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(subject to editorial corrections)**

Delivered: 27/01/2023

LAGANSIDE CROWN COURT

R v SINEAD CLARKE

RULING

BEFORE HIS HONOUR JUDGE MILLER KC

1. The defendant is charged with possession of articles likely to be of use to terrorists, contrary to section 58(1)(b) of the Terrorism Act 2000.
2. The information contained within the articles being personal details such as names and addresses of nine persons together with information alleging involvement in the illegal supply of drugs and anti-social behaviour contained on seven notes which are exhibits JM1 – JM7 inclusive.
3. To prove its' case the prosecution must prove the following elements of the offence as per *Blackstone* [2023] D10.69 – 10.70 citing *R v G* [2009] UKHL 13, [2010] 1 AC 43
 - (a) That the defendant had control of a record containing information that was likely to provide practical assistance to a person committing or preparing an act of terrorism.
 - (b) That the defendant was aware of having the record
 - (c) That the defendant knew the kind of information which it contained, although it does not have to prove that the defendant knew everything that was in the document or record.
4. In the present case, it is accepted by the defence that the prosecution has proven the stated elements beyond reasonable doubt and that the only issue at trial is whether the defendant can establish the statutory defence under s.58(3) of the Terrorism Act 2000 that she had “a reasonable excuse for her action or possession.”
5. It is common case that the defence having been raised it is for the prosecution to rebut it to the criminal standard, that is prove beyond reasonable doubt

that the defence was not satisfied, and that consequently the defendant should be convicted of the stated offence. If the defence is not rebutted to the required standard, then the defendant is entitled to be acquitted of the charge.

6. In approaching the competing submissions, it is necessary to set these within the context of the evidence, which I shall endeavour to do in relatively brief compass. As so much of the background to the case was not in dispute, I shall refer to the helpful summary provided by Mr Steer in the Crown Opening. I shall consider in more detail the evidence of Mr Hamill, Mr Maxwell and D/Con McVicar, who were the only witnesses required to be called for the prosecution and then the evidence of Ms Clarke, herself, which is obviously of crucial importance to an assessment of the core issue in the case.

FACTS

7. On 27th June 2018 at 10:21am, police entered the defendant's home at White Glen Dunmurry in respect of a search pursuant to Schedule 5 of the Terrorism Act 2000.
8. The defendant was not present, but her two sons, aged 14yrs and 17yrs respectively were and shortly after police entered, the older son, said that he was calling his mother on his mobile. Subsequently he entered the living room and told the officers that his mother was looking for her wedding planner and he didn't know what it looked like. He did not retrieve this and returned to the kitchen.
9. The officers continued the search and whilst examining a bookshelf in the corner of the living room, Constable Murphy found a total of seven blue post-it notes, which were folded up inside one another and placed under a notebook (wedding journal). These notes contained personal details of nine people including names, addresses or a specific description of the house where they lived together with the fact that they were involved in dealing with drugs and other anti-social behaviour. These notes were laid out on the floor and recorded by BWV and photographed and seized as JM1 - JM7.
10. The defendant arrived home at this point and said to police "that's my workbook" and "you could just phone BASE2 and you will see all them people are (inaudible) on it, no big deal". The defendant was then arrested pursuant to S.41 of the Terrorism Act 2000.
11. At the relevant date the defendant was an employee of Conflict Resolution Services Ireland (CRSI) based at 274 - 276 Falls Road, Belfast. This

organisation provides a facility allowing persons who believe themselves to be under threat from dissident republican paramilitaries to first seek confirmation of that threat and then a means of having it removed or the situation otherwise defused. In addition, republican paramilitaries may, on occasion, provide information regarding targeted persons directly to CRSI.

