

THE DISTRICT COURT

DISTRICT COURT AREA OF LIMERICK

DISTRICT NO. 13

**DIRECTOR OF PUBLIC PROSECUTIONS
(AT THE SUIT OF GARDA ALAN O'SULLIVAN)**

PROSECUTOR

- AND -

ANN CASEY

ACCUSED

Judgment delivered by Judge Brian O'Shea at Limerick District Court on the 24th day of September 2020

1. This a preliminary application on behalf of the accused. It is argued on her behalf that the court lacks jurisdiction to hear the complaint against her on the basis that the summons was applied for outside of the relevant statutory period of six months.
2. The accused is charged with careless driving contrary to section 52 of the Road Traffic Act 1961 as amended. The offence can only be tried summarily, and there is no statutory provision that offers exemption from the usual six-month time limit.
3. The alleged offence occurred on 26 March 2019. The garda applied for the summons on 26 September 2019. The summons is an "administrative summons" as provided for at section 1 of the Courts (No.3) Act 1986. On foot of the said application, the summons was issued on 30 September 2019 by the appropriate district court clerk. It was subsequently served on the accused by registered post, which is not in dispute.
4. In support of her argument that the complaint is statute barred, counsel for the accused opened the decision of the High Court in *DPP v Stafford* [2005] IEHC 586 and, further, she relied upon sections 2 and 18 of the Interpretation Act 2005.
5. The prosecutor argues that there is six months between 26 March 2019 and 26 September 2019 that the summons was applied for within the statutory time limit.
6. In *Stafford* the accused was charged with summary only offences, namely dangerous driving and other minor road traffic offences. The offences were alleged to have occurred on the 31 August 2002. The application for the summons, pursuant to subsection 1(4) of the 1986 Act, was made on 28 February 2003. A dismissal was sought on the basis that the application was not made within six months.

7. In *Stafford*, Finlay-Geoghegan J stated that the time period within which an application may be made for the issue of a summons pursuant to subsection 1(4) of the 1986 Act is provided for at paragraph 1(7)(a) thereof as follows: "*Any provision made by or under any statute passed before the passing of this Act relating to the time for making a complaint in relation to an offence shall apply, with any necessary modifications, in relation to an application under subsection (4) of this section.*" Subsection 10(4) of the Petty Sessions (Ireland) Act 1851 provides that "*In all cases of summary jurisdiction the complaint shall be made ... within six months from the time when the cause of the complaint shall have arisen, but not otherwise.*" The accused in *Stafford* sought to rely upon paragraph 11(h) of the Interpretation Act of 1937. It provides: "*(h) Periods of time. Where a period of time is expressed to begin on or be reckoned from a particular day, that day shall, unless the contrary intention appears, be deemed to be included in such period, and, where the period of time is expressed to end on or be reckoned to a particular day, that day shall, unless the contrary intention appears, be deemed to be included in such period.*" The accused contended that in his case paragraph 11(h) of the 1937 Act meant that the offence date should be included as the first day of the six months. The court concluded that paragraph 11(h) did not apply to the calculation of the six months because it only applies to "*An Act of the Oireachtas and every instrument made wholly or partly under any such Act*", and as the 1851 Act was not an Act of the Oireachtas, paragraph 11(h) did not apply to its construction.
8. Finlay-Geoghegan J concluded that the summons had been applied for within six months of the date of the offence and that the time at issue was specified in the 1851 Act, which was not an Act of the Oireachtas, and accordingly the 1937 Act did not apply to it. She further opined that in calculating the six-month period specified in the 1851 Act, that the day on which the offence was committed must be excluded, such that if, for example, an offence was committed on 1 January in any given year, the complaint would be in time if it were made on 1 July of the same year. She noted that in cases in which the 1937 Act applied there was a divergence between Irish law and English law on the question of the inclusion or exclusion of the date upon which an event occurred in computing a time period.
9. Counsel for the accused in the instant case referred the court to two passages referred to in *Stafford*: one from the first edition (2002) of Walsh on Criminal Procedure, at page 643, and the second from Woods on District Court Practice and Procedure, at page 77. Walsh relied on Woods as authority for the proposition that in dealing with the computation of the six-month period both the offence date and the complaint date count as full days. In the context of the facts in *Stafford*, as a matter of law, Finlay-Geoghegan J expressly declined to adopt such logic.
10. In conducting an analysis of the matter at issue, it is crucial to observe that *Stafford* was decided prior to the enactment of the 2005 Act. That is to say *Stafford* was delivered on 14 June 2005, whereas the 2005 Act came into operation on 1 January 2006.

