

14/02; [2002] VSC 242

SUPREME COURT OF VICTORIA

BLAIR v MAGISTRATES' COURT of VICTORIA & ANOR

Pagone J

14, 19 June 2002

PRACTICE AND PROCEDURE – CHARGE AND SUMMONS TO BE FILED WITH REGISTRAR WITHIN SEVEN DAYS AFTER SIGNING CHARGE SHEET – AT HEARING, ORIGINAL DOCUMENT REQUIRED TO BE FILED COULD NOT BE PRODUCED – MAGISTRATE FOUND AS FACT THAT DOCUMENT HAD BEEN FILED AND RELEVANT PROVISION COMPLIED WITH – WHETHER MAGISTRATE ENTITLED TO LOOK AT COURT'S RECORDS AND TAKE JUDICIAL NOTICE OF THEIR CONTENTS – WHETHER SECONDARY EVIDENCE AVAILABLE WAS SUFFICIENT FOR COURT TO CONCLUDE THAT ACT COMPLIED WITH: *MAGISTRATES' COURT ACT 1989, S30(2)*.

Section 30(2) of the *Magistrates' Court Act 1989* ('Act') provides:

- (2) If a prescribed person issues a summons under sub-section (1)—
- (a) he or she must file the charge and original summons with the appropriate registrar within 7 days after signing the charge-sheet; and
 - (b) the proceeding for the offence is commenced at the time the charge-sheet is signed, despite anything to the contrary in section 26(1).

When a charge came on for hearing in the Magistrates' Court, B. challenged the court's jurisdiction on the ground that the court file did not contain the original summons referred to in s30(2) of the Act and submitted that the charge should be struck out. The magistrate found as a fact that the summons had been filed and was satisfied that s30(2)(a) of the Act had been complied with. In finding the relevant facts, the magistrate referred to and relied upon evidence of the court's file and his knowledge of the process and procedures of the court. Upon appeal—

HELD: Proceeding dismissed.

The magistrate was entitled to look at the court's own records and to take judicial notice of their contents. That evidence was sufficient to permit the magistrate to draw the inference that the original document had been filed with the appropriate registrar and that it had been filed within seven days after the signing of the charge-sheet. The magistrate was entitled to be satisfied that the secondary evidence available was sufficient for the court to reach the conclusion required for the purposes of s30(3) of the Act. The magistrate was entitled to presume that the process and procedures known to him were followed regularly.

PAGONE J:

1. In this proceeding the plaintiff, Ian Blair, challenges the jurisdiction of the Magistrates' Court to hear a proceeding against him in which he is charged with an offence under sub-section 49(1)(e) of the *Road Safety Act 1986*. The challenge to the Magistrates' Court jurisdiction was made before Magistrate Cottrill who decided on 13 October 2000 that the court did have jurisdiction to hear the charge and adjourned the proceeding to a date yet to be fixed. The basis of the challenge to the Magistrates' Court jurisdiction is the absence from the court file of the original document fitting the description of the charge and original summons in sub-section 30(2) of the *Magistrates' Court Act 1989*.

2. Section 30 of the *Magistrates' Court Act 1989* deals with when a prescribed person may issue a summons. Sub-section 30(1) provides that a prescribed person may issue a summons to answer a charge for a prescribed summary offence. Sub-section 30(2) sets out certain requirements when a prescribed person issues a summons under sub-section 30(1). Sub-section 30(2)(a), provides, in particular, that a prescribed person issuing a summons under sub-section 30(1), must file the charge and original summons with the appropriate registrar within seven days after signing the charge-sheet. Sub-section 30(3) provides that "if it appears" to the court that sub-section 30(2)(a) has not been complied with "the Court must strike out the charge" and may award costs against the informant. The procedural requirement imposed by sub-section 30(2)(a) is, thus, mandatory and non-compliance with it compels the Magistrates' Court to strike out the charge.

3. The plaintiff contended before Mr Cottrill, and also by way of hearing *de novo* before me, that the charge had to be struck out because the original document required to be filed under sub-section 30(2)(a) could not be produced. The Magistrate found as fact that the document which was to be filed under sub-section 30(2)(a) had been filed and was satisfied that sub-section 30(2)(a) had been complied with. His Worship was able to find the relevant facts by referring to, and relying upon, evidence of the Magistrates' Court's file and his knowledge of the process and procedures of that court. He was able to conclude, in my view correctly, that the original of the document which was to be filed under sub-section 30(2)(a) had been filed and, on the basis of the facts before him, it appeared to him (as it does to me) that the terms of sub-section 30(2)(a) had been complied with.

