



Neutral Citation Number: [2022] EWHC 842 (Admin)

Case No: CO/2479/2020

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
ADMINISTRATIVE COURT

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 12 April 2022

Before:

Lady Justice Thirlwall
Mr Justice Jeremy Baker

Between:

Christopher Candlish
- and -
The Director of Public Prosecutions

Appellant

Respondent

Ms Shada Mellor (instructed by **Ben Hoare Bell LLP**) for the **Appellant**
Mr William Hays (instructed by **CPS Appeals Unit**) for the **Respondent**

Hearing date: 17 March 2022

Approved Judgment

Mr Justice Jeremy Baker:

1. This is an appeal by way of case stated from the decision of the South Northumbria Justices sitting at Gateshead Magistrates' Court on 23 July 2019, whereby they held that eight charges of theft were lawfully before the court and not time-barred under the provisions of section 127(1) of the Magistrates' Courts Act 1980 (hereinafter referred to as "the 1980 Act").

Offences

2. The charges related to eight offences of shoplifting which were alleged to have taken place at various stores in Gateshead and Newcastle over the course of about a month between 29 July – 26 August 2018.
3. Individually these offences related to the theft of goods valued at between £7.66 – £163.00, whilst the total value of the goods stolen was £442.57.

Proceedings before the Justices

4. The appellant was charged with these offences by postal requisition dated 16 April 2019 to attend the Magistrates' Court on 1 May 2019. The appellant did not attend, and the matter was adjourned until 14 May 2019. The appellant attended on 14 May 2019 and the matter was further adjourned for legal argument to take place concerning the jurisdiction of the justices to try these offences.
5. Prior to the hearing, written skeleton arguments were received by the justices on behalf of the appellant and the respondent.
6. It was submitted on behalf of the appellant that the justices lacked jurisdiction to try these charges against the appellant. It was submitted that as each of these charges related to offences where the value of the goods stolen did not exceed £200.00, they were offences of "Low-value shoplifting" within section 22A(1) of the 1980 Act, and were therefore triable only summarily. That being so, it was submitted that the justices lacked jurisdiction to try them, as the appellant had not been charged with the offences within the period of 6 months from the date when the offences were committed, as provided by section 127(1) of the 1980 Act.
7. On behalf the respondent it was submitted that the charges were not "Low-level shoplifting" offences, as defined by section 22A(3) and (4) of the 1980 Act, as although individually none of them related to theft where

the value of the goods stolen exceeded £200.00, the aggregate value of the goods stolen in the various offences exceeded this sum. Therefore, the offences of theft were indictable offences which the justices had jurisdiction to try, as they were not subject to the time-bar in section 127(1) of the 1980 Act.

8. After considering these arguments and having taken advice from their legal advisor, the justices determined as follows:

“Applying s22A(3) and s22A(4) Magistrates’ Court Act 1980, we did not find that the offences detailed on the charge fell under the definition of ‘low value’ due to their aggregate value being in excess of the statutory threshold of £200. We found that the offences, when considered in aggregate, were either way and not bound by the time limits imposed by s127 Magistrates’ Courts Act 1980.”

9. In those circumstances, the justices accepted jurisdiction and the case proceeded to conviction and sentence.

Case stated

10. However, on the application of the appellant, the justices agreed to state a case for the determination of this court, in relation to two questions:

- 1.) *Was the Court’s interpretation of Section 22A Magistrates’ Courts Act 1980 correct in determining that this case was not one of ‘low value’ shop theft, due to the aggregate value of charges exceeding £200?*
- 2.) *Should ‘low value’ shop theft allegations be treated as summary stand-alone offences, notwithstanding their aggregate value, up to the point of plea and allocation; thereby instigating the six-month time limit to lay an information, imposed by virtue of Section 127 Magistrates’ Courts Act 1980?*

Statutory provisions

11. Section 127 of the 1980 Act imposes a time limit by which offences triable only summarily must be heard in the Magistrates’ Court as follows:

“127 Limitation of time.

(1) Except as otherwise expressly provided by any enactment and subject to subsection (2) below, a magistrates' court shall not try an information or hear a complaint unless the information was laid, or the complaint made, within 6 months from the time when the offence was committed, or the matter of complaint arose.

(2) Nothing in—

(a) subsection (1) above; or

(b) subject to subsection (4) below, any other enactment (however framed or worded) which, as regards any offence to which it applies, would but for this section impose a time-limit on the power of a magistrates' court to try an information summarily or impose a limitation on the time for taking summary proceedings,

shall apply in relation to any indictable offence.

.....”

12. Furthermore, section 22A of the 1980 Act provides that certain offences of theft are to be triable only summarily, as follows:

“22A Low-value shoplifting to be a summary offence

(1) Low-value shoplifting is triable only summarily.

(2) But where a person accused of low-value shoplifting is aged 18 or over, and appears or is brought before the court before the summary trial of the offence begins, the court must give the person the opportunity of electing to be tried by the Crown Court for the offence and, if the person elects to be so tried—

(a) subsection (1) does not apply, and

(b) the court must proceed in relation to the offence in accordance with section 51(1) of the Crime and Disorder Act 1998.

