

JAMAICA

IN THE COURT OF APPEAL

RESIDENT MAGISTRATES' MISCELLANEOUS APPEAL NO: 2/05

**BEFORE: THE HON. MR. JUSTICE HARRISON, P
THE HON. MR. JUSTICE COOKE, J.A.
THE HON. MRS. JUSTICE HARRIS, J.A. (AG.)**

R v ANTHONY LEWIS

Debayo A. Adedipe for Defendant

**David Fraser, Snr. Deputy Director of Public Prosecutions (Ag.)
& Miss Natalie Brooks, Asst. Crown Counsel for the Crown**

3rd, 8th, & 16th February 2006

HARRISON, P.

This is a case stated for the opinion of the Court of Appeal under the provisions of section 49 of the Justices of the Peace (Appeals) Act by Her Honour Mrs. Marva McDonald-Bishop, Resident Magistrate for the parish of Manchester, exercising summary jurisdiction in the Court of Petty Sessions,

The learned Resident Magistrate stated the following case:

"Mr. Anthony Lewis (the defendant) was issued a traffic ticket on the 26th February, 2005 for the offence of careless driving, in that, on the said day he drove from a compound onto Caledonia Road, Manchester, into the path of a motor car causing a collision.

By this ticket, he was required to attend court at Mandeville on 14th April, 2005. No option was given

to him to pay a prescribed penalty at the tax office as such a course is not opened (sic) to an offender charged for the offence of careless driving. The defendant signed the ticket in acknowledgement of receipt of it as prescribed and duly appeared before the court on the said day specified for his appearance.

He was unrepresented and gave an informal plea of not guilty when he appeared in court on the 14th April as aforesaid. The matter was adjourned for August 11, 2005. The defendant was, accordingly, bound over to appear on that date.

On August 11, 2005, the defendant appeared and so did Mr. Debayo Adedipe, of counsel, appearing on the defendant's behalf for the first time. Mr. Adedipe proceeded to make a preliminary objection indicating that the appearance of the defendant was under protest and that his presence did not mean that he was surrendering to the jurisdiction of the court.

The objection of counsel was done orally but was later reduced into writing at the request of the court and filed on September 12, 2005 for these purposes."

She then recited the preliminary objection submitted by counsel for the defendant:

- "i) The defendant ought to be discharged for the offence as charged as there is no charge and no proceedings effectively commenced against him. All (sic) is on the records is a ticket and careless driving is not an offence in respect of which a ticket can be issued.
- ii) The commencement of a prosecution in Petty Sessions is by the laying of an information upon which either a summons or a warrant is issued, according to the circumstances, or by arrest and charge, followed by the laying of an information and production of the accused in court.

- iii) The traffic ticket has been incorporated as a means of commencing prosecution by virtue of section 116 of the Road Traffic Act (Appendix 2) and section 2 (2) of the Justices of the Peace Jurisdiction Act (Appendix 3). Careless driving is not one of the offences specified in section 116 for which a traffic ticket may be given. The ticket issued in this case cannot be construed as information or as an information and a summons.
- iv) There is no laying of an information in this case as an information is actually laid by a person going before a Justice of the Peace and stating the substance of the allegation against the person to be charged. The mere delivery of a ticket or a batch of tickets to the office of the Clerk of Courts is not and cannot be treated as the laying of an information.
- v) When the defendant attended court on April 14, 2005, no information had been laid against him. There was really no charge and no prosecution had been commenced. The position has not changed when he appeared in Court on August 11, 2005.
- vi) To lay an information against the defendant now would be an exercise in futility. It is accepted that the limitation period for laying an information in such a case as this is six months. However, section 38 of the Road Traffic Act (Appendix 4) expressly provides that a person shall not be convicted of careless driving unless certain conditions, as to warning him of prosecution, are satisfied. In this regard, the ticket is neither a summons nor a warning and is really of no effect. For these reasons, an information cannot now be laid charging him for careless driving if it is accepted that the ticket is of no effect."

The learned Resident Magistrate reserved her ruling and transmitted the case for the ruling of this Court on a matter of law.

