

CITATION: *Police v Katherine Barbara Mocketarinja* [2004] NTMC 048

PARTIES: ANDREW HEATH

v

KATHERINE BARBARA MOKETARINJA

TITLE OF COURT: Court of Summary Jurisdiction

JURISDICTION: Summary Jurisdiction – Hermannsburg

FILE NO(s): 20404442

DELIVERED ON: 1 June 2004

DELIVERED AT: Hermannsburg

HEARING DATE(s): 10 May 2004

JUDGMENT OF: M Little

CATCHWORDS:

REPRESENTATION:

Counsel:

Prosecutions: R Burgoyne
Defendant: M O'Reilly

Solicitors:

Prosecutions: Police Prosecutions
Defendant: CAALAS

Judgment category classification:

Judgment ID number: [2004] NTMC 048

Number of paragraphs: 29

IN THE COURT OF SUMMARY JURISDICTION
AT HERMANNSBURG IN THE NORTHERN
TERRITORY OF AUSTRALIA

No. 20404442

BETWEEN:

ANDREW HEATH
Police

AND:

**KATHERINE BARBARA
MOKETARINJA**
Defendant

REASONS FOR JUDGMENT

(Delivered 1 June 2004)

Ms M LITTLE SM:

1. At Hermannsburg on the 10th of May 2004 the defendant pleaded not guilty to three breaches of the Liquor Act. A hearing was conducted. Count three is a charge of consume liquor and at the end of their case, prosecutions conceded they had no evidence on count 3. I record a finding of not guilty with respect to count three. I adjourned the hearing for decision to be made on all counts and now proceed to consider counts one and two.
2. On the 10th of May 2004 there was also a voir dire conducted as to the admissibility of certain statements made by the defendant when she was stopped by the police on the 19th of February 2004. I admitted the evidence of those statements, which amounted to admissions, and proceeded with the hearing. I made a ruling on the voir dire and gave my reasons on that day.
3. The defendant's charges related to the 19th of February 2004 at Hermannsburg and are: Count one - that she possessed liquor namely 1.5 litre bottle of Stones Green Ginger wine and four 330ml bottles of Jim Beam and Coke in a restricted area namely the Hermannsburg restricted area. Count 2 is a charge that she brought

liquor into the Hermannsburg restricted area (the same liquor as alleged with respect to count one). There is no issue that the apprehension took place within the restricted area and that the liquor was liquor within the meaning of the Liquor Act. Both offences are alleged breaches of s.75 (1) of the Liquor Act.

4. The prosecution bears the onus of proving each and every element of the offence beyond reasonable doubt, otherwise the defendant is to be found not guilty.
5. I will now summarise the evidence that was given by the various witnesses.
6. Constable Faint gave evidence first. He said that he and Constable Lee were approximately five kilometres out of the Hermannsburg Township and had set up a random breath and inspection station at about 7.45pm, on the 19th of February 2004. The station was just over the boundary where the Liquor Act and Regulations prescribes liquor should not be taken into the Hermannsburg restricted area. Two vehicles came around the corner and a silver falcon was at the front. The silver falcon was driven by the defendant. He spoke to the defendant and he noticed that Ronnie Ngalkin was in the rear of the vehicle. He said that Ronnie had brought alcohol in before. He asked the driver, this defendant, if there was any alcohol in the vehicle. The driver said no. Officer Lee said he was going to search the vehicle and the defendant stepped out of the vehicle. Ronnie Ngalkin come out of the rear of the vehicle; he was in the back passenger seat. The officer checked the front of the vehicle and there was no alcohol. He went to the back seat area of the car and a black bag was located on the floor. He took the bag and found the alcohol as set out in the charge sheet. He cautioned the defendant and then asked her whose bag it was. She said "mine". He asked whose grog it was and she said "mine" and she said she was taking it to Alice's house. Alice is on the east side of Hermannsburg. She said she knew it was a restricted area and the officer arrested her.
7. The witness marked on an exhibit (which eventually became exhibit 1) the point where the liquor and vehicle were seized. P1 shows that the seizure occurred within the Hermannsburg restricted area.
8. He said that he had no previous dealings with this defendant and that she was the driver of the vehicle. He searched the vehicle using the powers under the Liquor

Act. He said the black bag was a backpack and had two shoulder straps on it. As stated earlier the questions and answers put to this defendant were the subject to a voir dire and I have ruled those questions and answers admissible.

