SHERIFF APPEAL COURT

[2019] SAC (Crim) 4
SAC/2019-132/AP
SAC/2019-143/AP

Sheriff Principal M. Lewis
Appeal Sheriff N. Stewart
Appeal Sheriff N.A. Ross

OPINION OF THE COURT

delivered by APPEAL SHERIFF N.A. ROSS

in

APPEALS

(FIRST) Under section 174 of the Criminal Procedure (Scotland) Act 1995 by

JOHN SCRYMGEOUR-WEDDERBURN

Appellant

against

PROCURATOR FISCAL, KIRKCALDY

Respondent

and

(SECOND) Crown stated case by

PROCURATOR FISCAL, ABERDEEN

Appellant

against

KEVIN COULSON

Respondent

Appellant (1): Paterson, sol adv; Paterson Bell solicitors
Respondent: Farquharson QC, AD; Crown Agent
Appellant (2): Farquharson QC, AD; Crown Agent
Respondent: Findlater, advocate; Michael Lyon, solicitor, Glasgow

31 May 2019

[1] These are separate appeals, raising similar issues, and were heard together.

Scrymgeour-Wedderburn appeal

[2] The appellant was charged with travelling at 55 mph in a designated 40mph zone in a vehicle at a location near Glenrothes on 26 April 2018. He was not stopped at the time. The offence was captured on camera.

[3] Section 1 of the Road Traffic Offenders Act 1988 provides that a person shall not be convicted of such an offence unless he has received notification of the intended prosecution. One method of giving notice is service of a notice of intended prosecution specifying the nature of the alleged offence and the time and place where it is alleged to have been committed. The notice requires to be served within 14 days of the offence.

[4] Mr Scrymgeour-Wedderburn was duly and timeously served with a notice of intended prosecution dated 27 April 2018. The notice contained the details required by section 1. It also bore the digital signature of Philip Gormley, designated as Chief Constable, Police Service of Scotland. By that date, however, Mr Gormley was no longer Chief Constable. He had resigned from that post on 7 February 2018 and was no longer a serving police officer.

[5] The competency of the prosecution was challenged at debate at first instance on the basis that the notice was incompetent because the signatory had no authority to issue the notice. That challenge was rejected. That decision is appealed. It is not disputed that the notice otherwise complied with the statutory requirements.

[6] Reference was made to *Pamplin* v *Gorman* 1980 RTR 54 and *Foster* v *Farrell* 1963 SLT 182. These cases both relate to a requirement to give information to a constable, so they are

not directly in point as they engage different considerations to those arising out of simple intimation. In *Foster* the court held, in relation to predecessor statutes to the present road traffic legislation, that a constable had no general power to require information as to identity of a driver, and that only information required "by or on behalf of a chief officer of police" was validly required. That decision turned on the particular wording of the statute. *Foster* was referred to in *Pamplin*, in which the Queen's Bench emphasised that it was not enough to simply accept an assertion contained in a formal document, but in each case the sufficiency and authenticity of the material must be considered. We respectfully agree with those principles, but in our view they do not assist Mr Scrymgeour-Wedderburn.

[7] For notice to be validly given under section 1 of the Road Traffic Offenders Act 1988, it is necessary only for the notice of intended prosecution to comply with the requirements of that section. The section does not require a notice to be signed. It does not stipulate who may serve the notice, or whose authority is required to do so. The requirements are that the notice must specify the nature of the alleged offence and the time and place where it is alleged to have been committed. Nothing else is required. Accordingly, the presence of a digital signature is irrelevant. It does not affect the validity of the notice for its statutory purpose, which is the limited purpose of giving notice of an intended prosecution. It follows that an inaccuracy in identification of the Chief Constable is irrelevant to whether notice has been properly given. The Chief Constable's authority is not required for section 1 purposes. A notice of intended prosecution is no more than an administrative act. This is consistent with the fact that such notice can be given verbally at the time of the offence, or by service of a complaint.