12. The defendant worked for CRSI for almost six years from in or around 2013 to 2018. Her role was to check out the information received to confirm its veracity. As part of that process, she would frequently liaise with BASE2, which is a crisis intervention project offering clarification, support and mediation services to individuals and families at risk of violence or exclusion from their community. BASE2 is funded by the NIHE, to which many under threat, make their initial report. Mr Jeff Maxwell, who was the Senior Practitioner within BASE2, also held a position on the board of CRSI until August 2018 and was therefore familiar with the workings of the organisation though not necessarily with the individual cases being dealt with by the defendant.
13. By its nature BASE2 deals with alleged threats emanating from both Loyalist and Republican sources and if from the latter, Kerry Anne Maria would liaise with CRSI to confirm the validity of the alleged threat whilst Mr Maxwell essentially dealt with the Loyalist threats. Similarly, where CRSI came into information this might be referred to BASE2 as the need for the targeted person/family to be rehoused would frequently arise. Mr Maxwell confirmed that an average of 30% of referrals turn out not to be genuine.
14. It is common case that for organisations such as CRSI to be effective there needs to be a close level of trust between the individual employees and the organisations issuing the threats, which include Oglai na hEireann (ONH), INLA & Republican Sinn Fein. As a niece of Gerry Adams and with both sides of her family from a staunch republican background, the defendant clearly had the necessary confidence of those paramilitary groups.
15. Joe Hamill is the former director of CRSI. He told the Court that the information regarding individuals was normally written on post-its, writing pads. The information was stored for as long as was necessary to close the case on that individual, something that in most cases might take a matter of a day or two but could occasionally take many months depending on the complexity involved in verifying the threat. Obviously where the information emanated from the dissident republican organisation itself the threat level could be more easily verified. Thereafter the papers were shredded. None of this information was backed up on computers on the basis, he asserted, that the staff members had a good working knowledge of the community and

therefore a good recall of their past cases. Generic records are stored on computer and form the basis of quarterly reports to the International Commission of the Red Cross (ICRC-International), which is a sponsoring body of the CRSI.

16. Mr Hamill stressed where paramilitary organisations reported directly to CRSI that an individual was under threat, his practice was to advise them to inform the person themselves as he did not see it as a proper role for CRSI to act as a conduit for the illegal organisations in their criminal threats. He stated, however that he did act in exceptional circumstances where he had cause to believe such a threat was imminent. Furthermore, whilst this was his policy, he also accepted that other employees who, like the defendant, had been employed by CRSI before his appointment in 2017, did not routinely adopt the same practice. He also accepted that employees, such as the defendant might take information out of the office, and this was not a cause for concern provided that it was securely stored.
17. Following the search of Ms Clarke's home, a further search was then carried out at her workplace, in the presence of Mr Hamill. More materials were seized, but notably no blue post-its, of the same type were located. The items seized comprised one A4 sized notebook (AB2), which contained records of clients' names and addresses from January 2017 to May 2018. Details recorded included the nature of the case and if it had been resolved.
18. Mr Hamill provided police with details of the number of referrals, as recorded in the quarterly returns, received during the period between January and March 2018 (79) and between April and June of that year (57). When shown the list on the blue post-its, Mr Hamill stated that it was typical of details that would have originated from a DR group in relation to persons who were under threat. He had no knowledge of the persons named on the list and could not say whether any had engaged with CRSI. On cross referencing the names on the 7 post-its only one name, A McC appeared in the register on the first page from January 2017, but this was in relation to a threat which had been marked as resolved.
19. The defendant was interviewed at Musgrave Street with her solicitor, on 27th June 2018 (7.24pm – 8.09pm; 9.00pm – 9.33pm; 10.32pm – 11.18pm; 11.20pm – 11.30pm; 11.39pm – 11.59pm) and subsequently on 8th May 2019 (2.16pm – 3.01pm; 3.03pm – 3.44pm). Throughout this entire process she exercised her right not to respond to any of the questions posed or offer explanation or comment in respect of the case against her as it unfolded. This stance will be the subject of discussion later in this judgement.

20. In light of the defendant's recorded response to police at the time of her arrest and in particular her reference to BASE2, Mr Hamill and Mr Maxwell were asked if they had any relevant information.
21. Mr Hamill confirmed that the defendant was on sick leave between the 30th of May and 6th June 2018 but that in or around this time she had spoken to him on several occasions saying that she needed to speak to Jeff Maxwell as she had referrals for him. He passed on this information to Mr Maxwell who confirmed that he had not received any missed calls or messages from the defendant but later in June whilst attending a meeting of the CRSI Board he spoke to her. He asked about the referrals, and she told him that she would give him them at another time. This she did not do.
22. The Court notes that in emails dated 4th June 2018, headed 'Referrals', Joe Hamill informed Jeff Maxwell that he had been told by the defendant she had been leaving messages using her mobile on Jeff Maxwell's mobile answering machine.