(3) “Low-value shoplifting” means an offence under section 1 of the Theft Act 1968 in circumstances where—

(a) the value of the stolen goods does not exceed £200,

(b)the goods were being offered for sale in a shop or any other premises, stall, vehicle or place from which there is carried on a trade or business, and

(c)at the time of the offence, the person accused of low-value shoplifting was, or was purporting to be, a customer or potential customer of the person offering the goods for sale.

(4) For the purposes of subsection (3)(a)—

(a)the value of the stolen goods is the price at which they were being offered for sale at the time of the offence, and

(b)where the accused is charged on the same occasion with two or more offences of low-value shoplifting, the reference to the value involved has effect as if it were a reference to the aggregate of the values involved.

(5)A person guilty of low-value shoplifting is liable on summary conviction to—

(a)imprisonment for a period not exceeding 51 weeks (or 6 months, if the offence was committed before the commencement of section 281(4) and (5) of the Criminal Justice Act 2003),

(b)a fine, or

(c)both.

.....”

Submissions on appeal

13. After the decision of the justices in this case the Court of Appeal held, in *R v Harvey* [2020] EWCA Crim 354, that the phrase “charged on the same occasion” should be construed as, “*referring to when the accused appears before the magistrates’ court to answer the charges*”, rather than any earlier occasion. As a result, shortly before the hearing before this court Ms Mellor, who represented the appellant before us but not below, informed the Court that there was no longer any challenge to the justices’ finding that this was not a case of “Low-value shoplifting” given the aggregate value of the goods stolen. She submitted that the issue for determination by this court is the stage at which an offence of shoplifting, where the value of the goods is under £200.00, ceases to be a low-value

shoplifting offence, and becomes triable either way, because of the aggregation of the values of other low-value shoplifting offences being in excess of £200.00.

14. In reliance on the decision in *R v Harvey* she submits that the phrase, “charged on the same occasion” in s22A(4)(b) of the 1980 Act, refers to the stage at which the offender first appears before the justices to answer the charges, rather than any earlier stage, such as when the offender is charged with the offences by the police.
15. She acknowledges that if the phrase referred to the stage at which the appellant had been charged with the offences by the police, then as the various offences of theft had a total value in excess of £200.00, they would not have been low value shoplifting cases, and would therefore not have been time-barred under s127(1) of the 1980 Act. However, she points out that in other circumstances, an accused may be charged with separate offences of shoplifting, where the individual value is under £200.00, at different times by the police, such that aggregation could not take place and this would produce an inconsistent result, as the offences would be subject to being time-barred if they were not charged within 6 months of their commission.
16. She submits that in the present case, the effect of aggregation only being able to take place when the appellant first appeared before the justices to answer the charges is that prior to that date the individual offences of theft were triable only summarily, such that they were subject to the time bar in s127(1) of the 1980 Act, and as they were not charged by the police within 6 months of the date of their commission, the justices lacked jurisdiction to try them.
17. She also submits that if individual offences of shoplifting, where the individual value was under £200.00, were not to be regarded as triable only summarily up to the first hearing before the Magistrates, then this would have the effect of permitting the police to circumvent the time limitation in s127(1) of the 1980 Act and could lead to unwarranted and ungovernable delays.
18. On behalf of the respondent, Mr Hays agrees that the phrase, “charged on the same occasion,” in s22A(4)(b) of the 1980 Act, refers to the stage at which the offender first appears before the justices to answer the charges, rather than any earlier stage, such as when the offender is charged with the offences by the police.

19. However, he submits that this is not the point for determination by this court, the matter having already been settled in *Harvey* (supra), rather the real point for determination is as to the status of the individual offences of theft prior to the appellant's first appearance before the justices.
20. He points out that offences of theft are triable on indictment, and submits that they remain so up until the stage at which an accused first appears to answer them at the Magistrates' Court, at which stage it is for the magistrates to determine whether any particular charge is a low-value shoplifting offence, or whether because of the effect of aggregation they are not to be so regarded and therefore remain indictable offences.
21. He submits that to decide otherwise would be to permit the appellant to pick and choose which part of section 22A of the 1980 Act applies at which point, and that there is nothing in the section which would suggest that this is warranted. Rather, the section should be read as a whole, such that when considering whether a particular offence of theft is a low-value shoplifting offence within s22A(1), it is necessary to apply the provisions of both subsections (3) and (4).
22. In these circumstances, he submits that in the present case as the individual offences of theft remained indictable offences throughout the course of the proceedings, both prior to the appellant's first appearance to answer the charges before the justices and after as a result of the effect of aggregation, none of them was subject to the time-barring provisions of section 127(1) of the 1980 Act, so that the justices had jurisdiction to try them.