4. His Worship has helpfully described the Magistrates' Court process and procedures by which proceedings are initiated in cases such as this. I was taken to that description, as being factually correct, by both parties. His Worship explained the commencement of the process and procedures as follows:

"For the purpose of initiating proceedings for a charge and summons pursuant to s30 of the *Magistrates' Court Act*, the proscribed [sic] person process, the police informant utilises a set of documents which are joined together by a perforated strip. There are four relevant documents: first page, white, headed CDEB, Police Brief Copy; second page, green, headed Charge and Summons To Be Filed At Court After Service; third page, green, headed Charge and Summons, Original To Be Retained By The Court; fourth page, blue, headed Charge and Summons, Bring This With You To Court. The balance of the document consists of two pages being notice and advice proscribed [sic] pursuant to the Magistrates Court General Regulations and which are not relevant for the purposes of these proceedings."

The problem in this case was that the second page which was to be filed in the court could not be located. His Worship inferred, however, that it had been filed (although it could no longer be found) and that what had been filed had indeed complied with the terms of sub-section 30(2)(a). In part His Worship relied upon the information found on the computer generated "screen-dump" which was before him and which contained information confirming compliance with the requirements of the sub-section. In part this conclusion was based upon what His Worship knew of the process by which the information finds its way on to the computer, which His Worship has helpfully set out in his reasons for decision.

5. The learned Magistrate was entitled to look at the Magistrates' Court's own records and to take judicial notice of their contents^[1]. The evidence of that court's record and process was before me through the affidavits and exhibits filed in the proceeding before me. That evidence was sufficient to permit the Magistrate, and me by way of *de novo* hearing, to draw the inference that the original document (that is the second page) had been filed with the appropriate registrar and that it had been filed within seven days after the signing of the charge-sheet. The inferences were capable of being drawn for the reasons articulated by the learned Magistrate which I fully adopt. Those reasons began with the fact that the relevant page (being the second page) was part of a perforated set of pages and ended with the existence of information in the computer that could only have been obtained from information that must have been entered on the second page for it to have been keyed into the computer. Some information in the Magistrates' Court computer, in particular that relating to the service of the document upon the plaintiff, could only have been derived from the page fitting the description in sub-section 30(2)(a).

6. It was argued for the plaintiff that secondary evidence of the original document could not be relied upon. A defendant charged by summons under sub-section 30(1) is entitled to challenge the proceedings, and in particular is entitled to test whether the process mandated by the provisions has been complied with^[2]. That challenge is not precluded by the absence of the original document and, indeed, may be facilitated by their absence especially to the extent that the burden of proof falls upon the informant^[3]. In this case the Magistrate was satisfied, as am I, that the secondary evidence available was sufficient for the court to reach the conclusion required for the purposes of sub-section 30(3). The Magistrate was entitled to presume that the process and procedures known to him, and known by me through his description of them, were followed regularly.

7. The conclusion I have reached removes the need for me to consider an alternative argument put on behalf of the second defendant to the effect that the proceeding should either

have been dismissed without considering the merits or, alternatively, that in the exercise of the court's discretion no relief should be provided. In deference to the argument before me, however, I should indicate that I fully accept the contentions raised on behalf of the second defendant. The proper course which the plaintiff should have followed was for the charge in the Magistrates' Court to have been heard and determined and then for any appeal from that outcome to raise the complaints about jurisdiction^[4]. The issues that were raised before me could easily have been raised in an appeal from conviction, if any, without the additional cost and delay which has been occasioned by this proceeding. Proceedings of the kind still pending in the Magistrates' Court should not be fragmented by interlocutory skirmishes and should generally be discouraged^[5]. It is most undesirable that the final and ultimate resolution of proceedings should be delayed with interlocutory appeals^[6]. Accordingly, I would if it were necessary, as a matter of discretion, decline to make the orders sought by the plaintiff.

8. Subject to hearing counsel on costs, I order that the proceeding be dismissed and that the plaintiff pay the costs of the second named defendant.

[1] *Craven v Smith* [1869] LR 4 Ex 146; *Cox v Snowball & Kaufmann* [1930] VicLawRp 50; [1930] VLR 325.

[2] *DPP v Emaden Pty Ltd* (unreported, Supreme Court of Victoria, Smith J, 20 November 1991); *DPP v Jack Sher* [2000] VSC 268.

[3] *DPP v Judge Fricke* [1993] VicRp 27; [1993] 1 VR 369 at 377.

[4] *R v Peterborough* [1997] 2 WLR 843.

[5] *DPP v Denysenko* [1998] 1 VR 312 at 316; (1997) 91 A Crim R 313.

[6] *R v Elliott* [1996] HCA 21; (1996) 185 CLR 250 at 257; 137 ALR 419; 86 A Crim R 335; 70 ALJR 637.

APPEARANCES: For the Plaintiff Blair: Mr P Billings, counsel. Christopher Trill & Associates, solicitors. For the Second defendant: Mr T Gyorffy, counsel. Solicitor for Public Prosecutions.
