



In The Supreme Court of Bermuda
APPELLATE JURISDICTION
2026: No. 25

BETWEEN:

NEZURI PAYNTER

Appellant

-v-

JEROME ASTWOOD (POLICE SERGEANT)

Respondent

JUDGMENT

Date of Hearing: 24th July 2026
Date of Judgment: 24th July 2026
Date of Reasons: 6th August 2026

Appearances: The Appellant in Person
Ms Paula Tyndale, Acting Director of Public Prosecutions, for the Respondent

Dangerous Driving – Whether offence ticketable - Whether offence properly described

JUDGMENT of Richards J

Introduction

1. This matter came before me as an application for an extension of time pursuant to section 8 of the Criminal Appeal Act 1952 (“CAA”). On reviewing the file in advance of the hearing, the Appellant’s intended grounds of appeal did not impress me as meritorious, but I formed

certain concerns of my own. I briefly stated those to the learned Acting Director of Public Prosecutions, Ms Tyndale, who graciously indicated that she would not oppose me taking the course I proposed. I then granted the application, treated the hearing as the hearing of the appeal and remitted the matter to the Magistrates' Court to begin afresh. I gave brief oral reasons for doing so at the time and now expand upon those.

Analysis and Discussion

2. The Appellant appeared in Traffic Court on 19th May 2026. She did so in answer to a ticket that should not have been issued because the offence it attempted to allege is not listed in Schedule 1 to the Traffic Offences Procedure Act 1974 (“**TOPA**”). Section 2 of that Act allows a departure from the standard means by which criminal proceedings are initiated (pursuant to section 3 of the Criminal Jurisdiction and Procedure Act 2015 (“**CJPA**”))¹. However, this departure is limited. It only applies to “traffic offences” that are listed in Schedule 1 to the Act (which the Minister of Transport is empowered by section 21 to amend). The ticket issued in this case said that it alleged an offence contrary to section 36 of the Road Traffic Act 1947 (“**RTA**”), which is not one of the offences listed in Schedule 1². The offence created by section 36 is properly called Dangerous Driving.
3. Ordinarily a summons can only be issued by a Magistrate after an information is laid. The TOPA reverses this process for “traffic offences” (i.e. those listed in Schedule 1) and allows a police officer to issue the summons (a portion of the ticket that is given to the alleged offender) *before* the information (another portion of the ticket) is laid. The latter step can then be taken (by the same officer or a different one) when the matter is presented to the court. Since this ticket did not allege an offence listed in Schedule 1, it was not a valid summons. I do not believe that invalidated the whole proceedings because the Appellant attended court, as the ticket appeared to require her to do. There is no reason in principle why the ticket could not then be laid before the Magistrate and stand as a valid information.

¹ i.e. by laying an information before a Magistrate and obtaining a summons requiring the person to come to court or a warrant authorising their arrest (unless they are already in custody).

² Nor is careless driving (aka driving without due care and attention), contrary to section 37 of the RTA, and yet tickets are sometimes issued for it.

4. However, there is another problem. The ticket described the offence simply as “speed dangerous”. There is not currently an offence that is properly described or defined in these terms³. Section 3(2) of the TOPA allows offences to be described in certain abbreviated ways, but again it does so by reference to the way those offences are listed in Schedule 1, which Dangerous Driving is not. As it is defined in section 36A of the RTA, Dangerous Driving requires proof that the manner of driving fell “*far below what would be expected of a competent and careful driver*” and that “*it would be obvious to a competent and careful driver that driving in that way would be dangerous*”. It is settled law that evidence of speed alone is not sufficient to establish Dangerous Driving (see for example *DPP v Milton* [2006] EWHC 242 (Admin)).
5. When the ticket was put to the Appellant, the offence was actually described as “*driving in a speed dangerous*” (i.e. those were the words spoken to her by the Magistrate). She pleaded guilty. The facts of the offence were briefly stated by the prosecuting police officer. Although the written summary was slightly more detailed (mentioning other potentially relevant features of the driving) the only aspect that was referenced orally was her speed, which was said to have been in excess of 80 KPH. If that is true, it is very bad indeed, but not inherently demonstrative of the offence of Dangerous Driving. It may well be that there is evidence that the Appellant’s driving on this occasion met that definition, but in the circumstances of the hearing as it proceeded before the Magistrate, I do not think that the plea entered was an unequivocal admission of the offence. Both the manner in which the offence was described in the ticket and the summary of facts (as read) left the impression that the allegation was about speeding. Had the Appellant actually been charged with an offence of Speeding, even at 80 KPH, she could not lawfully have been disqualified (as she was).
6. The Magistrate tried to explain the consequences of a conviction for Dangerous Driving to the Appellant, but she did not explore with her whether she accepted that her driving on this occasion met the definition of that offence. That would not ordinarily be a necessary

³ I understand that such an offence existed in the past and some very experienced police officers may of course have been serving since before it was redefined.

exercise, but given the deficient way in which the offence had been described on this occasion, I believe that it should have been done.

Conclusion

7. In the circumstances I was satisfied that by reason of an imperfection in the criminal proceedings before the Magistrates' Court, a new trial before that court should be ordered in this case pursuant to section 18(5) of the CAA. That disposal technically does not amount to allowing or dismissing the appeal, but to the extent that the Appellant required an extension of time, I granted it. I also bailed her to appear before Plea Court at 9:30 a.m. on Friday, 7th August, 2026. By the time she does so, I anticipate that the Respondent will have decided the charge they will proceed upon and will ensure that an amended information is laid which accurately describes that offence, so that the Appellant is clear as to what is being alleged against her and can make an informed decision as to her plea.

Postscript

8. Given the conclusions expressed herein, I shall cause a copy of this judgment to be sent to the Commissioner of Police. I would respectfully suggest that police officers should be encouraged to stop describing the offence of Dangerous Driving using out-of-date language and, even more importantly, to stop issuing tickets for offences that are not listed in Schedule 1 to the TOPA. If this offence had been charged, as it should have been, by way of information and summons, it would have been properly described and this situation would almost certainly not have arisen. In this case I held that the invalid summons did not invalidate the whole proceedings, but under other circumstances a more serious concern may arise. If a ticket alleges an offence that is not listed in Schedule 1 to the TOPA and cannot justify a first instance warrant due to section 3(3)(a) of the CJP⁴, it may be that no warrant can properly be issued upon such a defendant failing to appear. A summons would then have to be issued instead. That is something about which the Commissioner may wish to seek advice, but if I am correct those police officers who prosecute in Traffic Court should be alert to ensure that warrants are not unlawfully sought or issued.

⁴ i.e. an offence that is indictable or imprisonable

9. The Minister may also wish to consider whether offences contrary to sections 36 and 37 of the RTA should be added to Schedule 1 of the TOPA. Indeed Schedule 1 is now so long that I wonder whether it might be easier if the TOPA simply provided that a ticket can validly be issued for any summary offence created by the relevant pieces of legislation (RTA, Motor Car Act 1951, etc.).

Dated this 6th day of August 2026



THE HONOURABLE MR JUSTICE ALAN RICHARDS
PUISNE JUDGE