Neutral Citation Number: [2019] EWCA Crim 912

Case No: 201804712 B2

IN THE COURT OF APPEAL (CRIMINAL DIVISION)
ON APPEAL FROM CROWN COURT AT LEWES
Recorder Smith
T20180199

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 06/06/2019

Before :

LORD JUSTICE FULFORD
MR JUSTICE ANDREW BAKER
and
SIR JOHN ROYCE

- -

Between :

Darryl Mark Pledge	**Appellant**
- and -	
Regina	**Respondent**

- -
- -

Mr A G Thompson (instructed on a Direct Access basis) for the **Appellant**
Mr Matthew Thompson (instructed by **CPS**) for the **Respondent**

Hearing dates : 2nd May 2019

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Approved Judgment

Lord Justice Fulford:

Introduction

1. On 17 October 2018 in the Crown Court at Lewes before Mr Recorder Smith and a jury the appellant was convicted of Dangerous Driving contrary to section 2 Road Traffic Act 1988 ("RTA 1988").

2. On 18 October 2018 he was sentenced by the Recorder to four months' imprisonment suspended for 12 months.

3. Additionally, he was disqualified from driving for a period of 12 months pursuant to section 34 Road Traffic Offenders Act 1988 ("RTOA 1988") and ordered to take an extended retest pursuant to section 36 RTOA 1988. There was an order for the appellant to pay £2,800 towards the costs of the prosecution and a statutory surcharge of £115.

4. He appeals against his conviction by leave of the single judge. The point taken on this appellant's behalf relates to an important but extremely narrow issue of whether the prosecution had acted with reasonable diligence in fulfilling the obligation either to serve the appellant with a summons within 14 days of the offence, or to send notice of the possibility of the prosecution within 14 days of the offence to the driver or to the registered keeper of the vehicle (given he had not been warned at the time of the possibility of a prosecution). In these circumstances, a brief description of the facts underpinning this prosecution will suffice.

5. On 21 April 2017, Paul Markwick, a civilian speed/safety camera operator, was in a safety camera van, operating a video camera, when the appellant's Ford Transit van came to his attention as it was driven along the Old Shoreham Road in Hove, because the windscreen appeared to be completely shattered. Due to the level of damage, it was hard to see the driver through the cab window. Part of the roof was depressed, with the worst of the damage on the passenger side of the vehicle. He informed the police as to what he had seen.

6. As we have already set out, the appellant was not warned at the time of the possibility of a prosecution. Mr Markwick immediately began investigations into the alleged offence, and in particular he looked up the registered keeper of the vehicle by carrying out an internet search using Google for "Sussex Waste Services", which led him to the company's website. He looked up the business telephone number and telephoned the company on the same day as the incident. He spoke to the appellant and informed him that a vehicle examiner would be in touch with him to arrange an examination of the vehicle. Mr Markwick sent a notice of intended prosecution, dated 26 April 2017 (therefore 5 days after the incident), which was addressed to Mr Darryl Pledge (Sussex Waste Services), Sixt House, 5 Langley Quay, Waterside Drive, Langley, Slough, SL3 6EY. This was the registered keeper's address as it appeared on the DVLA database.

7. On 11 May 2017 a photocopy of the notice was returned to Sussex Police (therefore, we note, more than 14 days after the incident). It had been completed by the recipient, who was the previous owner of the vehicle (the car hire company, Sixt), to the effect that the vehicle had been disposed of on 15 March 2011. This prompted an immediate enquiry by Mr Markwick as to the correct address for the appellant. He issued further notices of

intended prosecution on 11 May 2017 to two different addresses, one obtained from Sussex Waste Services' website and the other from the insurance database.

8. The question clearly arises as to how this mistake came to have been made.

9. Ian Clarke, an employee at DVLA, gave evidence as to the records they hold. He explained that the vehicle logbook (the V5C certificate) was correctly issued by the DVLA in 2015 showing the address of "Sussex Waste Services, Darryl Pledge, 15 The Twitten, Southwick, Brighton, BN42 4DB". Subsequently the DVLA received an old V5 document from the previous owner of the vehicle, the car hire company Sixt, notifying a change of business address. The name of the registered keeper was not changed in the DVLA's records as a result of this notification, but the address was changed to Sixt House in Slough, as follows "Mr Darryl Pledge, (Sussex Waste Services), Sixt House, 5 Langley Quay, Waterside Drive, Langley, Slough, Berkshire, SL3 6EY". As a consequence, the notice of intended prosecution sent on 26 April 2017 was directed at the correct individual but at the wrong address. Mr Markwick testified during the trial that this was the address of the registered keeper of the vehicle shown on the Police National Computer, which in turn obtained its vehicle registration information directly from the DVLA, and which he used when preparing and sending out the original notice of intended prosecution dated 26 April 2017.