[8] For completeness, the grounds of appeal made comparison with the importance of signature of a summary complaint. This line of argument was not insisted in, correctly in

our view. Notices of intended prosecution under section 1 of the Road Traffic Offenders Act 1988, and summary complaints under section 138 of the Criminal Proceedings (Scotland) Act 1995, do not provide a useful comparison. There is no statutory requirement for the former to be signed. There is a mandatory requirement for the latter to be signed. They are different documents, drafted for different purposes. One is a notice of intent, the other is the commencement of the prosecution. The appellant in this case has, in the normal course, received both these documents at different stages.

[9] We refuse Mr Scrymgeour-Wedderburn's appeal. Notice was validly given in terms of section 1 of the Road Traffic Offenders Act 1988.

Coulson appeal

[10] Mr Coulson was charged with exceeding the speed limit on 10 March 2018 at a location on the Aberdeen to Dundee road by driving at 75 mph in an area designated with a 50 mph limit He was not stopped. The offence was captured on camera.

[11] Mr Coulson was served with a notice of intended prosecution dated 13 March 2018. It bore the digital signature of Philip Gormley, and his designation as Chief Constable, although he no longer held office as a police officer. It is not disputed that the notice was otherwise timeously served and bore the necessary requirements to be a valid notice under section 1 of the Road Traffic Offenders Act 1988.

[12] Mr Coulson challenged the notice on two grounds. The first was identical to the Scrymgeour-Wedderburn appeal. The second ground was that the notice also made a requirement of him to identify the driver, in terms of section 172 of the Road Traffic Act 1988. It was submitted that, due to the misdesignation of Mr Gormley, the requirement had

not been made lawfully. Those submissions were upheld at first instance, and the Crown appeals that decision.

[13] In relation to the first argument, the Crown submitted that the mistaken reference to Mr Gormley did not invalidate the notice for the purposes of validly giving notice of intended prosecution. For the reasons set out in the Scrymgeour-Wedderburn appeal, we agree with that submission, and find that notice of intended prosecution was validly given to Mr Coulson in terms of section 1 of the Road Traffic Offenders Act 1988.

[14] In relation to the second point, the letter dated 13 March 2018 also placed a requirement on Mr Coulson, as keeper of the vehicle, to identify the driver at the material time. Such a requirement may be made under section 172(2)(a) of the Road Traffic Act 1988 for the keeper of a vehicle to give such information as to the identity of the driver as he may be required to give. Such a requirement may only be made "by or on behalf of a chief officer of police". Mr Coulson duly complied with the notice and gave his own details as the driver at the material time and place, leading to the present prosecution.

[15] The Justice of the Peace upheld a submission at trial that there was no case to answer because the section 172 requirement had not been validly made. The letter of 13 March 2018 was issued in the name of a person who was not then a chief officer of police, or indeed a police officer. No other authority or chief officer of police was identified within the letter. The Justice found that the request had therefore been made without the requisite authority.

[16] The advocate-depute submitted that the Justice had erred. The question was one of authenticity, and a general authority to issue was sufficient. The court erred in failing to infer, on the basis of the surrounding facts, that there was no reasonable doubt that the requirement had been lawfully made.

[17] Counsel for Mr Coulson referred to the terms of the letter of 13 March 2018. He submitted that it was framed in personal terms, using phrases such as "I hereby give" and "I further give notice". It bore the name of Mr Gormley, his wrong designation as Chief Constable, and what appeared to be a digital facsimile of his signature. It did not bear the phrase "on behalf of" or similar. It accordingly bore to be a personal letter by someone who was not authorised to make a section 172 requirement, and was, therefore, invalid.

[18] Parties referred to the cases of *Michie* v *Gilchrist* 2000 SCCR 627, *Arnold* v *DPP* [1999] RTR 99, *Pamplin* v *Gorman* 1980 RTR 54 and *Mohindra* v *DPP* [2005] RTR 7.

[19] In *Michie*, the accused was identified as having driven a car into collision with another. He left the scene. A police dog followed a trail to his residence. Two police constables saw him the following day and asked if he was the keeper of the vehicle. He admitted he was. The police then made a verbal requirement under section 172 for him to identify the driver. The accused said he did not know. He was charged with and convicted of a breach of section 172. On appeal, it was submitted that the Crown required to prove authority under section 172 and, on the authority of *Foster* v *Farrell* (above), it was not enough that the constable had a general authority to act. It was accepted, however, that there did not require to be direct evidence of authority. Authority might be inferred, where such an inference could reasonably be drawn from the established facts. The High Court refused the appeal. They accepted that the sheriff was entitled to draw such an inference where a police constable ostensibly acted in terms of section 172 and therefore ostensibly acted under the authority of the Chief Constable. The requirement "had all the appearance of having been made properly by an authorised police constable in accordance with section 172", allowing the sheriff to infer in the absence of contrary evidence that the constable possessed the authority which he ostensibly exercised. Counsel for Mr Coulson

sought to distinguish *Michie* on the facts: in the present case, there could be no deemed authority, because the ostensible authority came from Mr Gormley.