The questions for the opinion of the Court of Appeal are as follows:

- (1) Whether upon an examination of the traffic ticket and upon a proper construction of section 116 of the Road Traffic Act, the traffic ticket is intended to serve only as a fixed penalty notice and, therefore, as an information and summons pursuant to section 2(2) of the Justices of the Peace Jurisdiction Act only in relation to those offences falling with section 116.
- (2) Whether a charge of careless driving can properly be commenced by the issuance of a traffic ticket.
- (3) Whether the mere delivery of the traffic ticket to the courts office by the police constitutes 'the laying of an information' or the 'making of a complaint' for the purposes of a prosecution.
- (4) In considering the forgoing questions, the Honourable Court is asked to pay regard to the following subsidiary questions.
 - a) Whether sections 2(1) (*Appendix 3*) and 9 (*Appendix 5*) of the Justice of the Peace Jurisdiction Act are applicable to a charge of careless driving on a traffic ticket whereby a summons or warrant is not sought by the police to secure the attendance of the defendant at court.
 - b) Whether section 64 of the Justices of the Peace Jurisdiction Act (*Appendix 6*) is of any application to render the traffic ticket sufficient to commence proceedings for careless driving.
- (5) Whether a defendant, who has been issued with a ticket for careless driving and appears in court, has surrendered to the jurisdiction of the court so that he can be proceeded against even if he objects on the basis that there is no proper process commencing a charge against him.

- (6) If the ticket cannot commence prosecution for careless driving, whether an information can be laid within six months of the commission of the offence and the traffic ticket taken as a warning of intended prosecution in satisfaction of the requirements of section 38 of the Road Traffic Act (Appendix 4).

Before this Court Mr. Adedipe counsel for the defendant repeated his submissions made before the Learned Resident Magistrate and emphasized that the fixed penalty notice issued under section 116(2) of the Road Traffic Act cannot be used to commence proceedings in a charge for the offence of careless driving, and is not capable as being construed as an information and summons as provided by section 2(2) of the Justices of the Peace Jurisdiction Act. Neither the latter section nor section 9 of the Act is applicable to a “traffic ticket” issued in respect of a charge of careless driving. He submitted further that the defendant had not surrendered to the jurisdiction of the court, in the circumstances, relying on ***Pearks Gunston v. Richardson*** [1902] 1 K.B. 91 nor had he waived his right to object to the incorrect procedure – ***R. v. Sussex Justices, ex parte Perkins*** [1927] 2 K.B. 475. He maintained that the said traffic ticket was ineffective as a warning notice of intended prosecution as required by section 38 of the Road Traffic Act and in all the circumstances this Court should respond to the questions in favour of the defendant.

Mr. Fraser for the Crown submitted that the said notice (traffic ticket) even though it was not an “information and summons” in respect of the offences listed pursuant to section 116 of the Road Traffic Act it was properly construed as an “information” based on which a summons could be issued for the offence of

careless driving because that document satisfied the requirements of section 64 of the Justices of the Peace Jurisdiction Act. He relied on *R. v. Ashenheim* [1973] 12 JLR 1067, *R. v. Hughes* [1879] 4 QBD 614 and *Dennis Thelwell v. Director of Public Prosecutions et al* SCCA 56/98 dated 26th March 1999. The delivery of the traffic ticket to the Clerk of the Courts properly initiated an information for careless driving. A summons could as a consequence be issued therefrom to the defendant, *Dixon v. Wells* 25 Q.B.D. 249. He stated further that the said ticket was a valid notice of intended prosecution as it contained all the information required by section 38 of the Road Traffic Act. Therefore, assuming that the Court finds that the said notice could not initiate proceedings in respect of a charge of careless driving, the fact that an information was filed in the Court's office on or before 11th August, 2005, the defendant may be summoned to answer the charge.

The prosecution for the offence of careless driving under the Road Traffic Act committed in the parish of Manchester is commenced by the laying of an information before a Justice of the Peace and the issuing of a summons to the offender to appear in answer to the charge (section 2(1) of the Justice of the Peace Jurisdiction Act) ("the Act").

This offence is triable summarily on information, invariably by the Resident Magistrate exercising his jurisdiction in Petty Sessions. (In the Corporate Area such offences are triable in the Traffic Court by the Resident Magistrate in the exercise of his special statutory summary jurisdiction – Traffic Court Act).

