

Neutral Citation No: [2022] NICA 2

Ref: McC11728

*Transcribed ex tempore Judgment: approved by the Court for handing down (subject to editorial corrections)\**

ICOS No:

Delivered: 14/01/2022

IN HER MAJESTY'S COURT OF APPEAL IN NORTHERN IRELAND

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ON APPEAL BY CASE STATED FROM BELFAST MAGISTRATES' COURT

BETWEEN:

MARIAN CRISTIAN FILIP

Appellant:

-and-

PUBLIC PROSECUTION SERVICE

Respondent:

Representation

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APPELLANT: Mr Barry McKenna, of counsel, instructed by G R Ingram and Company Solicitors

RESPONDENT: Mr Philip Henry, of counsel, instructed by the Public Prosecution Service

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BEFORE: The Rt Hon Lord Justice McCloskey and The Hon Mr Justice Horner

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McCLOSKEY LJ (delivering the judgment of the court)

*Introduction*

[1] By this appeal by case stated this court is required to determine the sustainability in law of the conviction of Marian Cristian Filip ("the appellant") in respect of (in short hand) the offence of causing a danger to road users contrary to Article 33(1)(a) of the Road Traffic (NI) Order 1995 (the "1995 Order"). The appellant was convicted of this offence, committed on 26 January 2021, following a remote live link hearing before Belfast Magistrates' Court on 23 December 2020.

*The Question of Law*

[2] The question of law arises in the following way. Article 33 of the 1995 Order provides:

### **“Causing danger to road-users**

33.—(1) A person is guilty of an offence if he intentionally and without lawful authority or reasonable cause—

- (a) causes anything to be on or over a road; or
- (b) interferes with a motor vehicle, trailer or cycle; or
- (c) interferes (directly or indirectly) with traffic equipment,

in such circumstances that it would be obvious to a reasonable person that to do so would be dangerous.

(2) In paragraph (1) “dangerous” refers to danger either of injury to any person while on or near a road, or of serious damage to property on or near a road; and in determining for the purposes of that paragraph that would be obvious to a reasonable person in a particular case, regard shall be had not only to the circumstances of which he could be expected to be aware but also to any circumstances shown to have been within the knowledge of the accused.

(3) In paragraph (1) “traffic equipment” means—

- (a) anything lawfully placed on or near a road by, or on behalf of, the Department;
- (b) a traffic sign lawfully placed on or near a road by a person other than the Department;
- (c) any fence, barrier or light lawfully placed on or near a road—
  - (i) by a person other than the Department in connection with the execution of works of any description on or in a road; or
  - (ii) by a constable or a person acting under the instructions or directions (whether general or specific) of the Chief Constable.

(4) For the purposes of paragraph (3) anything placed on or near a road shall unless the contrary is proved be deemed to have been lawfully placed there.

(5) In this Article "road" does not include a footpath, public path or other public right of way."

[3] The appellant was prosecuted, summarily, under Article 33(1) (a). The summons, in material part, recited the following:

**"CAUSING DANGER TO ROAD-USERS BY USING LASER LIGHT 2020/01/26 -**

That you on the 26/01/2020 intentionally and without lawful authority or reasonable cause, caused a laser light to be shone on or over road, namely Agincourt Road, Belfast, in such circumstances that it would be obvious to a reasonable person that to do so would be dangerous, that is to say at or about the driver of a vehicle, contrary to Article 33(1) (a) of the Road Traffic (Northern Ireland) Order 1995."

In the case the deputy district judge records that all of the prosecution evidence was agreed. There was no evidence from either the appellant or any person on his behalf.

[4] In the case the deputy district judge recites that he found the following facts:

- (a) On 26 January 2020, from his position on the footpath, the appellant shone the green light from his laser pen into a police cell van for approximately five seconds while the vehicle, which was approximately 10 metres away, was in motion on the road.
- (b) The appellant was laughing and looking directly at the police vehicle when he shone the light into the cab of the vehicle.
- (c) There were no obstacles between the appellant and the vehicle.
- (d) The light entered the eye of the police constable driver startling him, causing him to squint and stop the vehicle abruptly.
- (e) The appellant was arrested at the scene. The laser pen, which he had attempted to secrete down his trousers, was found upon searching him.