Police reviewed the outgoing call data for the defendant's mobile and there were no calls to NIACRO/BASE2 offices during this time, as confirmed by Mr Maxwell. There were, however, no checks carried out in respect of whether calls were made to Mr Maxwell's own mobile phone.

23. 8 out of the 9 names found in the defendant's home had never been referred to BASE2 and the 9th had been referred in 2010. Mr Maxwell confirmed that BASE2 had not had any referrals from the CRSI office on the Falls Road in the months between February and July 2018.
24. Brian O'Kane, then manager of the Belfast Region Housing Solutions for the NIHE, confirmed that his department deals with applications of persons presenting themselves to the NIHE as being either homeless or looking for options including house moves, occasioned by threats or intimidation. He confirmed that none of the names on the list had presented looking for a house move.
25. Statements were also recorded from two other employees of BASE2, Kerry-Anne Maria, who at the time of the defendant's arrest, was on maternity leave and Hannah McKnight, who covered for her during her period of leave. Ms McKnight confirmed that between January and July 2018 she had no contact with anyone from the CRSI Office on the Falls Road. Ms Maria stated that in cases relating to verification of threats from republican paramilitaries she would usually have liaised with Sean Reilly at the Falls Road office of CRSI and sometimes with the defendant. In her experience CRSI might provide

details of one or perhaps two persons under threat. She confirmed that she was never supplied with a list of names by CRSI. Regarding the list of 9 names, she thought she had heard of two but was unsure as to the context.

26. The handwriting on the notes was analysed. The report concluded that there was limited evidence that the defendant was not the author. Two separate fingerprints were found on a single file sheet. One of these belonged to Ms Clarke whilst the other was identified as belonging to a person known to police and who was subsequently arrested in August 2019 in respect of being in possession of documents likely to be useful to terrorists and of membership of the IRA. No fingerprints were found on any of the blue post-its.

The Defendant's case

27. As noted above, the defendant chose not to provide any explanation for how or why she came to be in possession of the blue post-its during the detailed and intensive interviews on 27th June 2018. Moreover, she maintained this stance when further interviewed on 8th May 2019 after police had carried out additional investigations as outlined above. Indeed, the first intimation of the case she subsequently relied upon at her trial was not made until her defence statement was lodged on 10th October 2022. This was subsequently subject to a small but not insignificant amendment on 6th December 2022, this being after the conclusion of the evidence on 24th November 2022.
28. This detailed defence statement formed the basis of the evidence Ms Clarke thereafter gave at her trial. In this she reiterated her republican credentials, which she asserted placed her in a position of trust whereby she could seek to mediate for a non-violent resolution to threats issued by republican paramilitary groupings. She referred, in support of this to her former work for Community Restorative Justice Ireland, during which she obtained a diploma in conflict resolution.
29. As a result of her work with CRSI, Ms Clarke claimed to have assisted hundreds of people under threat of violence from paramilitaries and had gained a reputation for ensuring the confidentiality of both sides, something, which she also asserted was essential for preserving the safety of herself and her family.
30. It was her case that informal meetings frequently took place with members of republican paramilitaries, during which information was passed. This included, as in the present case, instances were members of dissident groups or those connected with such groups, called at her home, and provided her

with information identical to that found by police on the 27th of June 2018. She would then have taken this information into work for onward communication to the person concerned or to bodies such as BASE2.

