

Neutral Citation Number: [2010] EWCA Crim 835

Case No: 2009/5139/D1

IN THE COURT OF APPEAL
CRIMINAL DIVISION

Royal Courts of Justice
Strand
London, WC2A 2LL

Date: Tuesday, 9 March 2010

B e f o r e:

LORD JUSTICE THOMAS
MR JUSTICE RODERICK EVANS

MR JUSTICE COULSON

R E G I N A

v

ANTHONY RICHARDS

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(Official Shorthand Writers to the Court)

Mr F O'Toole appeared on behalf of the **Appellant**

J U D G M E N T

1. LORD JUSTICE THOMAS: On 15th July 2009 in the Crown Court at Maidstone before His Honour Judge O'Mahoney and a jury, the appellant was convicted by a majority verdict of breach of a non-molestation order. He was subsequently sentenced to 24 weeks' imprisonment suspended for 24 months with an unpaid work requirement for 150 hours to be carried out within 12 months. He appeals by leave of the single judge on a short point of law in relation to the burden of proof in relation to the relevant legislation. It is necessary very briefly to set out the facts.
2. A non-molestation station order was made in July 2008 at the Dartford County Court. It specified the appellant should not go within 25 metres of premises in Wilmington, Kent, and he should not contact the complainant with whom he had had two sons.
3. On 11th January 2009 the appellant made several telephone calls to the complainant and subsequently went to the premises to which he was prohibited from going. The appellant said that he had a reasonable excuse for going. He had telephoned and, as the phone was not answered, he was concerned about the safety of his sons. His concern arose out of the fact that on his case the complainant was an alcoholic and drunk at the time.
4. The criminal offence he would have committed was an offence under section 42A(1) of the Family Law Act 1996. That legislation made it a criminal offence to breach the terms of such an order without reasonable excuse. As he admitted going to the house the sole issue was whether he had a reasonable excuse. The judge summed up the case to the jury on that sole issue in terms which made it clear that the burden was on the appellant to establish that it was more probable than not that he did have a reasonable excuse for doing what he did.
5. The issue therefore on which leave has been given is whether that direction on that piece of legislation was correct. The Crown accepts in written submissions made to the court that the relevant authorities are R v Edwards [1952] 1 QB 27, R v Hunt [1987] 1 AC 352, R v Dorothy Evans [2004] EWCA Crim. 3102 and, finally, R v Charles [2009] EWCA Crim. 1570.
6. The Crown also accept that, as section 1(10) of the Crime and Disorder Act 1998, section 5(5) of the Harassment Act 1997 and section 42A of the Family Law Act 1996 are all in materially the same terms, the decisions of this court that deal with the Crime and Disorder Act and the Harassment Act should be applied to section 42A. As it is clear from the decisions particularly those in Charles and Evans to which we have referred, that the burden is on the Crown, it is accepted that that should apply to section 42A of the Family Law Act 1996.
7. In those circumstances, as the judge plainly misdirected the jury on the sole issue in the case, the conviction cannot be regarded as safe and must accordingly be quashed. It is to be hoped that this decision will now make it clear to all courts where the burden of proof lies in these cases, so that cases of this kind are dealt with in accordance with what are now clearly established principles.