[20] In *Arnold*, the accused received section 172 notices from a named sender who was designated "manager, for the Chief Constable". He appealed his conviction under that section. The Queen's Bench Division refused the appeal. It was not reasonable in the days of computer technology to expect that the authorised person sign every letter, and therefore any lack of signature did not affect authenticity, which could be established by looking at the matter overall. The court concluded, applying *Pamplin* and looking at the document as a whole, that authenticity was established.

[21] In *Mohindra*, the Queen's Bench Division considered a situation where the only proof of service was from a postal clerk. This case adds little to the discussion, because it turned on questions of sufficiency rather than authenticity. The court accepted that the burden was on the prosecution to prove a valid requirement, and that substance rather than procedure was the proper focus.

[22] We consider that the question of whether authority has been given is a matter of fact in each case, that (*Pamplin*, *Mohindra*) the whole terms of the purported notice require to be considered, and (*Michie*) that the question of authority does not require direct evidence but can be a matter of inference drawn from the established facts.

[23] In our view the justice erred in acceding to a submission that the notice requires to bear the name of a serving chief officer of police. In our view this elevates the requirements of section 172 beyond its terms. In our view the letter of letter of 13 March 2018 fulfilled the requirements of section 172, and the requirement placed on Mr Coulson was validly made. We will therefore allow the Crown appeal.

[24] Counsel founded on the personal nature of the letter, its reference to the ostensible author's personal requirement, and the identified signatory. In our view the style or terminology of the letter does not detract from the terms of the statute – it is enough that it is issued "on behalf of" the chief officer. Section 172 does not require personal signature or individual authorisation. A practice has arisen of appending a digital signature, but that is not a requirement. It is not necessary to identify the chief officer making the requirement. It is not necessary for the notice even to refer to a chief officer, or any other authority. There is no stipulated content for such a requirement. Indeed, a requirement may be given verbally by a police constable without any further information or any reference to a chief officer of police (*Michie* v *Gilchrist*). We do not accept that *Michie* can be distinguished simply because the letter was phrased in certain terms.

[25] In our view, Mr Coulson's appeal does not recognise the distinction between the requirements of section 172 and the evidential requirements for conviction. It is enough, to satisfy section 172, that an unsigned, simple request for the relevant information be made. It is then the Crown's task to persuade the court that the request was indeed made by or on behalf a chief officer of police, was properly made, and was validly served. The question is, as the Crown submitted, not one of validity (there being no dispute that the request was made, in relevant terms, and duly served) but one of authenticity.

[26] The question is, as it was in *Michie*, whether the court at first instance was bound to draw an inference that the letter of 13 March 2018 was properly made under the authority of a chief officer of police. In our view the court ought, on the facts, to have made such a finding.

[27] The letter of 13 March 2018 bears to be a formal notice. It has a formal heading with the crest of Police Scotland. It has contact details for the "North Safety Camera Unit" in

Aberdeen, including a telephone number and website address. It has full details of Mr Coulson's address, vehicle registration and make, vehicle speed at the relevant time and precise identity of the locus. It identifies the relevant statutory provisions and their effects. In the absence of contrary evidence or formal challenge, in our view the court was bound to accept that this document was issued on behalf of a chief officer of police.

[28] The identity from time to time of the chief officer referred to in section 172 is not relevant. It is a reference to an office, not an individual. The identity of the particular officer from time to time will change, but the statutory function of the section 172, and its authority for issue, does not. The operation of section 172 is not suspended every time a chief officer demits office.

[29] We accordingly allow the appeal. We will answer questions one and two in the stated case in the affirmative and question three in the negative, and remit the cause to the sheriff court for further procedure.