31. Turning from the general to the specific, the defendant made the case that the post-its were delivered to her house on a Friday night (this being the new information added to the Defence Statement subsequent to the defendant giving evidence on 24th November) by a man she wouldn't name for reasons of confidentiality. This man had never been to her door before, and he told her he was delivering the lists on behalf of a named individual she knew to be a member of a dissident republican paramilitary organisation. The man told her that the named persons should be warned that they were under threat as a result of their activities.
32. As noted above in the course of her evidence in chief the defendant for the first time intimated that the list had been brought to her house on the first Friday in June 2018, (this would have been the 1st). She also deviated from the content of the Defence Statement by asserting that she knew him as one of her sources and believed he was a member of a proscribed organisation.
33. The post-its were wrapped inside a single file page and she knew they had to be secured so placed them, beneath her wedding planner on a bottom shelf in the living room. Her case is that she would normally take such material to the office, but this was a Friday night, and she was on sick leave. She said that she told Joe Hamill she had these names (didn't provide details) and told him she needed to speak to Jeff Maxwell about this and other issues. This was on Monday 4th June, and she tried to contact Mr Maxwell via her work phone calling to his work phone. There was a board meeting of the CRSI on Friday 8th June, which was after she returned from her sick leave. She claimed that she told Jeff Maxwell she needed to speak to him about referrals, but he was going into the meeting and said they could talk later.
34. Ms Clarke was asked why she did nothing about the notes between 8th June and their discovery by police on 27th. She accepted that she had been negligent in failing to follow up with Mr Maxwell and to ensure the notes were brought to her office, where they could be securely placed. Pressures of family life including the fact her youngest son's health issues, having two other teenage children and that her partner had changed jobs and was leaving for work at 2.00am, meant she was getting little sleep and trying to juggle so many responsibilities including other work-related duties.
35. Mr Toal asked the defendant why she had instructed her elder son to remove the wedding planner, which was clearly an attempt to remove the post-its

before police could find them. She responded by saying that to be seen to cooperate with police would have had ramifications in respect of her personal security. Similar reasons were advanced for her refusal to provide handwriting samples and her retention of her right to silence during interview. This was also provided as an explanation for wanting to put her mobile phone beyond the reach of police as she didn't want to compromise her work.

36. Mr Steer referred the defendant to her contract of employment and to para 22, wherein it was stated that any duty of confidentiality was with regard to information, which was the property of her employer.
37. It was implicit in the defendant's case that the information handed to her was from a reliable source and represented a genuine threat against the persons named. By her own account she had failed to warn the individuals concerned or take any meaningful steps to do so. If her account was credible, she was in possession of this information for nearly four weeks during which they were unknowingly subject to a real and verifiable threat to their lives and safety.
38. Mr Steer put it to Ms Clarke that she had tried to create a connection between the post-its and the conversation with Joe Hamill leading to his email correspondence with Jeff Maxwell on 4th June. It was for that reason, he suggested, that she had in her evidence in chief for the first time introduced the 1st of June as the date upon which she had received the notes. Why would she contact BASE2 before alerting the persons named in the notes? What is it that BASE2 could add to the state of her knowledge as to whether or not the threats were genuine? As previously noted, she knew that they were. Only following contact with the persons under threat could it then be decided if those persons wished to be re-housed, or whether they wished to have any action taken on their behalf. Mr Hamill's evidence was that over the period of a few weeks (up to the time of the search) he would have expected that some of the persons on that list would have been contacted.
39. In response to each of these points the defendant replied, "I genuinely haven't an answer except that I messed up."

The Closing Submissions

40. The prosecution is based on section 58(1)(b) being a charge of possessing a document or record containing information of a kind likely to be useful to terrorists. It is common case that each of the elements of this charge have been

made out in this case; thus, the prosecution has proven beyond a reasonable doubt that:

- a) She had control of a record which contained information that was likely to provide practical assistance to a person committing or preparing an act, or terrorism.
- b) She knew that she had the record.
- c) She knew the kind of information it contained

41. As Mr Steer points out the issue is the defendant's role in possessing the records rather than her intentions regarding those records – the prosecution does not have to prove that she had a terrorist intention.

42. In these circumstances it is for the defendant to establish the basis of the defence under s. 58(3), which is governed in turn by s. 118 of the Act

s.58(3) "It is a defence for a person charged with an offence under this section to prove that he had a reasonable excuse for his action or possession."

s.118 Defences

"(1) Subsection (2) applies where in accordance with a provision mentioned in subsection (5) [this includes s. 58(3)] it is a defence for a person charged with an offence to prove a particular matter.

(2) If the person adduces evidence which is sufficient to raise an issue with respect to the matter the court or jury shall assume that the defence is satisfied unless the prosecution proves beyond reasonable doubt that it is not.