The information is, in practice, in writing and is required to contain the particulars of the charge. Section 64 (1) and (2) reads:

“64. – (1) Every information, complaint, summons, warrant or other document laid, issued or made for the purpose of or in connection with any proceedings before examining Justices or a court of summary jurisdiction for an offence, shall be sufficient if it contains a statement of the specific offence with which the accused person is charged, together with such particulars as may be necessary for giving reasonable information as to the nature of the charge.

(2) The statement of the offence shall describe the offence shortly in ordinary language avoiding as far as possible the use of technical terms, and without necessarily stating all the essential elements of the offence, and, if the offence charged is one created by statute, shall contain a reference to the section of the statute creating the offence.”

An information may be oral – **R. v. Hughes** [1879] 4 Q.B.D. 614. In that case **Hughes**, a police constable effected the issue of a warrant also without a written information. The offender, in the warrant was held subsequently to be rightly convicted. Hawkins, J. at page 625:

“The information, which is in the nature of an indictment of necessity precedes the process; and it is only after the information is laid, that the question as to the particular form and nature of the process can properly arise. Process is not essential to the jurisdiction of the justices to hear and adjudicate. It is but the proceeding adopted to compel the appearance of the accused ... If a mere summons is required, no writing or oath is necessary. A bare verbal information is sufficient. If a warrant is required, ... an oath substantiating the information is requisite, ...”

Similarly, by section 9 of the Act, where a warrant is required to be issued, the information is required to be, in writing, and on oath or affirmation. Forte, J.A.

(as he then was), in *Thelwell v The Director of Public Prosecutions et al*, (*supra*) commenting on the *Hughes* case, at page 20, said:

“... in this jurisdiction where it is the normal practice where a Resident Magistrate is exercising statutory summary jurisdiction ... the informations are always present in Court, and endorsements of the plea and the results of the case are recorded, ...”

Section 116 of the Road Traffic Act was introduced into the Act in 1993, under the caption “Part VIII Special Powers of Enforcement and Administration Traffic Tickets.” It stipulated in subsection (1) that in respect of certain summary offences, namely:

- “(a) being an offence committed in respect of a vehicle –
 - (i) by its being left or parked on a road without the lights or reflectors required by law;
 - (ii) by its obstructing a road or waiting, or being left or parked or being loaded or unloaded, in a road; or
 - (iii) by the non-payment of the charge made at a parking place on a road; and
- (b) being an offence specified in the Appendix: ...”

a new statutory scheme applied.

Subsection (2) provided that:

“(2) Where a constable finds a person on any occasion and has reason to believe that on that occasion he is committing or has committed an offence to which this section applies, he may give him the prescribed notice in writing offering the opportunity of the discharge of any liability to conviction of that offence by payment of a fixed

penalty under this section; and no person shall then be liable to be convicted of that offence if the fixed penalty is paid in accordance with this section before the expiration of the twenty-one days following the date of the notice ...”

The offence of careless driving, contrary to section 32 of the Road Traffic Act was not one of the offences listed in the Appendix, referred to in section 116.

Section 2(2) of the Justices of the Peace Jurisdiction Act was introduced by amendment in 1994 specifically to provide for the effect of the new document, the notice, under the Road Traffic Act, namely, the traffic ticket and its enforcement. It reads:

“(2) For the purposes of this Act any notice given under subsection (2) of section 116 of the Road Traffic Act may be construed as an information and summons.”

The traffic ticket is therefore a composite document, statutorily created, with its functions clearly delimited by both the above statutes.

Mr. Fraser for the prosecution argued that the traffic ticket, because it contained all the particulars required to be contained in an information laid under the Justices of the Peace Jurisdiction Act, could be construed as an “information” as distinct from an “information and summons”. Therefore, he argued, the ticket could properly initiate a prosecution for careless driving.

We are unable to agree.

