

CITATION: *Rigby v Chadderton* [2007] NTMC 024

PARTIES: KERRY LEANNE RIGBY
v
DARREN JOHN CHADDERTON

TITLE OF COURT: Court of Summary Jurisdiction

JURISDICTION: Summary Jurisdiction

FILE NO(s): 20702042

DELIVERED ON: 14 May 2007

DELIVERED AT: Darwin

HEARING DATE(s): 27 April 2007

JUDGMENT OF: V M Luppino SM

CATCHWORDS:

Driving a motor vehicle while unlicensed – Suspension by Registrar of Motor Vehicles on request of Fines Recovery Unit for non payment of fine – Defendant unaware of suspension – Requirements to give notice – Defence of Ignorance of law where the law is created by a statutory instrument – Whether a caution administered by police is knowledge of an administrative suspension.

Traffic Act ss 29A, 32, 33B, 51; Criminal Code ss 22, 23, 30; Fines and Penalties (Recovery) Act s 60; Interpretation Act s 17.

REPRESENTATION:

Counsel:

Complainant: Mr Smith
Defendant: Mr Rowbottom

Solicitors:

Complainant: ODPP
Defendant: Withnalls

Judgment category classification: B
Judgment ID number: [2007] NTMC 024
Number of paragraphs: 15

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

No. 20702042

BETWEEN:

KERRY LEANNE RIGBY
Complainant

AND:

DARREN JOHN CHADDERTON
Defendant

REASONS FOR DECISION

(Delivered 14 May 2007)

Mr V M LUPPINO SM:

1. In this matter the defendant pleaded not guilty to a charge on complaint under section 32(1)(a)(i) of the Traffic Act, namely driving a motor vehicle without a licence.
2. There is no factual dispute. All of the evidence consisted of agreed facts and statements tendered by consent. The matter turns entirely on a question of statutory interpretation. The facts not in dispute are as follows:
 - On 20 January 2007 the defendant drove the motor vehicle referred to in the charge on McMillans Road.
 - For the period from 28 June 2006 and up to and including at least the entire day of 20 January 2007, the defendant's licence to drive a motor vehicle was suspended administratively by the Registrar of Motor Vehicles.

- The aforesaid suspension of the defendant's licence was made at the request of the Fines Recovery Unit pursuant to section 60 of the Fines and Penalties (Recovery) Act consequent upon the defendant's failure to pay fines.
- Up to 20 January 2007 the defendant had not received any notification of the suspension of his licence.
- On 1 January 2007 the defendant had been driving a motor vehicle on Kalymnos Drive at Karama when he was spoken to by a member of the Northern Territory Police namely, Jeremy Brunton.
- At that time Brunton informed the defendant of the licence suspension and warned him that he would be regarded as driving unlicensed if he drove a motor vehicle again before the suspension was lifted.

3. Set out below are extracts of the relevant legislation. Firstly, from the Traffic Act, namely:-.

29A. Effect of suspension of licence to drive or vehicle registration

(1) If a person's licence to drive is suspended under this Act or another Act, the person is to be taken not to hold a licence to drive during the period of suspension.

(2) Omitted.

32. Driving while not licensed

(1) A person shall not drive a motor vehicle on a public street or public place –

(a) unless that person –

(i) holds a licence;

33B. Person may be cautioned

(1) If a person contravenes section 32, 33 or 33A because the person's licence to drive or the registration of the vehicle is suspended because the person (or the owner of the vehicle) is a fine defaulter, a member of the Police Force may, if satisfied that the person was unaware of the suspension, caution the person and (if necessary) permit the person to continue to drive the vehicle to a nominated place instead of charging the person with an offence.

(2) A person who has been previously cautioned under this section for contravening section 32, 33 or 33A is not entitled to be cautioned again on another occasion in respect of the same suspension.

(3) It is a defence to a charge of contravening section 32, 33 or 33A if the person charged proves that he or she was given permission to drive under subsection (1).

51. Regulatory offences

An offence against or a contravention or failure to comply with this Act (other than sections 29AN(1), 30, 30A and 31) is a regulatory offence.

