

CO/7462/2007

Neutral Citation Number: [2008] EWHC 2932 (Admin)
IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
DIVISIONAL COURT

Royal Courts of Justice
Strand
London WC2A 2LL

Monday, 17 November 2008

B e f o r e:

LORD JUSTICE LATHAM

MR JUSTICE UNDERHILL

Between:

LISA ELLEN HUMBER_

Appellant

v

DIRECTOR OF PUBLIC PROSECUTIONS_

Respondent

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Miss Katherine Hodson (instructed by Ward & Griffiths) appeared on behalf of the
Appellant

Mr Richard Thatcher (instructed by DPP) appeared on behalf of the **Respondent**

J U D G M E N T
(As Approved by the Court)

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1. LORD JUSTICE LATHAM: I will ask Underhill J to give the first judgment.
2. MR JUSTICE UNDERHILL: On 28 February 2006 the appellant was charged before the Nottingham Magistrates' Court with driving at a speed in excess of 30 miles per hour on a stretch of the A610 on the outskirts of Nottingham. It was her defence that there was no (or no adequate) signage to inform motorists that a 30 mile per hour limit was in place for that stretch of road. A similar defence was being run by two other motorists convicted at or around the same time. On 10 May 2007 District Judge Cooper made a pre-trial binding ruling in all three cases rejecting that defence. On 7 June the appellant pleaded guilty on the basis of that ruling. She now appeals against her conviction by way of case stated.
3. Although the case has been meticulously prepared and a number of points are argued in the skeleton argument before us, the dispositive issue is very narrow and I am bound to say that the answer seems to me clear. The relevant statutory provisions are sections 81, 82 and 85 of the Road Traffic Regulation Act 1984.
4. Section 81(1) provides as follows:

"It shall not be lawful for a person to drive a motor vehicle on a restricted road at a speed exceeding 30 miles per hour."

We are not concerned with sub-section (2), which gives power to ministers to vary the speed limit provided for by sub-section (1).
5. Section 82(1) defines a 'restricted road' as follows:

"(1) Subject to the provisions of this section and of section 84(3) of this Act, a road is a restricted road for the purposes of section 81 of this Act if—

(a) in England and Wales, there is provided on it a system of street lighting furnished by means of lamps placed not more than 200 yards apart;

(b) in Scotland, ... "
6. Section 82(2) provides for circumstances in which the traffic authority may direct that a road which is a restricted road under the previous definition shall cease to be one; but we are not now concerned with that provision since the arguments based on it which were raised in the skeleton argument were, sensibly, abandoned in oral submissions before us by Miss Hodson, who appears for the appellant.
7. Sections 81 and 82 thus provide, by primary legislation, for a 30 miles per hour speed limit in what are commonly referred to as 'built-up areas' identifiable by the provision of street lighting. Speed limits on other roads (or limits other than 30 miles per hour on what would otherwise be restricted roads) may be imposed by orders made by traffic authorities under powers conferred by section 84.

8. For completeness, I should also refer to section 89(1), which provides as follows:

"(1) A person who drives a motor vehicle on a road at a speed exceeding a limit imposed by or under any enactment to which this section applies shall be guilty of an offence."

The enactments to which this section applies include the 1984 Act itself.

9. If those were (as, to anticipate, I believe they are) the only relevant provisions, the position would be clear. It is common ground that the stretch of road on which the appellant was driving at the material time was one where there was a system of street lighting in place furnished by lamps not more than 200 yards apart. It was, accordingly, a restricted road, so that a speed limit of 30 miles per hour applied; and it is accepted that the appellant was driving at a speed in excess of that limit.
10. But Miss Hodson says that it is necessary for us also to consider the provisions of section 85 of the Act. That section is headed "Traffic signs for indicating speed restrictions". Sub-section (1) provides for the Secretary of State to erect and maintain speed limit signs on certain roads for which he is the traffic authority "for the purpose of securing that adequate guidance is given to drivers of motor vehicles as to whether any, and if so what, limit of speed is to be observed". Sub-section (2) provides:

"In the case of any other road, it is the duty of the local traffic authority—

(a) to erect and maintain ... traffic 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 mentioned in subsection (1) above ..."