10. Mr Markwick's unchallenged evidence was that the registered address for a vehicle was often located somewhere that is not automatically associated with its keeper.

11. Proceedings were commenced against the appellant a little under a year later, on 15 March 2018, on the basis that the state of his van was such that driving it on the public highway amounted to a danger to pedestrians and other road users. He appeared at Brighton and Hove Magistrates' Court on 29 March 2018 and elected trial by jury.

12. A written report from the insurance assessors, in March 2017, assessed the vehicle as unroadworthy and William Holden, a forensic examination officer, gave evidence that there would have been restricted visibility looking forward from the cab due to the damage across the windscreen.

13. At trial, the appellant accepted that he drove the van on 21 April 2017, and that the vehicle was damaged when he did so. His case was that the damage to the vehicle was not significant and was mostly on the passenger side, as opposed to the driver's side; that the vehicle was being driven slowly and carefully to a place of repair; and that his driving was not dangerous.

14. The trial turned on the question of whether the jury could be sure that a careful and competent driver would have realised that driving the appellant's van in the condition it was in on 21 April 2017 would have presented a danger of personal injury to other road users, or serious damage to property.

15. At the close of the prosecution case, counsel for the appellant, Mr Andrew Thompson, renewed a submission that the charge of dangerous driving should be dismissed. This had been originally considered and rejected by His Honour Judge Kemp on the papers but was the subject of oral argument at this stage in the trial, by way of a submission of no case to answer. The essence of the submission was that the notice of intended prosecution dated 26 April 2017 did not comply with s.1(1)(c) RTOA 1988. The original

notice was never received by the appellant and, as a result, he could not be convicted of dangerous driving because the notice had not been received within the statutory 14 days.

16. The relevant legislation can be shortly described. Section 1 RTOA 1988 applies to offences falling within Schedule 1 RTOA 1988 which includes an offence of dangerous driving contrary to section 2 RTA 1988.

17. Section 1 RTOA 1988 sets out as follows:

> ***Requirement of warning etc. of prosecutions for certain offences.***
>
> *Subject to section 2 of this Act, a person shall not be convicted of an offence to which this section applies unless—*
>
> *(a) he was warned at the time the offence was committed that the question of prosecuting him for some one or other of the offences to which this section applies would be taken into consideration, or*
>
> *(b) within fourteen days of the commission of the offence a summons […] for the offence was served on him, or*
>
> *(c) within fourteen days of the commission of the offence a notice of the intended prosecution specifying the nature of the alleged offence and the time and place where it is alleged to have been committed, was—*
>
> *i) […],*
>
> *ii) (ii) in the case of any other offence, served on him or on the person, if any, registered as the keeper of the vehicle at the time of the commission of the offence.*
>
> *(1A) A notice required by this section to be served on any person may be served on that person—*
>
> *(a) by delivering it to him;*
>
> *(b) by addressing it to him and leaving it at his last known address; or*
>
> *(c) by sending it by registered post, recorded delivery service or first class post addressed to him at his last known address.*
>
> […]

18. It follows that on the facts of the present case, the appellant must either have been served with a summons within 14 days of the offence or notice of the possibility of the prosecution must have been served by the prosecutor within 14 days of the offence either to the driver or to the registered keeper of the vehicle, given he was not warned at the time of the possibility of a prosecution. A notice of the intended prosecution may be

served on that person (a) by delivering it to him; (b) by addressing it to him and leaving it at his last known address; or (c) by sending it by registered post, recorded delivery service or first class post, addressed to him at his last known address

19. Failure to comply with section 1 RTOA 1988 means that there cannot be a conviction for the offences to which it applies.