- (f) The judge rejected the appellant's account that shining the light into the vehicle was an accident when he had been trying to change the settings to show his friends who were with him.
- (g) The appellant shone the laser pen into the vehicle deliberately with the intention of distracting the driver, which he achieved.

The case continues:

"I found that it would have been obvious to a reasonable person that doing so was dangerous within the meaning of Article 33(2) because of the risk (which was made out in this case) of distracting the driver of a moving vehicle, thereby effecting their ability to safely control their vehicle on the road."

- [5] The question of law calls for the determination of this court is the following:

"... was I correct in law in finding that the laser light emitted from the appellant/aefendant's laser pen into a vehicle on a road was causing 'anything' to be over a road, pursuant to Article 33(1)(a) of the Road Traffic (NI) Order 1995?"

In the case, the prelude to the formulation of this question includes the statement that the case made on behalf of the appellant was confined to the "*anything*" issue and did not extend to the issues of intent or dangerousness.

### *The Appellant's Arguments*

[6] Before this court the first submission on behalf of the appellant is that the burden of proving the appellant's guilt beyond reasonable doubt lying on the prosecution, the PPS should have adduced evidence to show that the light emitted from the laser pen operated by the appellant was a "*thing*" within the meaning and compass of the statutory word "*anything*." This submission has no merit. Firstly, the term "*anything*" is undefined. Secondly, this is a question of law for the court, based on the facts found from the prosecution evidence and/or admitted (as here). The uncontested evidence before the district judge amply discharged the burden on the prosecution of establishing facts which were capable of establishing all of the ingredients of the offence in question. The issue for the judge was not whether the laser light was a "*thing*" as a matter of fact. There was neither any definition in the statute nor any decision binding on the district judge to the effect that the "*thing*" must be of a certain type or have specified characteristics. The issue, rather, was whether as a matter of law the shining laser torch light was embraced by the statutory word "*anything*."

[7] The second submission advanced on behalf of the appellant is reproduced verbatim:

“It is further submitted that the laser light was emitted from a device whilst the [appellant] was standing on a pavement and therefore cannot be said to be ‘anything to be on or over a road.’”

The syntactical difficulties in this formulation immediately expose a fundamental frailty, namely its distortion of the statutory language. An offence under Article 33(1) (a) is committed when a person “... intentionally and without lawful authority or reasonable cause – (a) causes anything to be on or over a road ... in such circumstances that it would be obvious to a reasonable person that to do so would be dangerous.” The specified ingredients of this offence are entirely silent on the position or place occupied by the perpetrator. The contention that in this case the laser torch light could not constitute “*anything ... on or over a road*” because of where the appellant was positioned physically when he activated and employed the relevant implement distorts the statutory language and air brushes the statutory requirements of *causing* the relevant thing *to be* on or over a road. The court considers this submission to be manifestly without merit.

[8] The balance of the argument on behalf of the appellant did not develop any further discrete submission. Rather it consisted of referring the court to certain sources. Each of these can be addressed briskly:

- (i) It is correct that in the jurisdiction of England and Wales there is a precise statutory analogue of **Article 33(1)(a)**, namely section 22A of the Road Traffic Act 1998 (the “1998 Act”).
- (ii) However, the digest of certain decisions in that jurisdiction contained in *Wilkinson’s Road Traffic Offences (30<sup>th</sup> Edition)* at paragraphs 15 – 52/15 – 55, each of them intensely and unavoidably fact sensitive, adds nothing to the appellant’s “*anything*” contention.
- (iii) The decision of the English Court of Appeal in *R v Meeking* [2012] EWCA Crim 641 cannot conceivably avail the appellant as it concerned a prosecution and conviction under the English statutory equivalent of **Article 33(1)(b)**, namely section 22A(1)(b): see in particular para [12] of the judgment. We acknowledge, of course, that the discourse in which Toulson LJ engaged considered, by way of introduction and historical explanation, the broader framework of this statutory provision, in particular the report of the Criminal Law Revision Committee and the White Paper “The Road User and the Law” (CMD 576, February 1989).

