

CITATION: *Garnet Alan Dixon v Bernard Patrick Marsh* [2004] NTMC 076

PARTIES: GARNET ALAN DIXON

v

BERNARD PATRICK MARSH

TITLE OF COURT: Court of Summary Jurisdiction

JURISDICTION: Summary Jurisdiction – Alice Springs

FILE NO(s): 20409339

DELIVERED ON: 6 October 2004

DELIVERED AT: Alice Springs

HEARING DATE(s): 15 / 29 September 2004

JUDGMENT OF: M Ward

**CATCHWORDS:**

**REPRESENTATION:**

*Counsel:*

Prosecutions: S Geary  
Defendant: T Svikart

*Solicitors:*

Prosecutions: DPP  
Defendant: Povey Stirk

Judgment category classification:

Judgment ID number: [2004] NTMC 076

Number of paragraphs: 20

IN THE COURT OF SUMMARY JURISDICTION  
AT ALICE SPRINGS IN THE NORTHERN  
TERRITORY OF AUSTRALIA

No. 20409339

BETWEEN:

**POLICE**

Prosecutor

AND:

**BERNARD PATRICK MARSH**

Defendant

REASONS FOR JUDGMENT

(Delivered 6 October 2004)

Mr M WARD DCM:

1. The defendant is a serving police officer in the Northern Territory Police Force. He is charged with driving without due care. Contrary to Regulation 18 of the Traffic Regulations made under the Traffic Act (NT). The uncontested facts in the matter are that he was conducting an R.B.T on the Stuart Highway near the Racecourse at about 6.30pm on Melbourne Cup day. He was told to return to the police station. Having just set up the R.B.T, he queried this, and concluded his response by saying: "I can be mobile in 10 minutes, unless it's urgent." Thirty seconds later, he was told he was required back at the station "asap." Not unreasonably, he interpreted this message as implying a degree of urgency in his return.
2. Approaching the intersection of the Stuart Highway (Telegraph Terrace) with Larapinta Drive, he braked "to the same speed as other traffic". His vehicle was the first in line, and he was in the left hand lane going through the intersection. The lights were green in his favour as he approached that intersection, so he continued through without stopping. He estimated that he had reduced speed to about 60kph as he went through the intersection. He accelerated then to

somewhere between 80 and 90kph between Larrapinta Drive and Parsons Street. In his statement to police and in his evidence, he estimated his speed at the time he first saw a young boy on a bike crossing the road in front of him at 90kph.

3. I am satisfied beyond reasonable doubt that, in attaining such a speed in this particular 60kph area, he was driving without due care. There are trees and bushes both on the left hand side of the road and in the median strip. It is notorious that Aboriginal (and perhaps non-aboriginal) pedestrian drinkers make their way to the railway yards for drinking sessions, having purchased alcohol from the Coles or Woolworths liquor outlets. They get there by crossing Telegraph Terrace between Larrapinta Drive and Parsons Street.
4. Such pedestrians, in varying degrees of intoxication, either move from west to east or east to west and are usually hidden by the shrubbery on the west side of the road or in the median strip until they set foot onto the bitumen. If a vehicle is travelling at 20-30kph above the speed fixed by law, the risk of a collision is significantly increased. It matters not whether the driver is a police officer or not. The driver's reflexes and ability to respond to an emergency are the same, and the chances of a successful response to an emergency are unacceptably diminished at such speeds. The speed was 50% above the legal limit. At this speed the vehicle is moving at 25 metres every second. Average reaction time is 1 ½ seconds. It would take the average motorist 37.5 metres just to react to this situation at this speed. Of course at that speed it takes so much longer to bring the vehicle to a halt once the driver has reacted.
5. In this particular case, it was a kid on a bike that emerged from the bushes on the defendant's left. The kid "froze" in the defendant's path, and the plain fact remains that the defendant was going too fast in the circumstances to pull up and stop in time, or go around the child safely, having slowed down. He did manage to avoid the child but crashed the car by taking it off the road into the median strip and crashing into the trees and bushes there.
6. The legislative exception aside, police officers on duty do not fit into any special category. There are not differing standards of care for inexperienced drivers, ordinary drivers, and super-skilled and trained drivers (Cf McCrone v Riding

(1938) 1 ALER 157). Whether or not any motorist has driven with or without due care must be measured on an objective scale. The standard to be expected is the standard one would expect of a reasonably prudent driver in the like or similar circumstances (Crispin v Rhodes (1986) 40 SASR 202 at 204).