The Secretary of State has indeed given directions to local traffic authorities as regards the practice and principles to be followed in erecting speed limit signs.

11. Miss Hodson says that it must follow from the fact that the duty under section 85(2) is placed on traffic authorities that no offence under section 89 should be committed in circumstances where that duty has been breached in relation to the relevant road. If it were not so, she submits, it would be an invitation to traffic authorities to ignore their statutory duty, and it could also lead to very unfair or arbitrary results in extreme situations where the road signs in place (or not in place) were positively misleading.
12. That submission was rejected by the District Judge. He held, as appears at paragraph 6.8 of the case stated:
- "A failure by the traffic authority to comply with section 85(2) of the 1984 Act does not, in my judgment, absolve a defendant from criminal liability for an offence contrary to section 81(1). Therefore, the absence of signs, or even the presence of misleading signs, would be relevant only to sentence."
13. In my view, the District Judge's conclusion was plainly correct. The language of sections 81 and 82 is quite clear. There is nothing in section 85 which is capable of

qualifying that. It does not necessarily follow from the fact that there is a duty on traffic authorities to provide signs which give "guidance" to motorists that in the absence of such signs motorists cannot be convicted on what is, irrespective of the absence of signs, statutorily designated as a restricted road. There is no question of motorists having no way of knowing, in the absence of proper signs, whether a road is restricted. That is in principle apparent from the fact that they are in a built-up area (as shown by the system of street lighting in place). Although the relevant provisions may not be as well-known as they should be, they are in fact referred to in the Highway Code: see the definition of 'built-up areas' on the table of speed limits.

14. But in any event the matter seems to me to be put beyond doubt - if there were any room for doubt - by the provisions of sub-section (4). This reads as follows:

"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."

The opening words of that provision clearly and necessarily imply that the rule which applies otherwise than on restricted roads, namely that the criminal liability of persons exceeding the speed limit is dependent on the existence of proper signage, does not apply where the system of street lighting referred to in section 82(1) is in place. With respect to Miss Hodson, the contrary seems to me to be unarguable.

15. The question raised in the case stated is as follows:

"In order to prove that a defendant is guilty of an offence of exceeding a speed limit, contrary to section 81(1) of the Road Traffic Regulation Act 1984, on a road that is a restricted road by virtue of the provision on it of a system of street lighting furnished by means of lamps placed not more than 200 yards apart, is it necessary for the prosecution to prove that the relevant traffic authority had fully complied with its duty under section 85(2) of the said Act in respect of the provision of signs for the purpose of securing that adequate guidance was given to drivers of motor vehicles as to whether any, and if so what, limit of speed was to be observed on the road in question?"

The answer to that question is, in my opinion, "no", and this appeal must be dismissed.

16. LORD JUSTICE LATHAM: I agree. Thank you very much, Miss Hodson, for all the material you provided us with.
17. MR THATCHER: My Lord, I do have an application for costs in this matter.
18. LORD JUSTICE LATHAM: Miss Hodson, have you anything to say about costs?

19. MISS HODSON: My Lord, I do not know what sum is sought, but I can indicate that the appellant is a single mother in receipt of benefits. She has had the benefit of a representation order throughout these proceedings, and I understand the lower court reduced the fine that would normally be imposed in cases of this sort to reflect her means.
20. LORD JUSTICE LATHAM: The usual order in such a case, if the court is to make any order for costs, would be to say that there should be an order for costs, and I will ask Mr Thatcher in a moment whether he is asking for a sum or for it to be assessed, and if assessed, then the costs judge will determine the extent to which it is appropriate for any costs order to be enforced.
21. MISS HODSON: I do not believe I can object in principle.
22. LORD JUSTICE LATHAM: Mr Thatcher?
23. MR THATCHER: My Lord, I am asking for them to be assessed. I am not in possession of an exact sum.
24. LORD JUSTICE LATHAM: The appellant is to pay the respondent's costs, to be assessed, if not agreed, by the costs judge, and for the costs judge to determine whether or not it is appropriate to enforce that order for costs against the appellant.