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Neutral Citation Number: [2010] EWHC 286 (Admin)

Case No: CO/2911/2009

**IN THE HIGH COURT OF JUSTICE
DIVISIONAL COURT**

Royal Courts of Justice
Strand, London, WC2A 2LL
19/02/2010

Before:

**LORD JUSTICE ELIAS
and
MR JUSTICE CALVERT-SMITH**

Between:

| | |
|---------------------------------------|------------------|
| Matthew Patrick Peake | Claimant |
| - and - | |
| Director of Public Prosecution | Defendant |

**Mr Mark Laprell (instructed by Blake Laphorn) for the Appellant
Mr Michael Forster (instructed by Crown Prosecution Service) for the Respondent
Hearing dates: 10 February 2010**

HTML VERSION OF JUDGMENT

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Mr Justice Calvert-Smith:

1. This appellant appeals by way of case stated from a decision of District Judge Gillibrand sitting at Portsmouth Magistrates' Court. The facts can be briefly stated. On 24th May 2007 at 7.29pm a police officer was operating an approved laser/video camera checking the speeds of vehicles driving west along the A27 from the Titchfield roundabout in Hampshire. Between that roundabout and the camera there are 3 "repeater signs" reminding motorists

of a 40 mph limit. The appellant's speed was recorded as being in excess of that limit. He was accordingly charged with driving his car "at a speed exceeding 40 mph, contrary to the Hampshire (A27 Southampton Road/The Avenue, Fareham)(40 and 50 mph speed limit) Order 2006 and sections 84 and 89(1) of the Road Traffic Regulation Act 1984 and Schedule 2 of the Road Traffic Offenders Act 1988."

2. It was not disputed at his trial

- a. that the appellant was the driver,
- b. that the camera was working correctly, or
- c. that the appellant had been driving his car at a speed in excess of 40 mph.

3. The dispute at trial concerned the validity of the speed limit and in particular the signs which the law requires to be erected to inform motorists of it.

4. An expert was called by the appellant. He pointed out that there were deficiencies in the traffic signs on side roads which fed into the A27 and other roads covered by the Order and submitted that those deficiencies rendered the whole 40 mph speed limit imposed by the Order along that part of the A27 unenforceable. That submission was based on the contention that each road or collection of roads which has been designated as a 40 mph limit area by an Order comprises a zone or "envelope". The effect of section.85(4) of the Road Traffic Regulation Act 1984 is to render unenforceable such speed limit if in any part of that "envelope" the limit is not "indicated by means of such traffic signs as are mentioned in subsection (1) or subsection (2)...". The regulations which currently dictate the nature of such signs are the Traffic Signs Regulations and General Directions 2002.

5. The District Judge rejected the submission. He found that the appellant had driven along the A27 from the roundabout and that the 3 signs he had passed between the roundabout and the camera were fully compliant with the requirements of the TSR&GD. He rejected the argument that the enforceability of a speed limit depends upon every single sign within the 40 mph area being compliant with the TSR&GD and ruled that the deficiencies identified by the defence expert were either irrelevant to the case since they were not on roads along which the defendant had driven or because the deficiency was so minor as to be caught by the *de minimis* principle.

6. He posed 6 questions for the consideration of this court.

- i. Was I correct in finding that the prosecution must establish a zone or envelope of lawful signage in order to enforce the speed limit in that area.
- ii. Was I correct in finding that provided the signage was adequate, minor breaches of the regulations did not impact on the legality and enforceability of the speed limit.
- iii. Was I correct in finding that the Titchfield roundabout ended one envelope on the A27 to the South East and started a new one to the North West where the Appellant was speeding.
- iv. Was I correct in finding the breaches of the signage at the junctions of Titchfield Hill and Southampton Hill where these roads join the A27 to be immaterial to enforceability of the 40 mph speed limit.
- v. Was I correct in disregarding any failures of signage at Prelate Way, Primate Road, The Hurdles, Hook Lane and Warsash Road as immaterial to the enforceability of the 40 mph speed limit on the A27.
- vi. In all the above circumstances was I correct in finding that the speed limit was enforceable and that the appellant was rightly convicted of speeding.

7. The case was originally listed before us for mention. Both sides wished the case to be referred back to the DJ for him to record additional factual findings or to expand the questions for the court. The parties were informed in advance of the hearing that the Court would wish to hear the arguments on the case as it stood and decide having heard them whether it would be assisted by some or all of the additional information sought from the District Judge. In the event we are quite satisfied that the case adequately sets out the relevant issues and that there is no purpose to be served by remitting a case which is already nearly 3 years old to the District Judge for further work on the questions.