20. However, section 2 (3) RTOA 1988 provides:

> *Failure to comply with the requirement of section 1(1) of this Act is not a bar to the conviction of the accused in a case where the court is satisfied—*
>
> *a) that neither the name and address of the accused nor the name and address of the registered keeper, if any, could with reasonable diligence have been ascertained in time for a summons or, as the case may be, a complaint to be served or for a notice to be served or sent in compliance with the requirement, or*
>
> *b) […]*

21. By section 1(3) RTOA 1988, it is unnecessary for the prosecution to give any evidence that its requirements have been fulfilled. It is for the defence to allege that they have not:

> *(3) The requirement of subsection (1) above shall in every case be deemed to have been complied with unless and until the contrary is proved.*

22. The question of reasonable diligence is for the judge to determine, not the jury (see *R v Bolkis* (1934) 24 Cr App R 19).

23. The approach to be taken to the requirement of reasonable diligence has arisen in a smattering of cases over the last 70 years. In *Clarke v Mould* [1945] 2 All ER 551, the inspector responsible for investigating an offence of dangerous driving telephoned the local taxation office of Kesteven county council to ask for the name and address of the registered owner of the car in question and was given an inaccurate address, namely a firm called Mould and Bloomer of Midland Bank Chambers, Westgate. This mistake arose because the most recent road fund licence was purported to have been signed by an individual on behalf of Mould and Bloomer and the assistant local taxation officer (perhaps unsurprisingly) had relied on that information. The true position was that Mr Mould (as opposed to Mould and Bloomer) was the registered owner, and he lived in Bottesford. Section 21 Road Traffic Act 1930 was in all material respects the same as section 2(3) RTOA 1988:

> *Failure to comply with this requirement shall not be a bar to the conviction of the accused in any case where the court is satisfied that (1) neither the name and address of the accused nor the name and address of the registered owner of the vehicle, could with reasonable diligence have been ascertained in time for a summons to be served or for a notice to be served or sent as aforesaid.*

24. Against that background, Wrottesley J sitting in the King's Bench Division observed:

> *It is quite clear from the plain words of the Act that the diligence there is the diligence of the police, and if the police, showing due diligence, are unable to find either the name and address of the accused or the name and address of the registered owner of the vehicle, they are excused from the obligation laid upon them to serve in this case the notice within 14 days. On the facts it is quite clear that the police applied with proper expedition to the proper place, viz, to the person charged with the duty of keeping this register, and from him they received an answer which was not an accurate answer. They were told that this firm of Mould and Bloomer were the registered owners of this motor car, and it was in accordance with that information so received that the police officer sent the registered letter to that firm. Had the information been correct, the police officer would have done all that was necessary. I do not, therefore, see how the police could have acted otherwise than in the way in which they did act.*

Oliver J agreed

25. In *Rogerson v Edwards* (1951) 49 LGR 358, the defendant was accused of dangerous and careless driving and he was not, when stopped, warned of an intended prosecution. Section 21 Road Traffic Act 1930 (*supra*) applied in this case. The defendant was driving a lorry of which the registered owners were Greenwoods (Contractors) Ltd. The case turned on whether the defendant had given evidence in support of his contention that a notice in compliance with section 21 had not been served on him, given the burden of proof rested with him. The defendant had not provided any evidence on the issue and the prosecution's appeal was allowed on that basis. As Lord Goddard (sitting in the King's Bench Division with Humphreys and Devlin JJ) put the matter:

> *In my opinion, there was no evidence here on which the justices could find that the requirements of section 21 had not been complied with. The onus was on the defendant and he did not prove anything.*

26. The court noted that an envelope or other document had been produced during the hearing which indicated that the police had sent the notice to Messrs. Greenwoods, Bury Road Ramsey, Hunts, having been informed by the registration authority that this was the address of the registered owners of the vehicle in question. The registered owners, as we have just observed, was Greenwoods (Contractors) Ltd, of Bury Road, Ramsey Hunts.

27. In the course of his judgment, Lord Goddard, during the course of certain *obiter* remarks, considered the requirement of reasonable diligence, as follows:

> *Certainly the police are not guilty of any lack of reasonable diligence if they apply to the registration authority. It may be said that they must also show that they did not know the name of the defendant, that is to say the driver. They can serve whichever they like either the driver or the registered owner. It may be – I do not think it necessary to give a concluded opinion on the point – that, if they sent the notice to the owner and showed that they had used all due diligence to serve him they must also go on and say that the name and address of the defendant was not known to them. I am inclined to think that it is enough that they did what they did.*

