



Neutral Citation Number: [2019] EWHC 798 (Admin)

Case No: CO/4503/2018

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
DIVISIONAL COURT

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 02/04/2019

Before:

LORD JUSTICE IRWIN
MR JUSTICE STUART-SMITH

Between:

JAMES WILLIAM BROWN
- and -
DIRECTOR OF PUBLIC PROSECUTIONS

Appellant

Respondent

Neil Corre (instructed by BB Law Ltd) for the Appellant
James Boyd (instructed by the Appeals and Review Unit, The Crown Prosecution Service)
for the Respondent

Hearing date: 28 March 2019

Approved Judgment

Lord Justice Irwin:

1. This case turns on the meaning of the term “issuing”. The Appellant was convicted on 17 August 2018 by the North Staffordshire Magistrates of an offence of speeding contrary to a Local Traffic Order and Sections 84 and 89(1) of the Road Traffic Regulation Act 1984 and Schedule 2 to the Road Traffic Offenders Act 1988. He has admitted the facts alleged. The defence advanced, and the basis of the appeal by way of case stated, is that the written charge in the case was not “issued” within the six months period specified by Section 127(1) of the Magistrates’ Courts Act 1980 [“the 1980 Act”].
2. The Appellant contends that proceedings cannot be “issued” unless and until the relevant document (the written charge) “is in the public domain at least to the extent that it has left the relevant prosecutor’s office”. The Respondent argues that the only way in which to make sense of the wording of [section 29 of the Criminal Justice Act 2003 [“the 2003 Act”]] is to interpret the word “issuing” as meaning what happens when the written charge is produced by the prosecutor in a form that is ready for service.

The Case

3. The Magistrates stated a case, formulating the proposed questions of law as follows:

“(i) Were we right to decide that a written charge is issued to the defendant when the relevant prosecutor determines to issue it?

(ii) Were we right to decide that the written charge and Single Justice Procedure Notice were issued to the defendant by the relevant prosecutor on 21 April 2018?”

4. The facts were stated as follows:

“Summary of the Nature and History of the Proceedings

1. That on 19th November 2017, James William Brown born 13/11/1992 drove a motor vehicle, namely an Audi A5 index number DG15 0TV on a road, namely A51 Weston, subject of a local traffic order, namely Staffordshire County Council (60mph speed limit) (Aston by Stone to Rugeley Road, A51 Sandon to Weston) (Dual Carriageway) Order 2001 at a speed exceeding 60mph. Contrary to the above local traffic order and sections 48 and 89(1) of the Road Traffic Regulation Act 1984 and Schedule 2 to the Road Traffic Offenders Act 1988.

2. At 15:48 hours on 19th November 2017, Kevin Sharpe, trained operator of laser measuring devices and Concept DVD system, formed the opinion that a vehicle was travelling in excess of the speed limit. He targeted an Audi A5 S LINE BLK ED and TDI vehicle registration VRM DG15 0TV using the device to which produced a record in the form of a DVD.

The speed of the vehicle is shown as 86 mph. Kevin Sharpe produces a witness statement dated 21st April 2018 which exhibits at 09221 A and B still frames taken from the DVD showing (*sic*) the vehicle and the speed measurement which appears in the datablock.

3. Morag Motum, Administrative Officer within the Safety Camera Office confirms that following detection of the above offence details of the vehicle were transmitted to the Police National Computer and details of the registered keepers name and address were automatically received back. This data then auto-populated a combined Notice of Intended prosecution and a request under Section 172 of the Road Traffic Act 1988, for details of the driver at the time of the offence.

4. A Notice of Intended Prosecution/Section 172 request was sent to James Brown of Marl Sprink, Rushton Spencer, Macclesfield, Cheshire, SK11 0RX. The date shown on the request is 22nd November 2017 which was the date it was sent by Royal Mail first class post.

5. James Brown completed a s 172 statement, confirming at Section A that he was the driver of the vehicle on 19th November 2017 at 15:48 hours on A51 Weston, Staffs. His statement is dated 4th December 2017.

6. Morag Motum confirms receipt of James Brown's signed admission. She was unable to offer a Conditional Offer of a fixed penalty due to the fact that the recorded speed was too high. She confirms that a single Justice Procedure Notice was issued to James William Brown. The evidence of Morag Motum is contained in her witness statement dated 21st April 2018 which exhibits the Notice of Intended Prosecution/s 172 Request and s 172 statement from James Brown.

7. On 21st April 2018 a written charge was produced, as worded above with the URN 21WT/51869/18 by Prosecutor Gareth Morgan, Chief Constable of Staffordshire Police.