The legal framework

8. It was agreed by all sides that the relevant authority was the local traffic authority. The relevant section of the RTRA is section 85.

(1) For the purpose of securing that adequate guidance is given to drivers of motor vehicles as to whether, and if so what, limit of speed is to be observed on any road, it shall be the duty of the Secretary of State, [in the case of a road for which he is the traffic authority, to erect and maintain....traffic signs in such positions as may be requisite for that purpose.

(2) [In the case of any other road, it is the duty of the local traffic authority-]

a. To erect and maintaintraffic signs in such positions as may be requisite in order to give effect to general or other directions given by the Secretary of State for the purpose

(3)

(4) [Where no such system of street or carriageway lighting as is mentioned in section 82(1) is provided on a road], but a limit of speed is to be observed on the road, a person shall not be convicted of driving a motor vehicle on the road at a speed exceeding the limit unless the limit is indicated by means of such traffic signs as are mentioned in subsection (1) or subsection (2) above.

(5)

(6)

(7) The power to give general directions under subsection (2) above shall be exercisable by statutory instrument.

THE ARGUMENT

9. The appellant submitted that because the Orders, as in this case, which create speed limits are frequently not confined to a single road, the effect of Sections 85(1)(2) and (4) and the TSR&GD is to require the local authority to comply in full with the Directions and to prevent any conviction for speeding on any part of any road in the area covered by the Order if in any respect there has been non-compliance with the Directions.
10. Alternatively, that if the traffic signs are non-compliant in any respect along a road along which the defendant might have travelled within the area covered by the Order before reaching the point at which his speed was measured he is entitled to the protection of section 85(4).
11. The words "adequate guidance" in Section 85(1) imply total compliance with the Directions. Anything less is "inadequate".
12. Much time was spent at trial and before us exploring the various deficiencies identified by the expert. These were to a large extent agreed. It became clear however during argument that if either of the contentions of the appellant were correct he was entitled to be acquitted, since on any view there was one possible entry route onto the A27 which had defective signage.
13. No authority was cited to us in support of the appellant's first and somewhat surprising submission. The respondent submitted that the word "road" in S-S (1) and (4) means what it says and cannot be expanded to mean "all the roads within the area delineated by an Order creating a speed limit". Any such interpretation, in addition to going beyond the clear words of the section, would produce extraordinary results in that a deficiency however recent and however caused in the signs anywhere in what may in some case be a very large area would grant immunity from conviction to anyone caught speeding within it.
14. The appellant's alternative submission was based upon the same contention as to the nature of the requirements of section 85 together with the criminal standard of proof. The magistrate described in his judgment and in his Case that he had found what he described as the "envelope" to begin at the Titchfield Roundabout. That, it was submitted, was a perverse finding since on any view the 40 mph limit extended along all the roads leading away from the roundabout. In particular, a few hundred yards along the A27 there is a side road which is subject to a 30 mph limit

which joins the A27 just beyond the point where the 40 mph limit begins. The requirement of the Directions is that the new 40 mph limit be displayed either by "terminal" 40 mph signs just before the junction or by smaller 40 mph "repeater" signs on both sides within 100 metres of the junction on the road subject to 40 mph limit. Neither were present in this case. Accordingly it was theoretically possible for the appellant to have passed a point on his journey through the relevant 40 mph limit where the signs were defective.

15. The one limitation to his submission the appellant was prepared to concede was the *de minimis* principle which had been applied in *Cotterill v Chapman* [1984] RTR 73. He did not however concede, as the District Judge found, that the 4 metres by which the distance of one of the repeater signs on the relevant stretch of road exceeded the necessary distance from the junction of a side road fell within the principle.
16. The appellant submitted that his argument on both points was supported by case law.
17. In *Mackereth v Madge* 66 LGR 69, decided in 1967, a motorist drove at more than 30 mph on a road which was thought to be subject to an automatic 30 mph limit because of the frequency of street lighting lamps which by section 22 of the Road Traffic Act 1960 (now re-enacted by Section 82 of the RTRA) automatically created the limit. In fact when the distances between the lamps were measured the distance between the lamps was found to be significantly greater than the 200 yards provided for in the Act. The Divisional Court held that in those circumstances "the directions in those regulations and directions were not here complied with, and accordingly by virtue of section 22(3) this appellant should not have been convicted".
18. In *Smith v Rankin* (1976) SCCR Supp 154 a motorist had driven along a road in excess of the speed limit but one of the terminal signs announcing the limit had been knocked down and was lying in pieces by the road. There were however repeater signs along the road. The motorist was acquitted. On appeal the acquittal was upheld. The Appeal Court of the High Court of Judiciary in Scotland held that

"...in the light of the strict conditions imposed by the language of section 75(3) of an earlier Act the RTRA 1967 the sheriff was not only entitled but bound to acquit the respondent, and it matters not that all the other prescribed signs were erected in compliance with the directions...."

