

45/93

SUPREME COURT OF VICTORIA

DPP v ROSS

Beach J

7 January 1993

PROCEDURE – DESCRIPTION OF CHARGE – TYPOGRAPHICAL ERRORS IN SPECIFYING SECTION OF ACT – SECTION OMITTED IN ONE CHARGE – WHETHER CHARGES SHOULD BE DISMISSED OR AMENDED: MAGISTRATES' COURT ACT 1989 SS27(2); 50(1).

(1) The correct numeration of a section in a charge is not an essential element of an offence. Where such defects or errors occur, the charge should not be dismissed but amended in accordance with the provisions of s50(1) of the *Magistrates' Court Act 1989*.

(2) A magistrate was in error in dismissing charges where:

- (a) the charge sheet specified the relevant section as 14 instead of 13;**
- (b) another specified 71.1.c instead of 17(1)(c); and**
- (c) no section was specified at all.**

BEACH J: [1] These are three appeals from decisions of the Magistrates' Court at Sandringham made on 2 September 1992. The respondent, Gabrielle June Ross, had been charged by the police with some eleven different offences, all arising out of incidents which occurred at Dandenong on the evening of Saturday 29 June 1991. The offences included being drunk in a public place, using threatening words near a public place, and using indecent language within the hearing of a public place. The eleven charges came before the Court at Sandringham on 31 August 1992.

At the conclusion of the case for the informant, counsel for the respondent made submissions to the Magistrate to the effect that the three charges in question were defective in form and should be dismissed. Having heard submissions in relation to the matter, the Magistrate acceded to the application made on behalf of the respondent and dismissed the three charges. It is from those orders that the informant appeals to this Court. The basis upon which counsel for the respondent made his submissions in each case can be expressed quite succinctly.

In the case of the offence of drunkenness, the charge stated that the defendant at Dandenong, on 29 June 1991, was found drunk in a public place, to wit the Albion Hotel. The charge identified the provision of the Act which created the offence as section 14 of the Act Number 7405. Act Number 7405 is the *Summary Offences Act 1966*. Section 14 was a typographical error. The correct section is Section 13.

The charge in relation to the offence of indecent [2] language stated that the defendant at Dandenong, on 29 June 1991, did use indecent language within the hearing of a public place, namely, the foyer of the Dandenong Police Station. The charge identified the provision of the Act which created the offence as section 71.1.c of the Act Number 7405. Section 71.1.c was another typographical error. The correct section of the Act is Section 17(1)(c).

The third charge in relation to the offence of using threatening words stated that the defendant at Dandenong, on 29 June 1991, did near a public place, to wit the foyer of the Dandenong Police Station, use threatening words. The charge only identified the Act which created the offence, namely, Act Number 7405. Due to an oversight, no section of the Act was specified in the charge. The appropriate section in the *Summary Offences Act* is Section 17(1)(c). The Magistrate did not state his reasons for dismissing the three charges. I infer that he dismissed them because the informant had not complied with the provisions of section 27(2) of the *Magistrates' Court Act 1989* which reads:

"27(2): A charge must identify the provisions of the Act or subordinate instrument (if any) that creates the offence which the defendant is alleged to have committed."

The questions of law raised by the appeal are stated in the three orders as follows:

"Whether it was open to the Magistrate to dismiss the charge on the ground only that the charge sheet specified 14 instead of 13 as the relevant section number of Act Number 7405.

Whether it was open to the Magistrate to dismiss the charge on the ground only that the charge sheet specified 71(1)(c) instead of 17(1)(c) as the relevant section number of Act Number 7405.

[3] Whether it was open to the Magistrate to dismiss the charge on the ground only that the charge sheet failed to specify 17(1)(c) as the relevant section number of Act Number 7405."

It is clear from the wording of section 27(2) of the *Magistrates' Court Act* that it is a mandatory requirement that a charge identify the provisions of the Act creating the offence in question. But does it follow from that that an error in the identification of the relevant section of the Act, or the omission to identify the relevant section, is automatically fatal to the prosecution? The short answer to the question posed must surely be, no. Section 50(1) of the *Magistrates' Court Act* provides;

"On the hearing of a proceeding the Court must not allow an objection to a charge, summons or warrant on account of any defect or error in it, in substance or in form, or for any variance between it and the evidence presented in the proceedings, but the court may amend the charge, summons or warrant to correct the defect or error."

That is a mandatory requirement that a Court must not allow objections of the type raised by counsel for the respondent in the present case. These were not cases in which the defendant was in any doubt as to the nature of the charges brought against the respondent; nor were they cases in which the charges did not disclose an offence; nor were the applications made on behalf of the informant seeking to amend the charges attempts to commence new proceedings outside the twelve months limitation period provided by section 26(4) of the *Magistrates' Court Act*.

Inconsequential errors in the wording or description of a charge and inconsequential omissions from a charge [4] are not, of themselves, sufficient justification for dismissing a charge. The correct numeration of a section in a charge is not an essential element of the offence in question; nor is the numeration of the section in relation to the charge an essential element of the offence. Where such defects or errors occur, the charge is to be amended in accordance with the provisions of section 50(1).

In my opinion the submissions made by counsel for the respondent in the present case were unmeritorious and should not have been entertained by the Magistrate. In each case the question asked in the order will be answered, No. In each case the appeals will be allowed and the three orders made by the Magistrates' Court at Sandringham on 2 September 1992 will be set aside. The three charges will be remitted to the Magistrates' Court at Sandringham to be dealt with according to law. I order that the appellant's costs of each appeal, including any reserved costs, be taxed and when taxed paid by the respondent. Does that satisfactorily deal with the matter Mr Gebhardt?

Mr GEBHARDT: I just wonder whether, in an act of generosity, I should ask on behalf of the respondent for a certificate.

BEACH J: You may make that application, and the view I take of the matter is that the submissions made by counsel for the respondent were unmeritorious, and in that situation I decline to grant any such certificate.

APPEARANCES: For the appellant DPP: Mr SP Gebhardt, counsel. Solicitor to the DPP. No appearance for the respondent Ross.