9. Under cross-examination he said that he inspected the vehicle for defects and there were no defects. He said he also intended to check to vehicle for alcohol. He said that bag was found on the floor in front of Ronnie Ngalkin. He said Travis Ngalkin, the son of the defendant and Ronnie Ngalkin, was also in the vehicle, as was Alice Ngalkin who was in the front. He said this defendant was reapprehended the day following the incident and he was sure one of the officers had offered her an electronic record of interview. He said she was arrested at 7.15am the next day pursuant to s.137 of the Police Administration Act. He said the questions he had asked with respect to whose bag it was and whose alcohol it was were to establish who was claiming ownership of the alcohol. He said that he was at the rear of the silver Falcon when he was asking these questions and there was another car behind the Falcon. He said he had placed the black bag on the boot of the vehicle.
10. Constable Lee was then interposed to ensure that the voir dire could proceed in an orderly fashion and I will summarise the evidence in the order it was given. Constable Lee said he was on evening shift with Constable Faint and at about 7.30pm they were on patrol along Larapinta Drive. They set up a RBT approximately five kilometres out of Hermannsburg. He saw vehicle lights coming from the Alice Springs direction and they activated their police lights. There were two vehicles travelling together and they both stopped. He said he drove up to where the first vehicle was and then he spoke to the driver of the second vehicle. He did not speak to this defendant. He could see Constable Faint dealing with this defendant. He knew this defendant and said he had previous dealings with her. He did not recall any of the conversation Constable Faint was having with her. He said on all other occasions that he had had dealings with this defendant she was polite and dealt with police in a friendly manner. However sometimes in the past she had not been forthcoming with information, when inquiries were being made with respect to her family members. He said he never required an interpreter when he spoke with her. He agreed she had been arrested again the next day. He had

drawn up the plan which became exhibit P1 setting out where the vehicle had been seized after the alcohol was located. He said that liquor was also seized from the second vehicle. He completed the exhibit book with respect to the seizure in this case. He said he had made enquiries and he had ascertained that this defendant did not have a permit to hold liquor in the Hermannsburg restricted area.

11. Under cross-examination he said that he could not be sure whether this defendant was shy. He agreed that that may explain why she had not prepared to be forthcoming with respect to some enquiries.
12. Sergeant Heath was then called on the voir dire. He said at approximately 7.45pm on the 19th of February 2004 he had received a call from Constable Lee asking him to come out to the inspection station to assist as they had seized two vehicles. He said he did not have any dealing with the defendant on the night but that she was with the vehicle. He said on the next morning the defendant was arrested for alcohol related offences and that he had arrested her. He said that he had dealings with her with respect to her deceased husband, in particular with allegations of domestic violence, and that she was able to speak English without the use of an interpreter.
13. He was then asked some questions with respect to whether the defendant had wanted to participate in a record of interview. He had not made any notes with respect to this issue. The matter was stood down for him to ascertain the status of the defendant when she was under arrest, in particular when she was bailed and whether she was given the opportunity for a record of interview.
14. He ascertained she was arrested at 7am and bailed at 11.08am. No record of interview was offered and there was no s.140 conversation conducted. There was some evidence as the explanation for the delay in the bailing of the defendant. There was some more brief evidence by Constable Faint with respect the questions on the voir dire.
15. The defence did not call any evidence on the voir dire. Submissions were made and I ruled that the evidence of the admissions be admitted into evidence.

