

CITATION: *Narjic v Commissioner for Police* [2009] NTMC 051

PARTIES: HONORATA NARJIC
v
COMMISSIONER FOR POLICE

TITLE OF COURT: Local Court

JURISDICTION: Wadeye

FILE NO(s): 20835168

DELIVERED ON: 2 November 2009

DELIVERED AT: Darwin

HEARING DATE(s): 11 August, 22 September 2009

JUDGMENT OF: Ms Melanie Little SM

CATCHWORDS:

Application for vehicle seized to be released – s 98 Liquor Act (NT)

REPRESENTATION:

Counsel:

Applicant: Mr Young
Respondent: Mr Frey

Solicitors:

Applicant: NAAJA
Respondent: NTPFES Legal Branch

Judgment category classification: C
Judgment ID number: [2009] NTMC 051
Number of paragraphs: 30

IN THE LOCAL COURT
AT DARWIN IN THE NORTHERN
TERRITORY OF AUSTRALIA

No. 20835168

[2009] NTMC 051

BETWEEN:

HONORATA NARJIC
Applicant

AND:

COMMISSIONER FOR POLICE
Respondent

REASONS FOR DECISION

(Delivered 2 November 2009)

Ms Melanie Little SM:

1. The applicant has filed an originating application seeking an order that a seized motor vehicle Northern Territory registration number 777-204 (the vehicle) be released to her. This application was made pursuant to s 98 of the *Liquor Act* (NT) (the Act). Mr Young appeared on behalf of the applicant and Mr Frey appeared on behalf of the respondent the Commissioner of Police. Evidence was taken at the Wadeye Court on 11 August 2009. The matter was adjourned to Darwin for submissions. I reserved decision in the matter. This is now the decision.
2. The onus of proof lies with the applicant and the burden of proof is on the balance of probabilities. The applicant filed affidavits, gave further evidence in chief and was cross-examined. Affidavit material was also filed from the applicant's husband, Vincent Jinjair and he was further examined in chief and cross-examined. Documents were tendered by the respondent. An inspection was made of the vehicle during the hearing in Wadeye in the presence of the applicant and the legal representatives. The matter in dispute

is whether the applicant could reasonably have known of the commission of the offence which led to the seizure of the vehicle.

3. Parties advised that they believed this is the first application pursuant to s 98 of the *Liquor Act* (as amended). Accordingly, there is no case law which directly relates to this section. Parties have provided with the Court with a range of related decisions. The cases have provided the court with some assistance.
4. Relevant parts of the Liquor Act (“the Act”) will now be considered. Part 8, Division 3 of the *Liquor Act* relates to the powers of entry, search and seizure for general restricted areas. Section 96 of the Act states that the Commissioner of Police must keep anything seized but not destroyed under section 95 in the Commissioner’s custody until is otherwise dealt with under this Division.
5. Section 97 of the *Liquor Act* sets out that a person who owns or has an interest in the thing may apply to the Commissioner of Police for its release. Such application must be made within sixty days after the seizure of the thing or such period as extended by the Commissioner. The Commissioner may release the thing to the applicant only if the Commissioner is satisfied the applicant owns or has an interest in the thing and the applicant did not know or could not reasonably have known about the commission of the offence (s 97(5)).
6. In this case the applicant has applied to the court for an order under section 98 of the Liquor Act, which sets out as follows:

98 Court may release or dispose of seized thing

- (1) A person who owns, or has an interest in, the thing may apply to the Local Court for an order under this section if:
 - (a) the thing has not been forfeited under section 99; and

- (b) proceedings for the prosecution of a relevant offence to which the thing is related have ended; and
- (c) the person:
 - (i) was not the defendant in the proceedings; or
 - (ii) was the defendant in the proceedings but was found not guilty of the offence.
- (2) The application must be made within 60 days after the end of the proceedings or that period as extended by the court.
- (3) The applicant must give notice of the application to the Commissioner of Police.
- (4) The Local Court:
 - (a) must make an order under this section if the court is satisfied:
 - (i) the applicant owns, or has an interest in, the thing; and
 - (ii) the applicant did not know or could not reasonably have known about the commission of the offence; and
 - (b) otherwise – must refuse the application.
- (5) An order under this section must:
 - (a) state whether the applicant owns, or has an interest in, the thing; and
 - (b) if the applicant has an interest in the thing – state the nature and value of the interest as at the time of the making of the order; and
 - (c) direct that:
 - (i) the thing be released to the applicant; or
 - (ii) the thing be disposed of in a specified way and all or a specified part of the proceeds from the

disposal be paid to the applicant and any other specified persons.

