the Court, provide the police with a tool to help steer young people and others away from knife crime and from routinely carrying knives in public.

KCPOs will help to divert those who may be carrying knives, or who are at greatest risk of being drawn into serious violence, away from being involved in knife crime. They will also help to prevent others who have been involved in knife crime from further offending when an order is granted by the court following a conviction.

The intention is that KCPOs will be preventative rather than punitive – to help prevent knife crime, by using positive requirements to help steer the individual away from serious violence and to address factors in their lives that may increase the chances of offending, alongside measures to prohibit certain activities to help prevent future offending.”

The DPP's submissions

15 Mr Boyd submitted that the plain and unambiguous wording of s.19(10)(c) of the 2019 Act must include an offence of having a bladed article in a public place: by definition the defendant has had a knife with them when committing the offence. Mr Boyd argues further that this construction of the subsection is consistent with Parliament's stated purpose in introducing KCPOs, as set out in the explanatory notes to the 2019 Act and in the guidance

issued pursuant to section 30 of the 2019 Act. He points also to the wording of section 19(4) which states that a KCPO may be imposed when it is necessary to protect the public or particular members of the public from the risk of harm from a bladed article or to prevent the defendant from committing an offence involving a bladed article.

- 16 Referring to the observations of Sir Igor Judge in *R v Povey & Ors.* [2009] 1 Cr App Rep (S) 42 at [3], Mr Boyd emphasised the risk from persons carrying knives in public even when the knives are concealed and/or are not intended to be used. If knives are being carried then there is an obvious danger that in circumstances of even mild confrontation matters could escalate to the point where the knives are pulled out and used. Mr Boyd submitted that the whole purpose of KCPOs would be undermined if the offence of carrying a knife in public with all the risks attendant on such behaviour, was not a “relevant offence” capable of triggering the imposition of a KCPO where necessary in an appropriate case.
- 17 If carrying a knife in a public place was not a “relevant offence” for the purposes of s.19 then it would lead to the absurd result, which Parliament cannot have intended, where a person found in possession of a type of knife specifically designed to cause injury such as a sword stick, flick knife or butterfly knife, and charged therefore with an offence of possessing an offensive weapon under section 1 of the Prevention of Crime Act 1953, would be ineligible to be considered for a KCPO, similarly even if that person had relevant previous convictions for possession of a bladed article.

Discussion and decision

- 18 The proper approach to statutory construction has recently been reviewed and restated by the Supreme Court in *R (on the application of O (a minor, by her litigation friend AO)) v Secretary of State for the Home Department* [2022] UKSC 3 per Lord Hodge at [29] to [31]. The primary source of interpretation is the language used in the statute itself:

“Words and passages in a statute derive their meaning from their context. A phrase or passage must be read in the context of the section as a whole and in the wider context of a relevant group of sections. Other provisions in a statute and the statute as a whole may provide the relevant context. They are the words which Parliament has chosen to enact as an expression of the purpose of the legislation and are therefore the primary source by which meaning is ascertained.”

- 19 External aids to construction, such as, in this case, the explanatory notes and guidance, play a secondary role although they may cast light on particular provisions or provide background and context for the purpose of construction.
- 20 The provisions of the 2019 Act enable KCPOs to be made against a person or persons irrespective of conviction. Section 14 of the 2019 Act permits an application to be made in respect of a person aged 12 or over provided that the person has had a knife on them in a public place or school on at least two occasions. The DJ referred to section 14 in the course of his ruling as an alternative to section 19, but the provisions are intended for different situations. Section 14 applies where someone has not be convicted of any offence, section 19 is engaged where they have.
- 21 I agree with Mr Boyd that the requirements under s.19(10)(a) to (c) are disjunctive. To qualify as a relevant offence, an offence need satisfy only one of (a) to (c), although of course there are offences which will fall under more than one of these subparagraphs.
- 22 I also agree that the wording of s.19(10)(c) is apt to cover an offence of having a bladed article in a public place under s.139(1) and (6) of the CJA 1988. The obvious overlap between the wording of the subsection and the bladed article offence is clearly what concerned the DJ and ultimately persuaded him that the offence referred to had to be a separate offence to that of possessing a bladed article, but in my view the obvious meaning

- that an offence of possessing a knife in a public place is itself a “relevant offence” - must be taken as the meaning for which Parliament intended.

23 Such a construction is supported by the second condition required for imposition of a KCPO set out in section 19(4) with its reference to protection of the public from risk of harm “involving” a bladed article or preventing the defendant from committing an offence “involving” a bladed article. The offence of possessing a bladed article in a public place is just such an offence, carrying just such risks.

24 Given the view I take of the plain meaning of the words used in s.19(10)(c), it is unnecessary to seek further explanation or context in the explanatory notes to the 2019 Act or the guidance provided under s.30. Nevertheless, both sources support the same construction, each referring to the risk attendant on carrying knives in public and the intention of KCPOs to address that risk.

25 Finally, I note that the Justices’ Clerks’ Society (“JCS”), having delegated power from the Lord Chief Justice to give directions to legal advisers in the Magistrates’ Courts, has reached the same view as to the proper scope of s.19. Mr Boyd directed us to recent advice issued by the JCS to legal advisers on 5 May 2022 in these terms:

“Possession of a bladed article is a relevant offence for the purposes of s.19 of the Offensive Weapons Act 2019. There is no requirement for any other offence to have been committed at the same time.”

Conclusion

26 For the reasons I have given, and if my Lord agrees, I would answer yes to the question posed for us by the DJ, allow the appeal and remit the case back to the Magistrates’ Court for consideration of the application for a KCPO in the Respondent’s case.

LORD JUSTICE EDIS:

27 I agree.

CERTIFICATE

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