

## ***Speeding Convictions, Avoiding Them & The Consequences***

by **Graham Gilbert**, Pupil - Call 2015

Ben Kitto spent the night of the 6<sup>th</sup> February 2017 in a cell in HMP Hull. At York Crown Court the next day, the 7<sup>th</sup> February, HHJ Stubbs, QC would tell the sales manager and father of two that his “exceptional character” and history of charity work had saved him from spending more nights in a similar institution. Instead Mr Kitto wakes up today with a two month suspended prison sentence with a hundred hours of unpaid work attached to it, five points on his driving licence and a £1000 fine. He also has to pick up the bill of bringing the case against him: £1,200 in prosecution costs and an as yet undecided sum for the investigation that ensnared him. Mr Kitto had pleaded guilty to one count of speeding, contrary to section 89(10) of the Road Traffic Regulation Act 1984 and one count of perverting the course of justice, contrary to common law.

How did Mr Kitto come to find himself in this position? His journey to Hull and York began in 2014 with the purchase of a £300 Laser Elite Jammer from the internet. These items can be legally purchased and sold. It is also legal to fit them to vehicles as they can act as parking sensors. However, the devices have two modes: parking and jamming. In jamming mode the Jammer intercepts the lasers on police speed guns and sends the beam back away from the vehicle at which it is aimed. The effect is to render the vehicle “invisible” to the device and make recording its speed impossible. The device also sounds a warning sound and flashes a light when officers attempt to monitor its speed. Mr Kitto employed the jamming mode on his device to avoid speeding fines. However, his car was eventually traced after it was monitored travelling at an average speed of 81-89 miles per hour on the A64 between Scarborough and York. The speed limit for the road is 70 miles per hour.

There can be no argument that the majority of his sentence arose from his conviction for perverting the course of justice which is an indictable only offence and carries a maximum sentence of life imprisonment. Speeding charges are summary-only offences and are usually dealt with by a fine and penalty points. But it is justifiable that a man such as Mr Kitto, someone of not just good but “exceptional” character, attracts such a sentence that, if public message boards are anything to go by, is seen as unjustified?

There is no sentencing guideline for offences of perverting the course of justice. Guidance comes from the case of *Mitchell* [2003] 1 Cr App R (S) 508 in which the Court of Appeal stated that there were three important factors a court should consider when passing sentence in such cases:

1. The length of time for which the deception was maintained;
2. The nature of the deception; and
3. The seriousness of the consequences.

In Mr Kitto's case the deception was maintained for a considerable period: the use of the Jammer, purchased in 2014, was not discovered until mid-2015. The nature of the deception was deliberate and calculated: Mr Kitto had not only purchased the device but activated the mode which transformed it from a parking sensor to a jamming device. HHJ Stubbs, QC described the offending as "arrogant". It is only the consequences that are, perhaps, not as serious as some other cases. In many instances of lying to avoid motoring offences and convictions, the deception leads to others being arrested and punished for the offence (Chris Huhne and Vicky Pryce, for example). There were no consequences of this nature in Mr Kitto's case. However, his deception did allow him to regularly exceed the speed limit with impunity. As the Learned Judge noted: "it appears [you view] the speed limits [as] an inconvenience." It should also be considered that his speeding could have had far more serious consequences if, for example, he had been involved in an accident.

Others who have been convicted of offences of perverting the course of justice for acts around motoring offences have faced far stiffer punishment for their deception. Chris Huhne was handed an 8 month prison sentence for swapping points with Vicky Pryce. She also was sentenced to 8 months' imprisonment. In *Burney* [2008] 1 Cr App R (S) 335 the defendant had claimed to have been driving a vehicle involved in a fatal accident. In fact his son had been driving, something that he later admitted. His sentence of 12 months' imprisonment was reduced to 6 on appeal. Similarly, in *Snow* [2008] 2 Cr App R (S) 497 the offender admitted twice giving false details to the police – one of which resulted in his brother being convicted in his absence for the offence. He was sentenced to 9 months for each deception. And, finally, in *Henderson* [2012] 1 Cr App R (S) 95 a lorry driver asked a friend to take his speeding points so he, the lorry driver, could avoid being disqualified. Both he and the friend were sentenced to four months' imprisonment after the deception was discovered.

Applying the factors in *Mitchell* and looking at the sentences previously handed down for motoring-related deceptions, Mr Kitto's sentence appears to be not only justified but possibly somewhat light. Clearly it was only his "exceptional character" that kept him from spending more time in HMP Hull. Those who consider purchasing a similar device in the hope of avoiding speeding points and fines would be advised to take note. As HHJ Stubbs, QC noted: such offences "almost inevitably" lead to a custodial sentence. Mr Kitto can count himself lucky to have been a rare exception to that rule.

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