19. In *Coombes v DPP* [2007] RTR 31 the motorist exceeded a 30 mph limit. However the terminal signs were obstructed by foliage and only visible as the motorist passed them. There was therefore insufficient time for the motorist to reduce his speed to comply with the limit. Walker J giving the judgment of the Divisional Court, said

"The ordinary meaning of the words used in section 85(4) is that two tests must be met before the appellant can be convicted. The first is that at the time when the offence is said to have been committed there were such signs as are mentioned in section 85(1) or (2). The second is that those signs indicated the relevant speed limit. At the very least it seems to me that this second test involves a requirement that at the geographical point where the motorist exceeded the speed limit the signs could reasonably be expected to have conveyed the limit to an approaching motorist in sufficient time for the motorist to reduce from a previous lawful speed to a speed within the limit. This court observed in *Wawrznczyk* that the purpose of section 85 is that "adequate guidance be given to motorists". The objective of section 85(4) is that motorists should not be convicted in the absence of adequate guidance. In my view the requirement I have described is necessarily implicit in order to ensure this objective."

He answered the 3rd question in the case stated:

"(3) There is a requirement that at the geographical point where the motorist exceeds the speed limit the requisite signs could reasonably be expected to have conveyed the limit to an approaching motorist in sufficient time for the motorist to reduce from a previous speed to a speed within the new limit."

20. The appellant further submitted that the dicta in *Wawrznczyk* and *Coombes* which appear to support the respondent's case may be the result of the Courts' not having been referred to the cases of *Mackereth* or *Rankin*.
21. Mr Laprell on behalf of the appellant further submitted that the District Judge's decision was in conflict with earlier decisions of his in speeding cases including one in which the same stretch of road was considered. We were supplied with notes of those judgments.

22. He further submitted that even if the respondent's submission was correct there were deficiencies in the signs within the "envelope" found by the District Judge between the roundabout and the camera.
23. Finally he submitted that to adopt the argument of the respondent and allow courts to look solely at whether the signing on the stretch of road over which the defendant in a given case would travel was "adequate" would generate hundreds if not thousands of contested cases in which possibly contradictory decisions would be made in different parts of the country on facts which were effectively on all fours with each other. By contrast at the beginning of his argument he had raised the spectre of hundreds if not thousands of convicted motorists having to have their convictions quashed and their penalty points removed if his appeal was successful.
24. In reply the respondent submitted that the "envelope" argument was not supported by the words of the statute. Both in the cases cited and in common sense the word "road" had been and should be taken to mean what it says. No authority had been cited for the proposition put forward by Mr Laprell that the word connoted every road the subject of an Order. He further submitted that the District Judge's findings were consistent with the evidence he had heard – and not heard – and with both the law as represented by section 85 and with common sense. He drew support from the remarks just quoted from *Coombes* and from passages in the court's judgment in *Wawrzynczyk*. In that case the speeding motorist had discovered by the time of his trial that the terminal signs of a 40 mph limit were placed at either end of the relevant road outside the area designated in the relevant Order. The fact that they were therefore not compliant with the strict terms of the TSR&GD was not found to have invalidated the conviction. At paragraph 11 Astill J giving the judgment of the court said

"Section 85(1) requires adequate guidance to be given to motorists. That adequate guidance here related to the 960 metres of road properly the subject of the speed restriction order. If the signs incorrectly include a stretch of road not subject to the order I am unable to accept that a motorist is not given adequate guidance concerning the stretch of road properly the subject of the order. If he speeds on that stretch of the road he commits an offence. The appellant in this case was speeding on a part of the road subject to the order."

25. All the signs on the relevant road travelling west between the roundabout and the speed camera were of the design, description or appearance specified in the TSR&GD. The deficiencies identified by the defence expert were all therefore irrelevant. The two deficiencies identified between the roundabout and the camera were irrelevant in one case because of the *de minimis* principle and in the other because it concerned traffic travelling in the opposite direction. The District Judge was entitled to consider merely the stretch of road over which he found it proved that the defendant had driven.