8. The posting date of the Single Justice Procedure Notice and written charge is 23rd May 2018."

5. Two issues were taken at trial, but the single issue pursued on this appeal is that arising from Section 127 of the 1980 Act, as amended.

The Legislation and Rules

6. Section 127 of the 1980 Act, in its material part reads:

"127 – Limitation of time.

(1) Except as otherwise expressly provided by any enactment ... a magistrates' court shall not try an information or hear a complaint unless the information was laid, or the complaint made, within 6 months from the time when the offence was committed, or the matter of complaint arose.”

7. Prior to the 2003 Act, summary criminal proceedings were initiated by the laying of a complaint or information before magistrates, who then issued the relevant proceedings. This two-stage process came to be regarded as wasteful and expensive, at least in the context of driving offences. By Section 29 of the 2003 Act Parliament altered the procedure. The relevant part of the statute reads:

“29 New method of instituting proceedings

(1) A [relevant prosecutor] may institute criminal proceedings against a person by issuing a document (a “written charge”) which charges the person with an offence.

(2) Where a relevant prosecutor issues a written charge, it must at the same time issue –

...

(b) a single justice procedure notice.

...

(2B) A single justice procedure notice is a document which requires the person on whom it is served to serve on the designated officer for a magistrates' court specified in the notice a written notification stating—

(a) whether the person desires to plead guilty or not guilty, and

(b) if the person desires to plead guilty, whether or not the person desires to be tried in accordance with section 16A of the Magistrates' Courts Act 1980.

...

(3A) Where a relevant prosecutor issues a written charge and a single justice procedure notice, the written charge and notice must be served on the person concerned, and a copy of both must be served on the designated officer specified in the notice.

(3B) If a single justice procedure notice is served on a person, the relevant prosecutor must—

(a) at the same time serve on the person such documents as may be prescribed by Criminal Procedure Rules, and

(b) serve copies of those documents on the designated officer specified in the notice.

(3C) The written notification required by a single justice procedure notice may be served by the legal representative of the person charged on the person's behalf.

...

(5) In this section [“*relevant prosecutor*”] means—

(a) a police force or a person authorised by a police force to institute criminal proceedings,

...

(5A) An order under subsection (5)(h) specifying a person for the purposes of this section must also specify whether that person and a person authorised by that person to institute criminal proceedings—

(a) are authorised to issue written charges, requisitions and single justice procedure notices, or

(b) are authorised to issue only written charges and single justice procedure notices.”

8. The Appellant cites the explanatory notes to the Act, which state:

“This section provides for a new method of instituting criminal proceedings which is available to a public prosecutor [now “*relevant prosecutor*”] as defined ... It consists in the issue to the person to be prosecuted of a written charge, together with a written requirement (“a requisition”). Subsection (3) requires the written charge and the requisition to be served on the person named and to be copied to the court.”

9. There is common ground that service of the written charge may properly be effected by post, pursuant to Criminal Procedure Rule 4.4(1). Crim PR 7.2(8) and (10) read:

“(8) An authorised prosecutor who issues a written charge must notify the court officer immediately.

...

(10) Where an offence can be tried only in a magistrates’ court, then unless other legislation otherwise provides –

(a) a prosecutor must serve an application for the issue of a summons or warrant on the court officer or present it to the court; or

(b) an authorised prosecutor must issue a written charge,

Not more than 6 months after the offence alleged.”

The Reasoning of the Justices

10. The Justices noted the Appellant’s contention that, under the Single Justice Procedure Notice [“SJPN”] procedure, the SJPN and the written charge were required to be issued “at the same time”. As a consequence, Section 127 of the 1980 Act should now be read as:

“a magistrates court shall not try a written charge unless the written charge and Single Justice Procedure Notice were issued within 6 months from the time when the offence was committed.”

11. The Appellant further argued that: “Authorising the written charge on 21 April ... as a “holding tactic” with the intention of issuing the written charge and SJPN at a later date is an artificial means of seeking to circumvent the intention of Section 127 ... Authorising the written charge is not equivalent to “issuing” it.”
12. The Respondent argued that although the SJPN and charge had to be “issued at the same time and within six months of the date of the alleged offence, issue and service are different processes”. The date of service was outside the six- months period, but the date of issue was (1) separate and (2) in time.
13. The court took account of relevant guidance from the Justices’ Clerks Society, and concluded as follows:

“7. The Justices took account of the JCS guidance and in particular that “The key difference from the information and summons procedure is that a summons is issued by the Court on the application of the prosecutor, while requisition and the SJP notices are issued by the prosecutor with the court having no role in their issue. This distinction means that the consequences of service on the court are also different. With a summons, service on the court initiates the process. However, with a requisition or SJP notice, service on the court only follows issue and does not initiate the process”. The date of issue was therefore determined to be 21st April 2018 and not the 23rd May 2018 which was the posting date of the SJP Notice to the Applicant.

