

19 August 1996

Despatched to the Department of the Director of Public Prosecutions for the Appellant on

Shiraza Kelly

Deputy Clerk of Petty Sessions

MAGISTRATES' COURTS (NORTHERN IRELAND) ORDER 1981
(Article 146: Rule 160)

Case Stated by Magistrates' Court

IN HER MAJESTY'S COURT OF APPEAL IN NORTHERN IRELAND

**On Appeal by way of Case Stated under the
Magistrates' Courts (Northern Ireland) Order 1981**

BETWEEN:

**THE DEPARTMENT OF HEALTH AND SOCIAL
SERVICES FOR NORTHERN IRELAND**

Complainant/Appellant

AND

CHARLES RODGERS

Defendant/Respondent

**Case Stated by M W Bates Esq, Deputy Resident Magistrate, in respect
of his adjudication at a Magistrates' Court sitting at Downpatrick,
for the Petty Sessions District of Down, on the 13th day of May 1996.**

C A S E

The defendant appeared at Down Magistrates' Court on the 13th day of May 1996, upon a summons alleging that he had made a false statement for the purpose of obtaining benefit, contrary to Section 106(1) of the Social Security Administration (Northern Ireland) Act 1992, the material parts of which were -

"that on the 21st day of May 1994, in the district of Down and Division of Ards, you, the said Defendant, for the purpose of obtaining benefit for yourself, made a statement which you knew to be false, namely that you had reported everything that you were required to report and that on each day since the last date you claimed, namely Saturday, 7 May 1994, you were unemployed and did not report

that you worked on Tuesday 10 May 1994, Wednesday 11 May 1994 and Thursday 12 May 1994, contrary to Section 106(1) of the Social Security Administration (Northern Ireland) Act 1992."

The following facts were proved or admitted:-

1. Mr Rodgers, who is now 29 years, lives at 115, Ballagh Road, Newcastle. On the 21st day of May 1994, he made a statement that he had done no work, paid or unpaid, since the last date he had claimed, the 7th day of May 1994, and that he was unemployed.
2. Miss Denise Clarke is an officer of the Department of Health and Social Services, and in that capacity carried out observation at Orlock Gardens, Kilcooley Estate, Bangor, on the 10th day of May 1994. She saw a red Transit van arrive and several men get out. There were renovations going on at Northern Ireland Housing Executive property in that estate. One of the men "fitted the description" of Charles Rodgers according to Miss Clarke from information given to her anonymously about him received by another member of staff who took a note. He was wearing working clothes and was observed wheeling a load of concrete and refilling the barrow he was using. This observation was carried out by Miss Clarke on foot, from about 60' away from the suspect.
3. Again, on the 11th day of May, alone, Miss Clarke again observed the person she believed to be the defendant, lifting a saw, talking to men digging drains and carrying a box full of letter box covers.
4. Miss Clarke returned on the 12th day of May, accompanied by another officer, Mr Glenn Hampton, and observed the person she believed to be the defendant, pushing a wheelbarrow, climbing ladders and pebble dashing a wall. This time from a slightly greater distance.

5. On the 2nd day of June 1994, at the Social Security Office, in the morning, Miss Clarke arrived about 15 minutes to 30 minutes before the defendant, Charles Rodgers, came into the office at the same time as 3 other persons. He went to the unemployment benefit section and handed a letter in. This was in response to a request for Mr Rodgers to attend at a given time for interview. Miss Clarke expressed herself "very satisfied" that the person attending for interview was the same person she had seen working on the three above dates. The defendant was unaware that he had been called for identification purposes. He was observed through a window by Miss Clarke accompanied by Mr Hampton, who had been with her on the 12th day of May at Kilcooley. Miss Clarke did not appear to Mr Rodgers at this time. Miss Clarke confirmed that there was the usual "traffic" of people in the DHSS office.

