the police. Is it too much to hope that this new case will make them think again?

J.R. SPENCER

TERRORIST POSSESSION OFFENCES: CURIOSITY KILLS THE CAT?

SECTION 58(1) of the Terrorism Act 2000 criminalises persons who collect, record or possess documents or records of information "of a kind likely to be useful to a person committing or preparing to commit an act of terrorism". Section 57(1) of the same Act makes it an offence to possess "an article in circumstances which give rise to a reasonable suspicion that his possession is for a purpose connected with the commission, preparation or instigation of an act of terrorism". A person charged with an offence under section 58(1) may advance as a defence that he had "a reasonable excuse for this action or possession". For an offence under section 57(1), it is a defence that "possession of the article was not for a purpose connected with … terrorism". For both defences, it suffices that the accused adduces evidence that is sufficient to raise the issue before the court; provided the accused adduces such evidence, it is incumbent upon the prosecution to disprove the defence beyond reasonable doubt. In *R* v. *G* and *R* v. *J* [2009] UKHL 13, [2009] 2 W.L.R. 724, the House of Lords allowed the Crown's appeals against two rulings by the Court of Appeal concerning the interpretation of these offences and defences, and answered a set of certified questions in relation to them.

In *G*, a prisoner suffering from undiagnosed paranoid schizophrenia had been found in possession of, *inter alia*, a construction plan for a pipe bomb and some notes concerning the manufacturing of explosives. G submitted that he had collected this information with a view to it being found by prison officers searching his cell, his objective being to "wind them up … with this terrorism stuff". The Court of Appeal accepted that this could amount to a "reasonable excuse" under section 58(3) in light of the judgment of a differently constituted Court of Appeal in *R* v. *K* [2008] EWCA Crim 185, [2008] Q.B. 827, that any explanation which showed that the defendant possessed the document or record for a purpose other than to assist the commission or preparation of an act of terrorism would amount to a "reasonable excuse", but certified that three questions of law of general public importance arose. The House of Lords restored the ruling of the trial judge that G had no reasonable excuse.

J was a young muslim found in possession of various encrypted files of an extremist Islamic content and a video of the West Midlands

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Police headquarters was discovered on his mobile phone. J's case was that he had never opened the files in question and that he had filmed the police headquarters by sheer co-incidence. He also maintained that he did not possess any of this information for any purpose connected with terrorism. J originally pled guilty to charges under section 58(1) but was later allowed to vacate his guilty pleas and to plead not guilty, the judge maintaining that it followed from the Court of Appeal's decision in *R* v. *K* that when a defendant adduced evidence capable of establishing a "reasonable excuse" it was for the prosecution to prove beyond reasonable doubt that he possessed the relevant documents for a terrorist purpose. The Crown's appeal failed before the Court of Appeal, but – as in *G* – the Court certified various questions of public importance concerning the interpretation of sections 57 and 58. The House of Lords allowed the appeal and reversed the rulings of both the Court of Appeal and the judge.

For their Lordships, section 57 focused on the *circumstances* of the defendant's possession of an (otherwise usually innocent) article – these being of such a kind as to give rise to a "reasonable suspicion" that possession is for a terrorist purpose. Section 58, on the other hand, was concerned with the *nature* of the information collected, recorded or contained in the incriminating documents (at [58]). This is information "which would typically be of use to terrorists, as opposed to ordinary members of the population" (at [43]). The defences available to an accused were correspondingly different. In the context of section 57, it is a defence for the defendant to adduce evidence (which the prosecution must disprove beyond reasonable doubt) that shows that his possession of the article in question is not for a terrorist purpose. In respect of section 58, the absence of any terrorist-related purpose might well be no defence. Rather, what was required is evidence that the defendant had a "reasonable excuse" for collecting, storing or possessing records of this information. An unlawful purpose unconnected to any potential terrorist offence would certainly not do (at [77] and [79]); simple curiosity may or may not do, depending on the circumstances (at [83]).

The result of all this is a significant extension of liability beyond the bounds established by the Court of Appeal's ruling in *R* v. *K*. Their Lordships were untroubled that, by their own admission, their reading of sections 57 and 58 created a situation where ordinary crooks, or even ordinary practical jokers, might get caught by legislation aimed at preventing terrorist acts, which moreover lays down very severe punishments. Surely it is only in the most abstract sense that the information collected by G (not a prospective terrorist) with a view to being found by the officers searching his cell (not prospective terrorists either) constituted information of a kind "likely to be useful" to a would-be terrorist? It is difficult to see any terrorism-related wrong that

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G supposedly committed. If he acted wrongly, his wrong is more akin to the creation of a public nuisance or the wasting of police time. Surely this is not the sort of wrong that section 58 was meant to capture.

Equally obscure is the wrong that supposedly underlies the offence in section 57. To conduct oneself in a manner that "gives rise to a reasonable suspicion" of wrongdoing is – as countless exasperated marriage counsellors try to get across to their clients – no proof of wrongdoing. Nor is it something that is in itself wrong. If the aim of section 57 (as their Lordships suggested at [41]) is to circumvent a suspect's right to silence by forcing him indirectly to provide an explanation for the suspicious state of affairs, there is some moral force behind the Court of Appeal's approach in *K* that once the suspect has provided an explanation, the prosecution ought to be required to prove the substantive wrong of possession of articles for a terrorist purpose.

Sections 57 and 58 of the Terrorism Act are ill-thought-through offences that oscillate between criminalising silence in suspicious circumstances, criminalising conduct that can in fact be shown to be connected, however remotely or indirectly, to future acts of terror, and conduct that may conceivably increase the risk of such acts being committed. The thin veneer of logic in this judgment can hardly mask the fact that the House is bending over backwards to leave this prosecutorial scatter-gun arsenal undisturbed.

ANTJE DU BOIS-PEDAIN

CRIMINAL LIABILITY FOR ACCIDENTAL DEATH: BACK TO THE MIDDLE AGES?

FROM time to time the courts decide important cases without noticing their broader implications, and thereby set the law off in the wrong direction. Such a case, I fear, is *R* v. *Chargot Ltd. and others* [2008] UKHL 73, [2009] 1 W.L.R. 1.

This arose from a fatal accident at a construction site, in which the driver of a dump-truck managed to tip it over and bury himself under the load of soil that it was carrying. This resulted in the prosecution of three persons – two legal and one natural – for offences under the Health and Safety at Work Act 1974. D1, the driver's employer, was prosecuted for failure to perform its duty under section 2, which is "to ensure, so far as is reasonably practicable, the health, safety and welfare at work" of his employees. D2, the contractor in charge of the site, was prosecuted for failure to perform its duty under section 3, which is "to conduct his undertaking in such a way as to ensure, so far as reasonably practicable, that persons not in his employment who may be affected thereby are not thereby exposed to risks to their health and

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