8. The Justices having determined the date of issue was 21st April 2018 that s 127 MCA 1980 had been complied with.”

14. In his oral submissions to us, which were broadly consistent with those made below, Mr Corre for the Appellant began by arguing that the written charge “cannot be issued” simply because the decision to issue has been made. He began by saying it must be “in the public domain” in some real sense. He qualified that to submit that it must be “ready to be in the public domain”. By analogy with the superseded

procedure of laying an information or complaint before magistrates, Mr Corre argued that the process of issue could only follow the presentation of the relevant information, in the earlier procedure to the Court, and therefore in the latter to the Defendant. In that regard, he relied on the decision of the Divisional Court in *Rockall v Department for Environment, Food and Rural Affairs* [2007] EWCA 614 (Admin) and the observation of Lord Justice Latham in paragraph 26, where he said:

“...the essential concept running through all these authorities is that the information should be made available to the justices, or the clerk to the justice, within time.”

15. For myself, I was unable to draw any help from that last submission. It is clear that the procedure of issue of written charge by a relevant prosecutor is quite distinct from the two-stage procedure which it replaced, in the context of charges such as this.
16. Mr Corre accepted in the course of argument that issue and service were separate steps, both as a matter of first principle and because they are so described in the Criminal Procedure Rules quoted above. They are, of course, also separately described within section 29 itself. He did not maintain the proposition that “the issuing” of the written charge was only complete when it was posted for service, but he did maintain the proposition that the written charge must at least be in a state of readiness to be placed in the public domain, in other words ready for service. He further noted that, if the issue of the written charge was held to be complete earlier than service, there was a real risk, through poor administration or otherwise, of extended delay after issue but before service, frustrating the will of Parliament that summary charges should be dealt with within a short period. He rejected the notion that abuse of process represented an adequate remedy for such delay.
17. In his clear written submissions, Mr Boyd for the Director of Public Prosecutions accepts that “the issue” of a written charge cannot have taken place merely because the relevant prosecutor has resolved to charge a suspect. As Mr Boyd puts it:

“The word “issuing” plainly suggests some tangible signification by the prosecutor that the accused now stands charged with a criminal offence. It is the act of producing the written charge that amounts to this signification and which results in its issue.”

18. Mr Boyd goes on to argue that whether a written charge had been produced (and therefore issued) in any given case is a question of fact and degree. It will be for the prosecutor to show, to the criminal standard, that issue had taken place: see *Atkinson v DPP* [2005] 1 WLR 96.

Conclusions

19. I reject the submission of the Appellant that the issuing of a written charge only arises when the written charge, itself comprised in the document, is posted as the acceptable means of service to the relevant defendant. The “issuing” of the written charge and service are discrete steps, as the legislation and the Criminal Procedure Rules make clear. I also reject the submission that the information contained in the written charge must be in the public domain, in the sense of being placed before a Court or being

served, before issue can be held to be complete. That would be to reconstitute the former two-step procedure in a different form. In my judgment, the submission that some intervening steps between the completion of the written charge as a document in its final form, and the service process, could in some way complete the process of “issuing” cannot possibly be right. The only intervening steps might be checking the postal address of the relevant defendant and placing the written charge in an envelope. There is no evidence of the first as part of the process. The second cannot possibly be part of the issuing process. Once it is recognised that the issuing of the written charge and service on the defendant are separate steps, to my mind these arguments make no sense.

20. I do conclude that the Magistrates were in error, at least technically, in their answer to the first question they formulate. In my view a written charge cannot be regarded as having been issued “when the relevant prosecutor determines to issue it”. Moreover, it seems to me that it is insufficient that there should be “some tangible signification by the prosecutor”. In my view, the written charge can be regarded as issued only when the document comprising the written charge is completed, with all relevant details and in the form needed for service. Provided that is done within six months of the relevant offence, the written charge will have been issued in time.
21. It follows that the Justices were right “to decide that the written charge and Single Justice Procedure Notice were issued to the Defendant by the relevant prosecutor on 21 April 2018”. As a consequence, in my view the Appellant’s conviction can stand and I would dismiss the appeal.
22. It should be noted that, if following issue in time, there is an inordinate or unwarranted or unjustified but significant delay before such a written charge is served, that should not and cannot go without remedy. The remedy is abuse of process. It would be wise for prosecutors, as a matter of practice, to ensure in every case that both the issue and service of Single Justice Procedure Notices are completed before six months from the relevant offences, so as to put paid to any suggestion of such unwarranted delay.

Mr Justice Stuart-Smith

23. I agree.