6. Mr Hampton gave evidence that he accompanied Miss Clarke on both the above occasions and confirmed her observations.

7. There was no evidence that Mr Rodgers made any admissions.

8. Counsel for defence applied at this stage for a direction that there was no case to answer on the basis that Article 76 of the Police and Criminal Evidence Order gave me a discretion to exclude the evidence of Miss Clarke and Mr Hampton as prejudicial, outweighing its probative value, as under Article 66 of the Police and Criminal Evidence Order, (hereinafter referred to as the 1989 Order), DHSS investigators must "have regard to" the provisions of the 1989 Order -
"(8) Persons other than police officers who are charged with the duty of investigating offences or charging offenders shall in the discharge of that duty have regard to any relevant provision of such a code.
(9) A failure on the part -
(a) of a police officer to comply with the provision of such a code; or
(b) of any person other than a police officer who is charged with the duty of investigating offences or charging offenders to have regard to any relevant provision of such a code in the discharge of that duty,

shall not of itself render him liable to any criminal or civil proceedings.

(10) In all criminal and civil proceedings any such code shall be admissible in evidence; and if any provision of such a code appears to the court or tribunal conducting the proceedings to be relevant to any question arising in the proceedings it shall be taken into account in determining that question."

It was therefore argued by Mr O'Kane for the defence that in the light of Article 66(8), (9) and (10) the investigating officer had not had regard to the provisions of Code D of the 1989 Order which relates to identification, and which reads as follows:-

"In a case which involves disputed identification evidence, and where the identity of the suspect is known to the police and he is available. (See Note 2E) the methods of identification by witnesses are -

- (i) a parade
- (ii) a group identification
- (iii) a video film
- (iv) a confrontation".

None of these methods of identification was employed by the investigator in this case. The Code states:-

2.13 "If neither a parade, a group identification nor a video identification procedure is arranged, the suspect may be confronted by the witness. Such a confrontation does not require the suspect's consent, but may not take place unless none of the other procedures are practicable."

I do not consider that the identification by Miss Clarke could be described as a confrontation, nor as a group identification, although other persons came into the office at the same time as the defendant.

The first question to be determined therefore is whether DHSS investigators are persons who must have regard to the codes.

I held that a DHSS officer was subject to the provisions of the 1989 Order and therefore should have regard to codes of practice made under it.

Authorities considered by me in arriving at this decision -

1. Archbold, Criminal Pleadings and Practice (1995) Vol 1, paras 15-9/15-10
2. Blackstone Criminal Practice (1995) - F18-5
3. R v Seelig and Lord Spens
4. R v Bayliss 1994 Criminal Law Reports 687
5. Written Judgement - Judge Anthony Hart QC, Friday 9 June 1996 (Bulletin of Northern Ireland Law 06/95)

The defendant on the 21st day of May made a statement that he had done no work, paid or unpaid, and his visit to the DHSS Office, at which Miss Clarke and Mr Hampton claimed to have identified the defendant, did not take place until the 2nd day of June at which time the alleged offence if any had taken place. In his Judgement of 9th June 1995 Judge Hart found that no offence had taken place during the investigation by the DHSS Officer in that case. I distinguished that situation from the present where the identification of Mr Rodgers, who was called by name at an appointed time, took place after any alleged offence had been committed. Although the earlier identifications were before that alleged offence I consider that the true identification in this case took place on the 2nd day of June when Mr Rodgers was called by name to attend and that since no regard was had to the provisions of Article 66 of the 1989 Order, I dismissed the case at this stage.

By a requisition dated the 20th day of May, the prosecution requested me to state a case for the opinion of the Court of Appeal on the point of law set out here, and I agreed to do so.

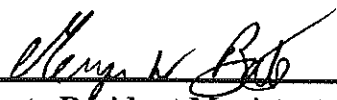
The following documents are annexed hereto and are intended to form part of this case:-

1. A copy of the Summons;
2. A copy of the request of the prosecution dated 20 May 1996 seeking a Case Stated;

The question of law upon which the opinion of the Court of Appeal is sought is -

"Was I correct in holding that a person other than a police officer charged with the duty of investigating offences contrary to the Social Security Administration (Northern Ireland) Act 1992, in the course of making an identification of an alleged offender is required to comply with the provisions of Code D of the Codes of Practice issued by the Secretary of State under Article 65 of the Police and Criminal Evidence (Northern Ireland) Order 1989, and that in the absence of such compliance that person's evidence of identification is not admissible for the prosecution."

This 8th day of July 1996.



Deputy Resident Magistrate