4. Next, the Fines and Penalties (Recovery) Act, namely:-

60. Suspension of licence to drive

(1) If the Fines Recovery Unit requests the Registrar of Motor Vehicles to take enforcement action, the Registrar must, under the Motor Vehicles Act and without further notice, suspend the licence to drive of the fine defaulter until the Unit advises that the enforcement order is satisfied or otherwise requests the Registrar to lift the suspension.

(2) Omitted.

(3) The Fines Recovery Unit or the Registrar of Motor Vehicles on behalf of the Unit may notify the fine defaulter of the suspension of the licence to drive, but a failure to notify the fine defaulter does not affect that action.

(4) Omitted.

5. Next, the Criminal Code, namely:-

22. Exclusion of regulatory offences

Except for sections 26(1)(c) and (d) (and sections 23 and 24 to the extent necessary to give effect to section 26(1)(c) and (d)), 30(3) and 38, this Part does not apply to regulatory offences.

23. Effect of authorization, justification or excuse

A person is not guilty of an offence if any act, omission or event constituting that offence done, made or caused by him was authorized, justified or excused.

30. Ignorance of law: Bona fide claim of right, &c.

(1) Subject to subsections (2) and (3), ignorance of the law does not afford an excuse unless knowledge of the law by the offender is expressly declared to be an element of the offence.

(2) Omitted.

(3) A person is excused from criminal responsibility for an act, omission or event done, made or caused in contravention of a statutory instrument if, at the time of doing, making or causing it, the statutory instrument was not known to him and had not been published or otherwise reasonably made available or known to the public or those persons likely to be affected by it.

(4) For the purposes of subsection (3), "published" means published in the Gazette or notified in the Gazette as having been made.

6. Lastly, the Interpretation Act, namely:-

17. Definitions

In an Act:

.....

"instrument of a legislative or administrative character" includes regulations, rules, by-laws, orders, determinations, proclamations, awards, documents and authorities made, granted or issued under a power conferred by an Act;

....

"statutory instrument" means an instrument of a legislative or administrative character;

7. The defendant concedes that he was driving without an appropriate licence at the relevant time but argues that he is excused from criminal responsibility by a combination of various of the sections of the Acts referred to above. Precisely, the argument is as follows:-
- (1) the suspension was effected by a statutory instrument;
 - (2) section 32(1)(a)(i) of the Traffic Act creates a regulatory offence;
 - (3) notwithstanding that, section 30(3) of the Criminal Code applies to that offence by virtue of section 22 of the Criminal Code;
 - (4) by virtue of section 23 of the Criminal Code, a person is not guilty of an offence if the relevant events constituting the offence were authorised, justified or excused;
 - (5) by reason of section 30(3) of the Criminal Code he is excused from criminal responsibility for driving in contravention of suspension effected by the statutory instrument because at the relevant time, the statutory instrument “was not known to him” within the meaning of section 30(3) of the Criminal Code.
8. Central to this argument is the nature of the notice or knowledge required for the purposes of section 30(3) of the Criminal Code. Mr Rowbottom for the defendant argued that the caution administered by Brunton on 1 January 2007 does not suffice. He relied in part on the difference of this form of notice compared to the other very formal methods of notice contemplated by section 30(3) of the Criminal Code i.e., publication in the Gazette or notification to the public at large. This is suggestive of an approach based on the *noscitur a sociis* and/or *ejusdem generis* rules of statutory interpretation. However, the requirements of notice on the one hand and publication on the other are separate matters in section 30(3). The aspect of knowledge of the defendant stands alone. Any genus can only relate to the publication component. The argument also seems to run counter to the effect

of the express provisions of section 60(3) of the Fines and Penalties (Recovery) Act which specifies that actual notice is not a pre-requisite to the validity of the administrative suspension.