16. Constable Faint then continued on with his evidence in cross-examination. He said that Travis Ngalkin was in the back of the vehicle as well as Ronnie Ngalkin. He was not sure if Travis was asleep and he did not recall waking Travis up. He could not recall hearing any conversation between the defendant and Travis but he agreed they may have said something. He agreed that when he asked if there was any alcohol in the car the defendant said, “no you can check”. His evidence in chief was that he took the back pack out of the vehicle and put it on the boot of the vehicle. He agreed that in his statement he had stated that the defendant took the back pack out of the vehicle. He agreed in cross-examination that she did do that – that she took the back pack out of the vehicle. He also agreed that after he had placed the backpack on the back of the vehicle the defendant had opened it. He said he could not recall if she took the backpack out voluntarily or not. That was the close of the prosecution case.
17. The defendant then gave evidence. She stated that she lives at east side camp in Hermannsburg and that she is married to Ronnie Ngalkin. One of her children is Travis Ngalkin. On the 19th of February 2004, she was in a silver Ford and she was driving. She said they had been to Alice Springs to visit her son-in-law who was in ICU. She had gone with Ronnie, Alice, Leonora and Baden. Travis was travelling in another vehicle. She said Travis had got into her vehicle when the vehicle had stopped near the Glen Helen turn off. She agreed the police stopped the car near Hermannsburg and that they had found grog in the car. She said the grog was behind the seat. She said it was Travis’s grog and that Travis was frightened. She said that Travis told her in Arrernte language to say the grog was hers. She said it was not hers and she did not know it was there. She agreed that the grog was in her bag but said she did not put the grog in her bag. She said she didn’t know who put the grog in the bag. She said she was in the hospital visiting and her bag was in the car when she was in the hospital. She said she told the police it was hers because her son was frightened. She agreed Travis drinks alcohol.
18. She was then cross-examined. She said that she drove into Alice Springs and drove to the hospital and that she had the keys to the car. She said the car was there when she got back out of the hospital and they then came back. She denied

that she drove to the Flynn Drive bottle shop. She said the black bag was in the car in the back seat. She said she had put it in the car. She said there was no grog in the bag when she had put it in the car. She said she had not taken the bag into the hospital and that the bag was in the same place when she returned to the car and that the car was still parked in the same place. She said she did not look into the bag when she came out of the hospital. She said that at first Travis was in the other car with Christopher Small. She said that Travis left about 5pm and said that he was coming back to Hermannsburg. She said that Travis was not there when she came out of the hospital and the next time she saw him was at the Glen Helen turn off. She said the black bag was in her car in the back of the seat, not in Travis's car. She said that Travis was in the other car, then he came with them and that she didn't see him with any grog.

19. She said she put her music on when she stopped the vehicle at Glen Helen. She said the other car, the car that Travis was travelling in, had a radiator that was boiling. Travis was then travelling with her in the silver falcon. She said that they had stopped for about 15 minutes at the Glen Helen turn off and that she didn't get out of the car. She said she saw Travis get in with a white plastic bag and then he threw the bag away. She said "might be he put it in my bag" but she didn't see Travis pick up her bag. She said she thought there might have been something in his bag and she "was thinking it might be grog". She said I told him "he shouldn't come with us, go with the other car". She said, I know he had grog. She said that Travis does not have a problem with drinking. She said Ronnie drinks often, that Ronnie did not say anything and that he was sick from grog that day. She said that Travis went to sleep and he was tired but not drunk. There were four of them in the car including her mother-in-law Alice. She said Travis was in the back and Ronnie was in the front. She said Travis was asleep when they crossed the boundary. She did not see the police car until they stopped them. Ronnie did not say anything and Travis was asleep until the police woke him up. She said that Travis said in language "tell the police that this grog is yours". She denied that she knew it was there, saying it was after the police stopped the car that she realised there was grog in the car. She said at Glen Helen she saw the plastic bag Travis had but she didn't see him put any grog in her bag. There was no re-examination and that was the close of the defence case.