7. From time to time, police officers are expected to drive fast, in excess of the speed limits, and yes, even without due care (measured as above – of course, one would still expect the police officer to drive with all the skill and attention that s/he could muster in such circumstances).
8. Where does such a police officer stand? I am accepting for present purposes that the defendant reasonably believed that there was a degree of urgency about his journey, for reasons already stated.
9. Rule 305 of the Rules under the Traffic Act provides:

305 (1) A provision of the Australian Road Rules does not apply to the driver of a police vehicle if:

(a) in the circumstances:

- (i) the driver is taking reasonable care; and
  - (ii) it is reasonable that the provision should not apply;
- and

(b) if the vehicle is a motor vehicle that is moving – the vehicle is displaying a blue or red flashing light or sounding an alarm.

(2) Sub Rule (1) (b) does not apply to the driver if in the circumstances, it is reasonable:

- (a) not to display the light or sound the alarm; or
- (b) for the vehicle not to be fitted or equipped with a blue or red flashing light or an alarm.

10. The exemption only applies to exempt a police officer from the Australian Road Rules.
11. The defendant is not charged with a breach of the Australian Road Rules, but with a breach of Regulations made under the (NT) Traffic Act. The exemption therefore does not apply. There are possible exemptions available to a class of vehicles or persons under the Regulations (Reg.90) but these were not invoked by the defendant in this case. Whether or not police drivers or vehicles have an exemption under the Regulations is unknown to me.
12. As I understand it, there is an evidential onus cast upon the defendant to raise issues under the Regulations and the Rules (such as exemptions). Once raised, the onus is cast upon the prosecution of disproving the claimed exemption beyond reasonable doubt.
13. In summary, Rule 305 is inapplicable, and Regulation 90 was not raised or invoked. The defendant therefore is not exempt for obedience to Reg.18 of the Road Rules.
14. In case I am wrong about the applicability of the exemption clause Rule 305, I turn now to consider the argument.
15. The defendant did not have his lights or siren activated. He claimed that Sub Rule 305 (2) made the requirement (that he have a flashing light or siren) inapplicable. Generally speaking, speeding police vehicles are required to have one or other of flashing lights or sirens activated (Sub Rule 305 (1)) in order to warn pedestrians and traffic ahead that there is a police vehicle approaching, possibly travelling in excess of the speed limit. Sub Rule 305 (2) provides two exemptions from this requirement. One is where it is reasonable in the circumstances not to display a flashing light or sound the alarm. The other is where the vehicle is not fitted with such lights or sirens. Here, the vehicle was fitted with both flashing lights and sirens, so only the first exemption is possibly applicable.
16. When asked why he did not have his lights on, or sirens sounding, the defendant said that it was both unnecessary to do so because there was nothing on the road ahead of him and the lights were green, and undesirable. It was undesirable, he

said, because police flashing lights and sirens tended to make vehicles (drivers), pedestrians and cyclist skittish. That is they would hesitate, complicate the forward passage of the speeding police vehicle by moving from one lane to the next, cutting off the police vehicle. So he says he avoids its use where possible.

17. [If, as the defendant seems to be suggesting, lights and sirens are dangerous, one wonders why they are the primary requirement under Rule 305.] Whatever his justification for not activating lights and sirens normally, those circumstances did not apply on this occasion. There were no motorists, cyclists or pedestrians on the road ahead of him to render scared, skittish, hesitant or an obstacle or hazard to continued speedy police progress.
18. He did however agree with the proposition that there may have been pedestrians or cyclists lurking in the bushes on either side of the carriageway for north bound vehicles. Indeed, in his written statement to police he volunteers:

“I had not seen him prior to this, as he was obscured by the vegetation alongside the road, some of which was less than a metre from the kerb.”

19. It is for this very reason that he ought to have had his lights flashing or sirens sounding. That is to warn such persons (as the kid on the bike) that they had best not venture onto the road, because there was approaching a police vehicle or ambulance or fire truck at an excessive speed. In my view, under the circumstances it was unreasonable for him not to have had either his lights flashing or sirens sounding or both. The exemption does not apply in this case.
20. I am satisfied beyond reasonable doubt that the offence is made out, and I find the defendant guilty.

Dated this 6<sup>th</sup> day of October 2004.

-----  
**M Ward**  
DEPUTY CHIEF MAGISTRATE