



THE COURT ORDERED that no one shall publish or reveal the name or address of the appellant who is the subject of these proceedings or publish or reveal any information which would be likely to lead to the identification of the appellant or of any member of his family in connection with these proceedings.

30 July 2018

PRESS SUMMARY

R (on the application of AR) (Appellant) v Chief Constable of Greater Manchester Police and another (Respondents) [2018] UKSC 47
On appeal from: [2016] EWCA Civ 490

JUSTICES: Lord Kerr, Lord Reed, Lord Carnwath, Lord Hughes, Lord Lloyd-Jones

BACKGROUND TO THE APPEAL

This appeal concerns the legality under the Human Rights Act 1998 of an Enhanced Criminal Record Certificate (“ECRC”) issued in respect of the appellant (“AR”) under section 113B of the Police Act 1997. An ordinary Criminal Records Certificate is limited to the facts of convictions or cautions or their absence. By contrast, an ECRC includes information on the basis simply of the Chief Officer’s opinion as to its relevance, and whether it “ought to be included in the certificate”.

In January 2011, AR was acquitted of rape by the Crown Court. He was a married man with children, of previous good character, and a qualified teacher, but was working at the time as a taxi driver. It was alleged that he had raped a woman who was a passenger in a taxi driven by him. His defence was that there had never been sexual contact with the victim. Following his acquittal, he applied for an ECRC in the course of an application for a job as a lecturer. The ECRC was issued with details of the rape charge for which he had been tried and acquitted. AR objected to this disclosure on the basis that there had been no actual conviction and it failed to give a full account of the evidence given and how the jury came to its conclusion.

The judge and the Court of Appeal dismissed AR’s appeal against the disclosure, holding that it was reasonable, proportionate and no more than necessary to secure the objective of protecting young and vulnerable persons. The main issue before the Supreme Court was whether the admitted interference with AR’s rights under article 8 of the European Convention of Human Rights (“ECHR”) due to the disclosure was justified. There was also a question as to the proper role of an appellate court in reviewing the judge’s finding of proportionality under the ECHR.

JUDGMENT

The Supreme Court unanimously dismisses the appeal. Lord Carnwath gives the judgment with which all the other justices agree.

REASONS FOR THE JUDGMENT

The leading authority on the operation of the ECRC regime is the Supreme Court decision in *R (L) v Comr of Police of the Metropolis* [2010] 1 AC 410 (“L’s case”). In L’s case, the ECRC disclosed details of alleged inadequate parental supervision by the applicant of her child. It was held that although article 8 was engaged, the essential issue was whether the disclosure was a proportionate interference with her private life, and that in the particular circumstances of the case, the significance of the information in

respect of risk to children outweighed the prejudicial effect of the disclosure on the applicant's employment prospects [22-29].

Following the initial hearing before the Supreme Court in the present case, the court sought more detailed information about the guidance available to chief officers and potential employers as to the operation of the ECRC system, and also any evidence about its impact on those affected. The resulting picture was not entirely clear or consistent [30-41].

On the issue of the proper role of the appellate court in approaching proportionality, Lord Carnwath noted that the purpose of the appeal is to enable the reasoning of the lower court to be reviewed and errors corrected, not to provide an opportunity for parties to reargue the same case [57]. The question in relation to the standard of review is whether the judge erred in principle or was wrong in reaching the conclusion which he did [61]. To limit intervention to a "significant error of principle", as the Court of Appeal did, is too narrow an approach if it is taken as implying that the appellate court has to point to a specific principle which has been infringed by the judgment of the court below. The decision may be wrong because of an identifiable flaw in the judge's reasoning which undermines the cogency of the conclusion. It is equally clear, however, that it is not enough that the appellate court might have arrived at a different evaluation. In the present case, it was sufficient for the Court of Appeal to consider whether there was any such error or flaw in the judge's treatment of proportionality, and if there was not, there was no obligation for it to make its own assessment [64-65].

The procedural aspect of the complaint under article 8 is essentially that there was a lack of consultation, and this was rightly rejected for the reasons given by the judge as endorsed by the Court of Appeal. The officers were fully aware from the evidence at trial of the nature of AR's defence, and his personal circumstances, and they were aware and took account of the potential impact on his employment prospects. As the judge said, there was no indication of any further information he would have wished to advance [66].

On the substantive effect of article 8, Lord Carnwath rejected the submission that the interference involved in the disclosure could not be justified unless the officers were in a position to form a positive view of likely guilt, which could not be done without a full appraisal of the evidence at trial. He did not accept that, as a matter of domestic law or under article 8, it is necessary or appropriate for those responsible for an ECRC to conduct a detailed analysis of the evidence at the trial [67-68].

The judge went no further than to accept, as he was entitled to do, the Chief Constable's view that the information was "not lacking substance" and that the allegations "might be true". It was a matter for him to assess whether the information was of a sufficient weight in the article 8 balance. It should be borne in mind that the information about the charge and acquittal was a matter of public record, and might have come to the potential employer's knowledge from other sources. The judge took full account of the possible employment difficulties for AR, but regarded them as no more than necessary to meet the pressing social need for which the ECRC process was enacted [69-70].

Lord Carnwath notes in a postscript to his judgment that although he has reached a clear conclusion on the limited issues raised by this appeal, it gives rise to more general concerns about the ECRC procedure in similar circumstances. There is no clear guidance as to what weight should be given to an acquittal in different circumstances, and there is a lack of information about how an ECRC is likely to be treated by a potential employer in such a case. Careful thought needs to be given to the value in practice of disclosing allegations which have been tested in court and have led to an acquittal [72-76].

References in square brackets are to paragraphs in the judgment

NOTE

This summary is provided to assist in understanding the Court's decision. It does not form part of the reasons for the decision. The full judgment of the Court is the only authoritative document. Judgments are public documents and are available at:

<http://supremecourt.uk/decided-cases/index.html>