11. Subsection 2(1) of the 2005 Act provides that: *"In this Act - "Act" means - (a) an Act of the Oireachtas, and (b) a statute which was in force in Saorstát Éireann immediately before the date of the coming into operation of the Constitution and which continued in force by virtue of Article 50 of the Constitution ... The subsection also provides that the word "enactment" means an Act or a statutory instrument or any portion of an Act or statutory instrument ..."*
12. In relation to periods of time, paragraph 18(h) of the 2005 Act provides: *"Where a period of time is expressed to begin on or be reckoned from a particular day, that day shall be deemed to be included in the period and, where a period of time is expressed to end on or be reckoned to a particular day, that day shall be deemed to be included in the period ..."* This provision is comparable to paragraph 11(h) of the 1937 Act, as discussed in *Stafford*. It is somewhat surprising that the changes brought about by the 2005 Act are not referred at the appropriate stage (paragraph 14-56 to 14-59) in Professor Walsh's 2016 edition of his text on Criminal Procedure.
13. Regarding the definition of a month: there was also both submissions and discussion in *Stafford* as to what precise period of time a month incorporated. Finlay-Geoghegan J concluded that a month means a calendar month. In *McCann v An Bord Pleanála* [1997] 1 IR 264, Lavan J concluded, albeit in the context of the filing of an appeal in a planning matter, that a month meant a calendar month.
14. The issue is put beyond doubt in the 2005 Act. Subsection 21(1) of the 2005 Act provides that: *"In an enactment, a word or expression to which a particular meaning, construction or effect is assigned in Part 1 of the Schedule has the meaning, construction or effect so assigned to it."* The Schedule goes on to state: *"month" means a calendar month."*
15. I have set out the common law position, and the provisions of the 1937 Act, only because counsel referred to them, and therefore it is appropriate that I address them. They do no more than elucidate some of the historical jurisprudence on the issue, but they are effectively irrelevant owing to the express provisions of the 2005 Act. It is clear that the matter at issue in the instant case can now be determined on the basis of the content of the 2005 Act.
16. The alleged offence occurred on 26 March 2019. The summons was applied for on 26 September 2019. Put another way, the cause of the complaint accrued on 26 March 2019 and the complaint was made on 26 September 2019. The six-month time limit is a six-calendar-month time limit. There cannot be seven days referred to as the 26th in a six-month period. Paragraph 18(h) of the 2005 Act dictates that the 26 March 2019 and the 25 September 2019 must be included in reckoning the time period. This provision does not rescue the prosecution from the fact that the summons was applied for on the day after the six-month time limit had expired. Accordingly, the complaint was not made within six months of the date of accrual of the complaint.

17. I do not agree with counsel's contention that just because the summons was applied for outside of the statutory time period the court has no jurisdiction. In my opinion that cannot be a correct statement of the law. I take comfort in arriving at this conclusion by reference to *Minister for Agriculture v Norgo Limited* [1980] IR 155 and the later decision of the High Court in *Murray v McArdle* (Unreported 5 November 1999). However, once a breach of the statutory time limit is raised and established it amounts to an absolute defence.

18. Accordingly, having regard to the agreed manner in which the court was required to deal with the issue, that is to say on the basis of agreed facts surrounding the various relevant times, that has now been determined in favour of the accused, there is no practical reality to making any order other than to dismiss the complaint.