(3) Subsection (4) applies where in accordance with a provision mentioned in subsection (5) a court –

(a) may make an assumption in relation to a person charged with an offence unless a particular matter is proved, or

(b) may accept a fact as sufficient evidence unless a particular matter is proved.

(4) If evidence is adduced which is sufficient to raise an issue with respect to the matter mentioned in subsection (3)(a) or (b) the court shall treat it as proved unless the prosecution disproves it beyond reasonable doubt."

43. I am satisfied that the defendant has, to quote the wording of the statute, "adduced evidence which is sufficient to raise an issue with respect to the

matte” and accordingly the burden reverts to the Crown to rebut that defence to the criminal standard.

44. Mr Steer argues that Ms Clarke’s evidence was both self-contradictory and at odds with that presented to the Court by Mr Hamill. In particular her comment recorded on the BWF at the time of her arrest - “You’s could just phone Base2 and you’ll see that all them people are (inaudible) on it. Not a big deal.” - is not borne out by her later admission that she had, in fact not succeeded in contacting Jeff Maxwell and therefore BASE2 would have been unaware of the content of the notes.
45. Furthermore, her words clearly imply knowledge of the contents of the notes, and the details of the names recorded therein. This is at odds with her assertion that she had only handled the outer covering sheet and was thus unaware of the contents of the notes themselves.
46. The Court is also asked to note that the defendant took steps to try to recover the notes once she was made aware of the police search, by asking her son to get her wedding planner, which she knew concealed the notes on the shelf in her living room. This, it is argued clearly supports Mr Steer’s contention that she was only too well aware of the notes’ significance.
47. This brings me to the issue of the defendant’s failure to answer questions during the several interviews on 27th June 2018 and 8th May 2019. Whether or not she was relying on legal advice and whether or not such advice, if given, was appropriate, her failure to provide any explanation for the presence of the notes in her house in circumstances where the evidence clearly called for such an explanation gives rise to consideration of whether an adverse inference should be drawn against her. I shall deal with this matter in my conclusion to this judgement.
48. Mr Toal submits that in considering the ambit of the statutory defence the Court should focus on the core question of whether the defendant had a legitimate reason to have the notes in her possession. He referred to s. 58(3A), which amplifies and provides guidance on the interpretation of subsection 3.

“(3A) The cases in which a person has a reasonable excuse for the purposes of subsection (3) include (but are not limited to) those in which –

(a) at the time of the person’s action or possession the person did not know, and had no reason to believe, that the document or record in question contained, or was likely to contain, information of a kind likely to be useful to a person committing or preparing an act of terrorism, or

(b) the person’s action or possession was for the purposes of –

- (i) carrying out work as a journalist, or
- (ii) academic research.”

49. Clearly s. 3A (a) does not afford any assistance to the defendant as she has accepted, she knew the contents of the document and its purpose. However, Mr Toal asks the Court to see the defendant as being in an analogous position to that of a journalist who has a legitimate reason to have such information in her possession.
50. It is not lost on the Court that all the available evidence points towards the originator of the notes being a person associated with a terrorist organisation. The defendant, herself has said so and the other fingerprint, aside from the defendant's, found on the outer sheet, was that of a person subsequently charged with being a member of the IRA. So, whilst the information is such as would likely be useful to a terrorist organisation the defendant being in possession of the document would not advance that usefulness any further. Nevertheless, I accept Mr Steer's submission that the defendant's intention is of limited application in the context of s. 58(1).
51. Equally I acknowledge the strength of Mr Toal's assertion that by virtue of her role in CRSI, Ms Clarke had a legitimate interest in receiving sensitive information such as that forming the content of these notes. Provided she acted within the scope of her employment, he submits that she would be in an analogous position to that of a journalist as envisaged by s. 58 (3A) (b)(i) on the basis that:
- “ i.) They both maintain confidential sources.
 - ii.) They both receive information from members of illegal organisations in the course of their duty.
 - iii.) They are both acting in the public interest.
 - iv.) And they are both in a difficult position if they betray those sources as they will have breached their promise of confidentiality and they are then finished in their chosen profession.”
52. Both Mr Hamill and Mr Maxwell confirmed that the information contained within the notes was entirely consistent with that dealt with by both CRSI and BASE2.
53. This then brings me to the question of when the defendant came into possession of the notes, why they were in her home and not at the CRSI office and what conclusions can then be drawn from my findings.