DECISION

26. I am satisfied that the respondent's submissions are correct and that the District Judge was entitled to reach the conclusion that he did. In so far as this decision is in conflict or tension with the decisions in *Mackereth* and *Rankin* I accept the submission of the respondent – partly accepted by the appellant – that statutory interpretation has progressed since 1967 from a focus on the actual words of the statutory provision to a combination of the actual words of the provision together with its purpose. The purpose of section 85 is to ensure that so far as possible motorists drive at safe speeds, that they are enabled to do so by adequate guidance, and that they should only be penalised if such guidance is available on the road on which the limit is exceeded.
27. I have not explored the alleged conflict between the District Judge's decision in this case and his decision in two earlier cases. Such decisions were not binding on him and they are irrelevant to this court's decision. Likewise I have not been impressed by the argument as to the potential consequences of ruling that in disputed cases the question of whether traffic signs are adequate for the purpose stated in section 85 must be left to the tribunal of fact.
28. I would add two matters as comments on the matter rather than as part of my judgment. First, the use of the term envelope or zone in this connexion has proved unhelpful. It is quite clear that the appellant was using it in quite a different sense to that used by the District Judge in his Case and in the decisions he had made in previous cases. If it is clear that it is being used in the sense set out in the answer to the first question below then it may be a convenient shorthand. However it is not found in the RTRA nor, so far as we were told, in the Directions made under it. Second, nothing in this judgment is designed to relieve local traffic authorities of their duty to provide adequate traffic signs compliant with the TSGR&D in areas covered by an Order. It became clear during the hearing that there were roads within the area covered by this Order which were inadequately signed and upon which speeding motorists would almost certainly have been able to escape conviction under section 85(4).

29. I would therefore answer the questions posed as follows:

- i. Yes in the sense described in paragraph 28 above.
- ii. Yes.
- iii. This was a conclusion open to the District Judge on the facts of the case.
- iv. Yes.
- v. Yes.
- vi. Yes.

Lord Justice Elias

30. I agree that the appeal should be dismissed, essentially for the reasons given by Calvert-Smith J. However, the case raises an issue of some importance, and I will briefly summarise my reasons in my own words. I will not repeat the facts which I gratefully adopt from my Lord's judgment.

31. The key issue in this case is the meaning of section 85(4) which for convenience I set out again:

"[Where no such system of street or carriageway lighting as is mentioned in section 82(1) is provided on a road], but a limit of speed is to be observed on the road, a person shall not be convicted of driving a motor vehicle on the road at a speed exceeding the limit unless the limit is indicated by means of such traffic signs as are mentioned in subsection (1) or subsection (2) above."

32. Subsection (1) provides for the Secretary of State to erect and maintain signs in such positions as may be requisite for the purpose of securing that adequate guidance is given to drivers as to what, if any, speed limit is to be observed on the roads.

33. Sub-section (2) requires the local traffic authority to erect and maintain signs in accordance with directions given by the Secretary of State on those roads for which they are made responsible. It is that sub-section that is engaged in this case.

34. The effect of sub-section (4) is that there can be no conviction unless there are signs complying with the directions indicating the speed limit. But the question is: Where must the limit be indicated? The Act is silent on this point. Plainly it cannot simply be at the place where the alleged speeding occurs, which I shall call the "point of enforcement". If, for example, repeater signs indicated the speed limit at the point of enforcement but there were no signs placed in positions indicating the speed limit leading up to that point, then there would be no signs requisite for the purpose of providing adequate guidance as to the speed limit. It follows that there must be compliant signs on the road or roads leading up to the point of enforcement. But how far back need they go? That is essentially the issue raised in this case.

35. Before considering the rival submissions I make two observations about sub-section (4). First, as both counsel accept, it is irrelevant whether or not the driver in fact knows the speed limit, whether from local knowledge or otherwise. Sub-section (4) provides there shall be no conviction unless appropriate signage is provided: if they are, the driver cannot pray in aid the fact that he did not see them; if they are not, the prosecution cannot rely on the fact that he in fact knows the limit anyway

36. Second, if the limit is not indicated by the appropriate signs complying with the relevant directions then there can be no conviction even though there are some signs in place and even if the court takes the view that these did give

adequate guidance to the driver. It is for the Secretary of State to determine what signs should be imposed for the purpose of securing adequate guidance, and if those signs are not provided then it must be inferred that the guidance is inadequate. Sub-section (4) is not satisfied and the conviction cannot stand.