The Legislature expressly excluded prosecutions for careless driving under the Road Traffic Act, (section 32), from the new process, the traffic ticket, by not including the offence within the Appendix to section 116 of the latter Act. Consequently, the said ticket cannot be utilized in any form nor by any

construction to initiate prosecutions for such an offence. The former practice of issuing of the summons under the Justices of the Peace Jurisdiction Act (Form 2), after the laying of the information (“the no. 1 information”) still governs the prosecution for such an offence as careless driving triable in petty sessions (section 9 of the Justices of the Peace Jurisdiction Act). The no. 1 information, as Mr. Fraser correctly pointed out, is in fact Form 15 in “Part 11 indictable offences” of the schedule to the Justices of the Peace Jurisdiction Act, adapted for use in respect of Part 1, which relates to summary offences.

The ticket issued under section 116 of the Road Traffic Act for the offence of careless driving cannot therefore provide the basis for a summons to be issued to satisfy the provisions of sections 2 and 9 of the Justices of the Peace Jurisdiction Act.

The said ticket is a specific statutory creature created by section 2(2) of the Act as a composite document designated as an “information and summons”, and therefore cannot, by implication, be construed as an “information” merely because co-incidentally, it conforms with section 64 of the Justices of the Peace Jurisdiction Act. The statutory provisions must be strictly construed.

By section 10 of the Road Traffic Act an information which charges a summary offence, simpliciter must be laid within six (6) months after the alleged commission of the offence, although the summons emanating therefrom may be issued outside of the said six (6) months (see also *Hill v. Anderton* [1982] 2 All ER 963). This provision may affect also the issuance of the summons under

section 32 for careless driving as it concerns the bar to such a conviction for such an offence. Section 38 reads:

"38. Where a person is prosecuted for an offence under section 26, 27, or 32 he shall not be convicted unless either –

- (a) he was warned at the time the offence was committed that the question of prosecuting him for an offence under some one or other of the provisions aforesaid 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 the said fourteen days 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 served on or sent by registered post to him or the person registered as the owner of the vehicle at the time of the commission of the offence:

Provided that –

- (a) 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; or
 - (2) the accused by his own conduct contributed to the failure; and

- (b) the requirement of this section shall in every case be deemed to have been complied with unless the contrary is proved.

The purpose of such a warning is to make the offender aware that he has committed an offence and that a prosecution is contemplated. Sometimes the nature and complexity of the offence, requires a more indepth consideration and legal advice which may not be readily available prior to the initiation of proceedings. Provided that the ticket contains all the statutory requirements of the said section 38, it suffices as such a warning. A fortiori, an abortive attempt at prosecution for the offence of careless driving by the use of a traffic ticket which by its contents provides the necessary particulars to suffices as a statutory warning. The greater includes the lesser.

In the instant case an information handed in at the Court's office and numbered 5030/05 was laid on the 11th day of August 2005. In ***R v Leeds Justices, ex parte Hanson et al*** [1981] 3 All ER 72 at 73, the headnote reads:

"An information was 'laid' for the purpose of s 104 of the 1952 Act when the contents of the information and the fact that the prosecutor wished to pursue criminal process were brought to the attention of a magistrate or clerk to the justices, as part of the prosecution process, and not when the magistrate or clerk considered the information for the purpose of issuing process."

In this case it was within six (6) months of the offence alleged to have been committed on the 26th February 2005. It therefore satisfies the requirement of section 10 of the Justices of the Peace Jurisdiction Act.

The defendant Anthony Lewis is now before the Petty Sessions Court in Mandeville before the Resident Magistrate, albeit by an invalid process. He

cannot be regarded as having submitted to the jurisdiction of the said Court. He did not waive his right to object (*R v Essex Justices (Sizer et al) ex parte Perkins* [1927] 2 KB 475). Of course, he may submit to the jurisdiction of the Court and by so doing cure the want of, or the invalidity of the process (*R v Hughes*, (supra)). If the defendant Lewis declines to submit voluntarily the summons may be issued and served on him to attend court based on the said information no. 5030/05.

The case stated for the opinion of this Court is therefore answered as hereunder:

Question	1.	Yes
“	2.	No
“	3.	No
“	4(a)	No
“	4(b)	No
“	5.	No
“	6.	Yes

The case shall be returned to the Resident Magistrate's Court, Mandeville for continuation and for the issue of a summons for careless driving, if necessary, depending on the surrender of the defendant to the jurisdiction of that Court.