54. Until she gave her evidence at trial there was no information as to when the defendant took possession of the notes. In her evidence she said for the first time that it was on the evening of Friday 1st June 2018 that the unnamed individual came to her house and handed her the post-its inside the folded cover sheet. This led to Mr Toal applying to amend the Defence Statement to include this detail.
55. Ms Clarke linked this date to three independently verifiable pieces of evidence. First that she was on sick leave between the 30th of May and 6th June and second that on the 4th of June Joe Hamill was emailing Jeff Maxwell to tell him that Sinead Clarke had been trying to contact him about referrals. Finally, on the 8th of June Mr Maxwell confirmed that he had spoken to the defendant about the referrals, and she told him she would give them to him another time.
56. As previously noted, there is no evidence that Ms Clarke had tried to ring Jeff Maxwell in the first few days of June, and she never followed up on her promise to him on the 8th to pass on the referrals. Nevertheless, as she didn't make any other referrals to BASE2 during this period this does provide some supporting evidence for the defendant's claim.
57. Accepting that this timeframe is credible leads to the next question, namely why did the defendant have the notes in her home for upwards of four weeks leading up to the date of the police search on Wednesday 27th June 2018? In terms her response to this was that she "messed up" and acted unprofessionally by failing to bring the notes to her office and taking steps to inform the persons named, whose personal safety must have been at risk.
58. Mr Toal submits that the notes were not secreted but remained in the living room of her house and had not been passed on by the time police carried out the search. That method of storage and period is, he asserts, inconsistent with it being held for passage to dissident terrorists.

Inferences and Good Character

59. There is no doubt that the prosecution case against the defendant is strong and is one that called for an answer from her during interview; something she failed to provide. Mr Steer therefore asks the Court to draw an adverse inference, which should be taken as supportive evidence to that accumulated against her and in such circumstances return a guilty verdict.

60. On the other hand, I have to bear in mind that the defendant comes before the Court at the age of 43, with no previous convictions. She is therefore a person of good character. She has given evidence on her own behalf, and she asks the court to take account of her personal circumstances as a mother of 3 children, including the youngest who is autistic. She has worked for several years in a role whereby she sought to resolve dangerous issues of confrontation by way of non-violent solutions.
61. The Defendant comes from a staunch republican background, something she states gave her credibility with paramilitary organisations and allowed her to do her work effectively. This, she says, made her wary about being seen to co-operate with the authorities out of a fear she might otherwise compromise her contacts, her safety and that of her family. She has never previously been arrested, charged, or had her home searched by police.
62. Mr Toal, however, submits that notwithstanding her background she had been prepared to co-operate in the prosecution of her own father, Liam Adams, who was convicted of serious sexual offences. Taking all these factors together he asserts that the Court should place considerable reliance on her good character and conclude that it was less likely she would be guilty of this offence.

Conclusions

63. Given the nature of her employment had the defendant taken the post-its to her office and left them there, regardless of whether she then followed up on them, it is hard to see any basis upon which she would have faced prosecution. On the other hand, by keeping them in her home she opened herself up to the accusation that she had them for an illegal purpose.
64. Of course, she could so easily have avoided all that has befallen her had she simply told police during interview what she subsequently relied on in court. She accepts that her failure to do so was a mistake. She also admits that she acted unprofessionally by not carrying out her responsibility to those named on the individual notes to warn them as to the threats posed by dissident republicans.
65. By way of mitigation, she pleads family pressures and health concerns, which led her to not giving priority to pursuing Jeff Maxwell with details of the referrals. In the final analysis, Mr Toal asks this Court not to elevate what were in essence errors and failings beyond the mistakes they are to criminal culpability.

66. I have considered all aspects of the evidence and weighed the competing arguments ably advanced by both counsel. The defence under s. 58(3) has been raised and this has been robustly challenged by the prosecution. Nevertheless, I am not satisfied that they have succeeded in rebutting this to the required criminal standard. In these circumstances the defendant is entitled to be acquitted of the charge and I so order.

Geoffrey Miller KC

Judge of the Crown Court in Northern Ireland

27th January 2023