37. The appellant's primary argument is that when subsection 4 forbids any conviction unless compliant signs indicating the speed limit are to be found, this requires that they are placed on every road within the zone or area where that particular speed limit operates. There will be a specific regulation fixing the limit and identifying the road or roads where it applies (save where section 82(1) applies and the speed limit is indicated by the lighting arrangements) The effect of subsection (4), read with subsection (1) or (2) as the case may be, is that the appropriate signing must relate not simply to the speed limit on that part of the road where the offence is committed, but to the speed limit on all the roads identified in the relevant regulation. This is so however large the area so identified.
38. It is not disputed that the local traffic authority had not complied with their duty under subsection (2) to provide compliant signs throughout the area subject to the 40 mph limit. Hence if the appellant is right, the conviction cannot stand.
39. The respondent submits that there is no warrant for reading the section in this way. It gives insufficient weight to the purpose for which the traffic signs are erected. This is to provide adequate guidance to drivers as to the speed limit. All that need be asked is whether there is compliant signing so that anyone who is caught speeding at the point of enforcement will have been given adequate guidance by compliant signs of the appropriate limit and will therefore be culpable for transgressing it. If there are such signs and if they will have provided adequate guidance whichever route may have been adopted by a driver up to that point of enforcement, then section 85(4) is satisfied. In other words the reference in subsection (4) to the limit being indicated by means of traffic signs is merely a reference to the limit at the point of enforcement on the particular road. Section 85(4) refers to the ...road; it makes no reference to zones or envelopes or such similar terms.
40. I prefer the respondent's argument. In my judgment it leads to a just result and I think it the more natural meaning of the statutory language. The appellant's argument gives no substance at all to the purpose of providing the signs, and it seems to me that the purpose ought to dictate the construction of the legislation, particularly since it is identified in the section itself. If at the point of enforcement there are signs complying with the directions of the Secretary of State which in fact provides adequate guidance of the speed limit at that point, this satisfies the requirement of section 85(4). If the prosecution can establish the route taken by the defendant, it will only have to show that compliant signs provide adequate guidance at the point of enforcement for someone taking that route. If they cannot establish the route, they will have to show that there were compliant signs on all routes which the driver may have taken.
41. The appellant's analysis leads to a perverse result. It means that a driver who is speeding on a stretch of road which is impeccably signed will escape conviction because of a failure by the Secretary of State or the local traffic authority, as the case may be, to comply with their duty to erect the appropriate signs perhaps miles away from the place of enforcement and on a road which the prosecution could demonstrate the driver had not travelled. I do not accept that the language of section 85(4) compels such a bizarre result.
42. In my judgment, there is nothing in the authorities, to which Calvert-Smith J has referred, which is at odds with this construction. The cases most strongly relied upon by appellant were *Mackereth* and *Smith* respectively. In the former there was a lengthy stretch of road with no speed limit markings at all; plainly therefore there were no compliant directions at the place of enforcement. *Smith* is a stronger case for the appellant because in that case there was a failure to provide a terminal sign although there were compliant refresher signs. This single failure was considered sufficient of itself to render the conviction unlawful. However, the argument relied upon by the respondent here does not seem to have been advanced. It was not suggested that there was an area of compliant signage on the road leading up to the point of enforcement which would have provided adequate guidance of the speed limit, and that the terminal sign was located outside that limit.
43. The appellant also relies heavily upon *Coombes v DPP*, the case where certain relevant signs were concealed by overgrown hedgerows. It is submitted that the two-fold test identified by Mr Justice Walker in that case, which Mr Justice Calvert Smith has set out in paragraph 19 above, supports the appellant's argument.
44. I do not agree. It simply stipulates that there must be signs as mentioned in section 85(1) or (2). It does not assist in determining where those signs must be located in order to make a conviction lawful and in accordance with subsection (4). Indeed the test as adumbrated by Mr Justice Walker emphasises that the crucial question is whether a

motorist could reasonably be expected to know the speed limit so that he would be able to reduce his speed from a previous lawful speed to a speed within that new limit. In my judgment, that is entirely consistent with the formulation principle which the respondent relies upon in this case.

45. In this case the judge found that there were compliant signs from the Titchfield roundabout to the point of enforcement. It is accepted that whichever route the appellant had taken, he must have travelled down that part of the road. The judge found that there was compliant signing there which adequately gave him sufficient notice as to the speed limit at the point of enforcement so that he should have been complying with that limit, whereas in fact he was speeding.
46. It follows that the conviction, in my judgment, should stand. I agree with my Lord as to the answers which could be given to the questions posed by the judge, although I also agree that the use of the term 'envelope' is not used with sufficient precision to make it a particularly helpful term to adopt when analysing the proper meaning of section 85(4).