Discussion

23. The effect of s127 of the 1980 Act is that, in general terms, there is no limitation of time in relation to the Magistrates' Court dealing with "indictable offences", (an expression which includes offences which are triable only upon indictment and those triable either on indictment or summarily i.e. an offence triable either way, see: Schedule 1 to the Interpretation Act 1978), whereas in relation to "summary offences" (i.e. those triable only summarily) there is a time limit which prevents magistrates trying or hearing them after a period of 6 months has elapsed from the date when the information was laid or the complaint made, which in relation to offences dealt with by the police by way of the charge and requisition procedure introduced by s29 of the Criminal Justice Act 2003, as in the present case, means the date when the written charge was completed, see: *Brown v DPP* [2019] EWHC 798 (Admin).

24. In the present case there is no dispute that if the individual offences of theft were summary offences at the date when the appellant was charged with them by postal requisition, then they would have been time-barred under s127(1) of the 1980 Act, whereas if they were indictable offences at that time, then the effect of s127(2) is that they would not have been subject to subsection (1) and the justice would have had jurisdiction to try them. Indeed because of the effect of aggregation provided by s22A(4)(b) of the 1980 Act, the offences would have remained indictable offences, as none of them would have been regarded as low-value shoplifting offences.
25. S22A of the 1980 Act has been considered by the Court of Appeal, Criminal Division, in a number of cases, including *Harvey* (supra), *R v McDermott-Mullane* [2016] EWCA Crim 2239, and *R v Maxwell* [2017] EWCA Crim 1233; albeit the phrase “charged on the same occasion” in s22A(4)(b) has only been considered in the first of these cases. Moreover, the status of individual charges of theft by way of shoplifting, where the value of the goods stolen is under £200.00, prior to the appellant’s first appearance before the justices, has not previously had to be considered.
26. It is, to my mind, quite rightly a matter of agreement between the parties in this case that, in accordance with what was said in *Harvey*, the phrase, “charged on the same occasion,” in s22A(4)(b) of the 1980 Act, refers to the stage at which the offender first appears before the justices to answer the charges, rather than any earlier stage. That being the situation, it seems to me that the issue for determination in this case is the status of the individual offences of theft prior to the appellant’s first appearance before the justices, which in turn is dependent upon the stage at which it is to be determined whether an offence of theft fulfils the criteria for being a low-level shoplifting offence.
27. In this regard, although it would be possible to have regard to the provisions of s22A serially, as is implicit in the appellant’s submission, the better view is that they should be considered as a whole, and that in order to determine whether an offence of theft qualifies as a low-value shoplifting offence, it is necessary to have regard to both subsections (3) and (4), such that the stage at which an offence of theft may become a low-level shoplifting offence, because it fulfils the criteria set out in s22A, is on the occasion that the accused appears before the Magistrates Court to answer the charge. Until then the offence of theft is, like all

other offences of theft, an indictable offence, in that it is triable either way.

28. There is nothing to suggest otherwise in the provisions themselves, and the natural reading of s22A is for it to be construed as a whole. Moreover, the effect of the determination as to whether an offence of theft is a low-value shoplifting offence taking place at the stage when an accused appears before the magistrates to answer the charges, has an equivalence under subsection (2) with the stage at which, notwithstanding the determination that the accused is charged with a low-value shoplifting offence, they are nevertheless entitled to elect to be tried in the Crown Court.

29. This does not deprive an accused of protection against unwarranted delays in the charging and prosecution of such offences, which is by no means the only reason for the limitation of time provided by s127(1) of the 1980 Act, as was pointed out by May J (as he then was) in his judgment in the Divisional Court case of *R v Newcastle-upon-Tyne Justices* [1976] 1 WLR 517, when considering the materially identical wording of s104 of the Magistrates' Court Act 1952, where he said,

“In my view the six months' limitation provision in section 104 of the Magistrates' Court Act 1952 is to ensure that summary offences are charged and tried as soon as reasonably possible after their alleged commission, so that the recollection of witnesses may still be reasonably clear, and so that there shall be no unnecessary delay in the disposal by magistrates' courts throughout the country of the summary offences brought before them to be tried.”

30. Indeed, no doubt if there were such egregious delay in the charging of such offences, especially if there had been any unfair manipulation of the process by the police, then this might form the basis of an application to stay any proceedings arising from them.

31. In these circumstances I consider that the justices were correct in their determination, that not only were the offences of theft alleged against the appellant not low-value shoplifting offences, due to the effect of aggregation of the value of the individual offences, but that those offences were not subject to the limitation of time in s127(1) of the 1980 Act, due to the fact that they had been and remained indictable offences throughout the course of the proceedings.

Conclusion

32. Therefore, in relation to the two questions posed for us in the case stated, I would answer them as follows:

1.) Was the Court's interpretation of Section 22A Magistrates' Courts Act 1980 correct in determining that this case was not one of 'low value' shop theft, due to the aggregate value of charges exceeding £200?

Yes

2.) Should 'low value' shop theft allegations be treated as summary stand-alone offences, notwithstanding their aggregate value, up to the point of plea and allocation; thereby instigating the six-month time limit to lay an information, imposed by virtue of Section 127 Magistrates' Courts Act 1980?

No

33. Accordingly, and for these reasons I would dismiss the appeal.

Lady Justice Thirlwall:

I agree.