9. Mr Smith for the prosecution contended that on a proper interpretation of section 33B of the Traffic Act, the caution that the defendant was given on 1 January 2007 constitutes notice to, or knowledge of, the defendant for the purpose of section 30(3) of the Criminal Code such that the defence of ignorance of law is therefore not available.
10. Mr Smith developed the argument by referring to the second reading speech relating to the legislation ultimately to be passed as the Fines and Penalties (Recovery) Act and the Fines and Penalties (Consequential Amendments) Act. Relevantly that provided:

“It should also be noted that one of the most significant differences between the new Fines and Penalties Act and the New South Wales act is our approach to licence suspension. In other jurisdictions, there have been some concerns raised over the fairness of this enforcement method, especially because of the possibility of a person not being informed of a licence suspension in certain circumstances – for example, where there has been a change of address and the notice of suspension was not received. The Fines and Penalties (Consequential Amendments) Act will therefore add a new provision to the Traffic Act to allow for police to give cautions where they are satisfied that a person is not aware of their licence being suspended. This will ensure that the suspension aspect of the new enforcement regime operates fairly. The caution provisions will allow for only one caution to be given in relation to a specific suspension, that will give police officers the power to issue permits at the time of giving a caution to enable the person to drive to a specified place – for example, to arrange payment of the outstanding fine.”

11. The matter turns entirely on whether a caution administered under section 33B of the Traffic Act amounts to notice or knowledge for the purposes of section 30(3) of the Criminal Code.
12. The position is not clear on the face of the relevant provisions. There is an ambiguity on that issue. Parliament could have removed any doubt by

simply providing in section 33B of the Traffic Act, that a caution administered under that section is deemed to be notice of the suspension thereafter. The absence of such a provision may indicate an intention that section 33B was only to create a defence rather than to equate to notice. Parliament may well have intended the matter to be left open, for example, to enable a person in the position of the defendant to dispute either or both the caution or the validity of any suspension. Additionally Parliament may have been concerned to allow notice or knowledge derived from a caution under section 33B of the Traffic Act to act as a substitute for actual notice or for something formal such as publication in the Gazette. On the other hand, the express provision in section 60(3) of the Fines and Penalties (Recovery) Act that actual notice is not a pre-requisite to the operation of the suspension indicates the contrary.

13. Despite the absence of the type of deeming provision referred to in the preceding paragraph the prosecution interpretation is open by reason of the express provision in section 33B of the Traffic Act that a person may only receive one caution in relation to any one particular suspension. There is no requirement anywhere for the Registrar of Motor Vehicles to send a further notice after a person has been cautioned. If Parliament's intention was that the caution was not to amount to notice, then limiting the number of cautions to one appears ineffective if the defence in section 30(3) then continues to be available. I think that is a very telling factor in determining the intention of Parliament.
14. The fundamental object of statutory interpretation is to ascertain the intention of Parliament. In the pursuit of that object, one of the principles applied by courts is that interpretations which lead to absurdity or which render legislation ineffectual are avoided. Another equally well established principle is that ambiguities in penal laws are construed in favour of the individual, something which Mr Rowbottom specifically relied upon, and quite validly in my view. In the current case I think that the matters which

make Parliament's intention clear are firstly, the express provision that the absence of notice does not negate the validity of the suspension (section 60(3) of the Fines and Penalties (Recovery) Act) and, secondly, that a person is only entitled to one caution (section 33B(2) of the Traffic Act). If the caution was not to be notice or knowledge for the purpose of section 30(3) of the Criminal Code, then section 33B(2) of the Traffic Act is rendered ineffectual as, despite not being entitled to another caution, a person who drives a motor vehicle after receiving a caution would still have available the defence in section 30(3) of the Criminal Code unless he received actual notice of the suspension in the meantime. That would in turn render the specific provision in section 60(3) of the Fines and Penalties (Recovery) Act nugatory. Such an interpretation is inconsistent with express provisions of the legislation in question and Parliament could not have intended that.

15. Accordingly in my view the caution administered to the defendant on 1 January 2007 amounted to notice or knowledge for the purposes of section 30(3) of the Criminal Code. The defence of ignorance of law is therefore not available and I therefore find the charge proved.

Dated this 14 day of May 2007.

V M Luppino
STIPENDIARY MAGISTRATE