- (iv) This court has considered the aforementioned materials. We can identify nothing in them of material assistance to the appellant. It is trite that the fundamental focus of the court must be the wording of the statutory provision as enacted, to be contrasted with the preceding broad and unparticularised objectives of agencies other than the legislature.
- (v) For the same reason, no assistance is to be derived from either the Laser Misuse (Vehicles) Act 2018 or the non-commencement of certain of its provisions in this jurisdiction. If the laser/vehicle provisions of this enactment are to be commenced in Northern Ireland, this will doubtless be preceded by a careful review of their interplay with Article 33(1) (a) of the 1995 Order, which will include consideration of whether harmonious co-existence is possible or repeal of the earlier provision is indicated. These are not questions for this court.
- (vi) Nor is there any evidence before this court suggestive of any unaddressed mischiefs or perceived shortcomings in Article 22(1) (a) which might illuminate the issue of legislative intent. Quite the contrary: both members of the court can confirm that neither has any experience – or knowledge – of a previous case stated under this statutory provision.

[9] We remind ourselves of the correct approach in principle to the issue of statutory construction which arises. Per Lord Bingham in *R v Secretary of State for Health, ex parte Quintavalle* [2003] 2 AC 687, at para [8]:

“The court’s task, within the permissible bounds of interpretation, is to give effect to Parliament’s purpose. So the controversial provisions should be read in the context of the statute as a whole and the statute as a whole should be read in the historical context of the situation which led to its enactment.”

Lord Steyn added at para [21]:

“The pendulum has swung towards purposive methods of construction. This change was not initiated by the teleological approach of the European Community jurisprudence and the influence of European legal culture generally, but it has been accelerated by European ideas ...

Nowadays the shift towards purposive interpretation is not in doubt.”

In the context of construing a statute creating criminal liability in a Northern Ireland case, the House of Lords adopted precisely the same approach: *R v Z* [2005] NI 468 at para [17], per Lord Bingham

[10] The skeleton argument of Mr Philip Henry on behalf of the PPS correctly draws attention to two additional features of Article 33. First, it is located in a chapter of the 1995 Order entitled “Danger to Road Users.” Second, it has the bespoke heading “Causing Danger to Road Users.” Resort to each of these headings is permissible as a matter of principle: As observed in *Cross, Statutory Interpretation* (3<sup>rd</sup> ed), p131 while Parliament does not vote on headings they are included in the Bill and form part of the text entered on the Parliament roll. Likewise a new Part or schedule added to a Bill by amendment during the Bill’s passage through Parliament will contain headings. By virtue of these considerations they are considered to have Parliamentary authority. Therefore a court, while alert to their shortcomings (noted in *Bennion, Bailey and Norbury On Statutory Interpretation* (8<sup>th</sup> ed, para 16.7)) and alive to the Order in Council procedure, may legitimately consider them in construing the text which follows.

### ***Conclusion***

[11] The language of Article 33(1) (a) is of demonstrable breadth. The legislature did not opt for the familiar mechanism of attenuating the scope of the statutory language by definitions. In particular, neither the word “causes” nor “anything” is defined. The mischiefs which these statutory provisions sought to address are not constrained in anything in the pre-enacting history which this court has considered. We consider the statutory language to clearly reflect an underlying intention to recognise (a) the broad scope of the human behaviour which could conceivably occur and (b) the broad range of objects and devices which could conceivably be employed. The legislature has left it to the courts to apply this provision sensibly and on a factually sensitive case by case basis.

[12] The unexpressed undercurrent in the appellant’s arguments was that “anything” denotes something tangible or physical. The short riposte is that the legislature has not opted for a definition of “anything” to this effect. Equally, neither the invisible nor the inaudible is excluded. The manifest common sense underpinning the absence of a definition including missiles such as stones and bottles, whether moving or static, while excluding the non-physical or intangible, such as laser lights or full beam vehicular headlights or, indeed, deafening noise or blasting wind effects from e.g. street cleaning blowing devices, is all too clear.

[13] Giving effect to the foregoing this court concludes without hesitation that the district judge committed no error of law. We would add that the judge is to be commended for the formulation of the case stated.

[14] For the reasons given, the question posed in the case, namely -

"... was I correct in law in finding that the laser light emitted from the appellant/defendant's laser pen into a vehicle on a road was causing 'anything' to be over a road, pursuant to Article 33(1)(a) of the Road Traffic (NI) Order 1995?"

is answered "Yes."