28. The last of the relevant authorities is *Haughton v Harrison* [1976] R. T. R. 208, in which case a car failed to stop at traffic lights showing red and a constable, who noted its registration number, was provided by the local taxation department with the name and address of a person as the car's registered keeper. A notice of intended prosecution for an alleged offence under section 22 of the Road Traffic Act 1972 was served on that person at the address within the 14 days limited by section 179(2)(c)(ii) of the Act of 1972. About one month after the date of the alleged offence the constable was informed that the information provided by the local taxation department had been wrong, the car having been sold, and resold, to a limited company, before the date of the alleged offence. Subsection (4) of section 179 provided:

> *Failure to comply with the requirement of subsection (2) above shall not be a bar to the conviction of the accused in a case where the court is satisfied – (a) that neither the name and address of the accused nor the name and address of the registered keeper, if any, could with reasonable diligence have been ascertained in time for a summons or, as the case may be, a complaint to be served or for a notice to be served or sent in compliance with the said requirement …'*

29. Although a different point was argued in that case, the court clearly accepted that the prosecution had acted with reasonable diligence in relying on the information from the local taxation department.

30. Mr Thompson submitted in the court below and again before us that the present case should be distinguished from what he describes as a routine case, namely the usual situation when it is sufficient for the police to rely on the information that is received from the DVLA. In the present case, Mr Markwick had undertaken a number of enquiries, including tracing the business website, upon which the registered business address was apparent. He had telephoned the appellant. In order to discharge the obligation of reasonable diligence, it is submitted that Mr Markwick should also have sent the notice of intended prosecution to the address shown on the company's website, which he had visited and would have seen a local Sussex business address, not one in Slough. This different business address, it is argued, should have alerted Mr Markwick to the possibility that something was amiss with the address held by the DVLA.

31. The prosecution submitted that the requirement of section 1(1) RTOA 1988 was met, given the original notice of intended prosecution dated 26 April 2017 was served on the keeper of the vehicle as registered with the DVLA, even though the keeper details held by the DVLA were incorrect. In any event, reasonable diligence was exercised. There was no reason for Mr Markwick to doubt the registered keeper address held by the DVLA, and as stated in his evidence, the registered address for a vehicle is often located somewhere that is not automatically associated with its keeper. Although he received more information than in the majority of cases, that did not mean that any additional level of diligence in establishing the address of the registered keeper was expected.

32. The Recorder ruled that Mr Markwick had acted with reasonable diligence and the exception in section 2(3)(a) RTOA 1988 was engaged. There was nothing unusual in the registered keeper address being located outside the area of the alleged offence, and addresses were often submitted to the DVLA which have no obvious association with the registered keeper. The fact that Mr Markwick engaged himself in the investigation of the alleged offence did not lead to any heightened expectation of diligence on his part. It was

the DVLA's mistake, of which Mr Markwick was entirely unaware, not Mr Markwick's lack of diligence which meant the 14-day period would always have been missed.

33. The single point taken on this appeal is whether Mr Markwick, having been alerted to the Sussex address on the website, should have taken further steps to ascertain the address of the registered keeper. It is accepted that if the appellant fails in that contention, the appeal is to be dismissed. In our judgment, the Recorder was entitled to conclude that the prosecution acted with reasonable diligence. It is right to observe that having noted the name Sussex Waste Services on the vehicle, Mr Markwick undertook an internet search which enabled him to speak with the appellant, and he told him that a vehicle examiner would be in touch to arrange an examination of the vehicle. He then used what is evidently the usual route of obtaining the address of the registered keeper from the Police National Computer, which in turn obtains its vehicle registration information directly from the DVLA. Given that in his experience the registered address for a vehicle is often located somewhere that is not automatically associated with its keeper, in our judgment it was unnecessary for him to send copies of the notice on a speculative basis to addresses which appeared on the website of Sussex Waste Services. There is no evidence before us to suggest that, save exceptionally, the records obtained in this regard from the DVLA are inaccurate. In those circumstances, the police were entitled to conclude that the information the DVLA provides was accurate, given they had not been alerted to the real possibility of an error. Knowledge of a different address on a website for a company does not materially raise the possibility that the DVLA have reported the wrong address for the registered keeper, given the contact or business address provided by a company on its website may well be different to the registered address for any relevant vehicles. On the facts of this case, therefore, the appellant's arguments as regards reasonable diligence fail.

34. This appeal is dismissed.