IN THE HIGH COURT OF JUSTICE
QUEENS BENCH DIVISION
(CROWN OFFICE LIST)
Ashford Magistrates' Court

Date: 15 April 1959

B e f o r e :

LORD CHIEF JUSTICE
(LORD PARKER)

MR JUSTICE DONOVAN
MR JUSTICE SALMON

RAYMOND ALBERT YOUNG

-v-

MICHAEL BRIAN WESTBROOK DAY

V. Durand QC, and T. K. Edie (instructed by Sharpe, Pritchard & Co. for N. K. Cooper for the appellant)
D. Collard, (instructed by Cripps, Harries, Hall & Co.for the respondent.

HTML VERSION OF JUDGMENT

THE LORD CHIEF JUSTICE: This is an appeal by way of Case Stated by justices for the petty sessional division of Ashford, Kent, before whom an information was preferred against the respondent for dangerous driving. When the matter came to be heard, a preliminary objection was taken that the provisions of the Road Traffic Act, 1930 s.21, had not been complied with. There had been no warning of the respondent at the time. No summons was served on him within fourteen days, but undoubtedly on the ninth day a notice of intended prosecution was served, and it was said that the prosecution had failed in the notice sufficiently to specify the place where the alleged incident occurred. The notice itself was in these terms:

> "I hereby give you notice that the driver of motor-car No. MKJ 680 has been reported for consideration of the question of prosecuting him of one or more of the following offences"
>
> [then there were set out five offences including dangerous driving]
>
> "contrary to ss. 11 and 12 of the Road Traffic Act, 1930, as applied by s. 11 of the Road Traffic Act, 1956. At 7.40 p.m. on July 6, 1958, at Hothfield to Bethersden Road. It is alleged that while motor-car No. MKJ 680 was being driven along the Hothfield to Bethersden Road in the direction of Hothfield the driver drove in such a manner that he narrowly avoided colliding with a motor-car which was stationary on the off side of the road."

That notice was served on the respondent, the owner of the vehicle.

The short question here is whether, being obliged, as the police are under the section, to specify the place where it is alleged the offence was committed, they sufficiently complied with the section in describing the

place of the offence as on the "Hothfield to Bethersden Road". The justices found that the Hothfield to Bethersden Raod was a minor road approximately four miles in length, and they went on to hold that, in their opinion, the preliminary objection was well founded, and accordingly the notice was bad in that the police could have identified the spot in that four-mile stretch where the alleged offence occurred. As was pointed out in Pope v. Clarke (1953) 37 Cr. App. R. 141, s. 21 of the Road Traffic Act, 1930 is mandatory and provides that a notice of intended prosecution shall be served. So far as the matters which have to appear in that notice are concerned, the court held that they were directory, and that the test whether there had been compliance was whether the information specified was sufficient to bring to the attention of the alleged offender the incident which was going to be relied upon. In that case details of the place had been given and the date had been given, but by a mistake the notice said that it had occurred at 1.15 p.m., whereas in fact the correct time was 11 a.m. In those circumstances, this court held that there could have been no question of the alleged offender being misled or prejudiced in any way, and they held that the notice was a good notice.

It seems to me that in all these cases it is a matter of degree whether the information given is sufficient, and, being a matter of degree, it must be a question of fact in each case. As counsel said in the course of his argument for the appellant, if the four-mile stretch had been along a main London road, it would be quite idle to suggest that the notice was sufficient if it did not specify more clearly the exact place in that stretch of road where the incident was said to have occurred. This, however, was a minor road, as the justices found. They had full knowledge, and on consideration of the matter, they felt that the police could have specified it more accurately. The police certainly had the information and it is obvious that they could have been more specific because, even if they could not specify the place by reference to an intersection, a building, or a church, they could indicate that the alleged offence took place a quarter of a mile from Hothfield or half a mile from Bethersden, or wherever the place was. It seems to me that this was a question of fact for the justices, and it is impossible for this court to say that there was no evidence which would entitle them to come to the conclusion to which they did. In my judgment, they came to the right conclusion, and this appeal must be dismissed.

MR JUSTICE DONOVAN: I agree. I would merely merely emphasise that there is a specific finding of fact in this case that the notice did not sufficiently specify the place where the alleged offence occurred. The question is whether as a matter of law the justices were disentitled to come to that finding. They clearly were not. They were entitled to take that view on their knowledge of the locality.

MR JUSTICE SALMON: I agree. I think that the question whether the place is sufficiently specified in the notice under Road Traffic Act, 1930 s. 21, is essentially a question of fact. For example, it clearly would not be enough to specify "Oxford Street" in London. On the other hand, I am far from saying there are not many country lanes where it would be sufficient to identify a place in the way in which it is specified in this notice, but the justices, who presumably know this country district, have come to the conclusion, which is one of fact, that the place was not sufficiently specified, and, in my view, it is impossible for this court to interfere with their finding.

Appeal dismissed.