20. The defence case has raised a difficult issue and that is what to make of the admissions which I have admitted into evidence. The defendant is now asserting that the admissions were made for reasons other than to implicate herself. In particular she says that they were made to protect her son who was “frightened” of the police. She has claimed ownership of the alcohol by way of her admissions but now she denies she owned the alcohol. She has also said she was taking the liquor to Alice’s place. The fact that she said that the bag was hers is not said to be a lie.
21. The defendant is charged pursuant to s.75 of the Liquor Act. The relevant charges are that she either possessed or brought liquor into a restricted area. Neither of these expressions are defined in the Liquor Act and accordingly they must be given their ordinary meaning. Neither word necessarily implies ownership of the liquor seized. A person can be in possession of liquor, or can bring liquor into, a restricted area without being the owner of the liquor. In this case even if I accept that the defendant made the admissions to protect her son, and not to implicate herself, and if I make a finding that she did not own the alcohol that, of itself, does not exclude the possibility that she may have possessed or brought the liquor into the restricted area.
22. The defendant’s evidence to the Court is that she lied to the police by claiming ownership of the liquor. She has told the Court the reason she lied was to protect her son. It is far from uncommon that persons in a position such as the defendant make admissions to protect family members. The difficulty with then seeking to distance themselves from those admissions is evident in a hearing. If a Court is to accept that the admissions were made for the reason put forward, and find that the admissions have no weight as against the defendant, the Court has found that the person is prepared to lie to an authority figure following a caution. This is then relevant when the Court is assessing honesty, credit and reliability of the defendant. Much was made of the issue that the defendant was not offered an electronically recorded record of interview. There is no requirement that all suspects or persons to be charged are offered an EROI. In this case, there is no evidence that the defendant sought to correct the record by approaching the police to make a statement saying she had lied and giving the account she now gives the

Court. While she is not required to give such a statement, the fact that she did not is, in my view, one factor which can be given some weight in deciding the issues in dispute (albeit not a great deal of weight). The police can not be expected to check with everyone as to whether they wish to retract any admissions made and I would expect that it could be argued successfully that any attempt to do so could be said to be oppressive.

23. When the defendant was being cross-examined she gave inconsistent evidence on the point as to whether she knew the alcohol had been placed in the vehicle at the Glen Helen turn off, where she said her son Travis entered the vehicle. The conflicting evidence is extremely relevant. On the first occasion in her evidence she said that she had a conversation with Travis telling him not to be in her vehicle and making it clear that she did not want him to get into the vehicle with what she was thinking might be grog. She said he had a bag and she did not see any alcohol but had assumed there was alcohol in the bag. She then said she did not know he had got into the vehicle with any alcohol. On one occasion she said she knew he had grog. On other occasions she said that she did not know of the grog.
24. I find that the alcohol was not the defendant's and that she lied to the police about the ownership of the alcohol. She has given evidence that the alcohol belonged to Travis. Yet the alcohol was in a bag which was located near the area where Ronnie had been sitting. There is no evidence that Travis had told the defendant that the alcohol was his – only that he asked the defendant to say it was hers. That does not satisfy me that, because of this request alone, that the defendant knew the alcohol belonged to Travis. The discussion the defendant had with Travis at the Glen Helen turnoff, and the observations she made, convince me that she knew that Travis had put alcohol into the vehicle she was driving at the turn off.
25. Another issue of direct relevance to whether the defendant knew of the alcohol is the handing of the black bag by the defendant to the police officer. There is no evidence upon which I can conclude that the explanation for that occurring was that Travis had told the defendant where the alcohol was. All the defendant has said that Travis said was for her to say the grog was hers. There is no suggestion that he told her where the grog was – whether it was hidden somewhere in the car,

whether it was in the back or the front, under a seat or, as it transpired, in the black bag near where Ronnie had been seated. There is no evidence as to when he told her to say the grog was hers.

26. There is inconsistent evidence from the defendant on the question of whether she knew there was liquor in the car. She made admissions to the police as to ownership of the liquor and now seeks to distance herself from those admissions. In these circumstances I do not accept the defendant as an honest or reliable witness on issues in question. She has lied to the police as to the ownership of the alcohol. She has given inconsistent evidence on oath. I find that the defendant was driving the vehicle and, by her actions, has brought liquor into a restricted area. Bringing alcohol into a restricted area connotes carrying or conveying alcohol into a restricted area. This can be way of a motor vehicle (though is not limited to such method of conveyance). The driver of a vehicle can bring alcohol into a restricted area without owning the alcohol.
27. I find that the defendant knew there was liquor in the vehicle when she entered the restricted area. Prosecutions proven their case beyond reasonable doubt on each element of the offence of bring liquor.
28. Although it is irrelevant to the bring liquor charge who owned the liquor, I find that it did not belong to the defendant.
29. I find count 2 made out and record a finding of guilty. On these facts count 1 is encompassed by count 2 and I record a finding of not guilty on count 1.

Dated this 1st day of June 2004.

M Little
STIPENDIARY MAGISTRATE