(6) The Court may extend the period mentioned in subsection (2) only on the application of the Commissioner of Police.

(7) The Court:

(a) may extend the period more than once; but

(b) must do so before the expiry of the period or the period as extended under subsection (2).

7. I will now summarise the evidence. Exhibit A1 is the affidavit of Honorata Narjic dated 14 January 2009. The applicant deposes that she is married to Vincent Jinjair and they have three young children. In late August 2008 she arranged for a direct payment from her Centrelink monies to purchase a vehicle. Paperwork from Centrelink is annexed to her affidavit and shows the transaction was on 27 August 2008. She was of the view the car was registered in Henry Jinjair's name because he had a driver's license. Her husband Vincent Jinjair and his cousin-brother Henry Jinjair went and collected the car from Darwin. They brought the car back to Wadeye. The next day her husband said he wanted to take the car to go to Peppi to drink at the club. She said this would be okay. Henry Jinjair was driving the car and their cousin-brother Luke Jinjair went as well. They advised they would be gone for two days and they would stay overnight at a house in Peppimenarti. She later found out that her husband had told her lies. She found out they had in fact gone to Darwin. The applicant had no idea he was going to Darwin. If she had known he was going to Darwin she would have said no and that he could not take the car. She had an argument with her husband after the car was seized. She was thinking of getting a driver's license of her own so she can drive her car herself the next time. In Exhibit A2 her date of birth is corrected to read 25 April 1982. The applicant would have been 26 years of age at the relevant time.

8. Ms Narjic gave evidence using an interpreter. She said to her husband Vincent Jinjair “just go to Peppi”. He was using the car soon after she had purchased the car. She was aware her husband was going to Peppi to drink beer. He did not say what he was going to do after he had been drinking. She meant “just go to Peppi, don’t go past Daly”. In cross-examination, she was shown registration papers from the Motor Vehicle Registry with respect to the motor vehicle. The vehicle has not had its registration changed from a person named “Brodie”. That paper became Exhibit R4. The witness had believed the vehicle was registered in the name of Henry Jinjair, as he had a driver’s license. It was put that Henry Jinjair has no license, as his license was suspended. The witness was not aware of this. Exhibit R5 was tendered setting out the driver’s license status of Henry Jinjair. The witness was not aware whether Henry Jinjair had been in trouble with the police. Henry Jinjair’s information for Courts was tendered as Exhibit R6 and showed a conviction for Control Liquor, namely 18 September 2007 and a conviction for bringing liquor into a restricted area on 10 March 2005. Vincent and Henry Jinjair had been travelling together.
9. Vincent Jinjair is the applicant’s husband. She agreed that Vincent had been in trouble with the police. When she was asked about her husband, “has he been in trouble with the police for bringing alcohol, grog, back into Wadeye?” she nodded her head in agreement. Antecedents for Vincent Jinjair became Exhibit R7. The record shows 11 November 2008 he had a conviction for bringing liquor into a restricted area (this offence from 30 August 2008). Vincent Jinjair has a conviction on 13 December 2005 for consuming liquor and bringing liquor into a restricted area, namely the Wadeye restricted area offence dated 28 October 2005. The applicant agreed that she knew that Henry Jinjair and Vincent Jinjair were using the car to go and consume alcohol. She agreed she had said to her husband words to the effect of “if you go to Darwin, I don’t want to see this car go to the police station when you come back” before they left. It was put that she

made this comment because she had in the back of her mind a thought that Vincent and Henry might bring alcohol back. She agreed with that proposition. It was put that she had concerns that Vincent and Henry would go to Noonamah or Darwin and she replied “far as Noonamah”. It was put that the reason she spoke to her husband in this way was that she was scared that the car would be seized if police found that alcohol had been brought back. She responded in the affirmative. She had not read her husband’s affidavit. In re-examination, the applicant said that Vincent had asked her if he could go to Darwin and she had said “no”. She confirmed her affidavit material she said she had no idea he was intending to go to Darwin.

10. Exhibit A3 is an affidavit of Vincent Jinjair. In late August 2008 his wife paid for a car out of the children’s money she gets from Centrelink. It was his idea to get the car and his wife agreed. The plan was to use the car to take the children out bush and also for shopping. Phillip Jinjair, the father of Vincent Jinjair was going to be a driver. Two days after the car had been picked up he asked his wife if they could go to the Daly River Pub. He was planning to come home the following day. Vincent Jinjair told his wife that if they couldn’t get anything to drink at Daly River they would go to Noonamah instead. His wife said to him “if you go to Darwin, I don’t want to see this car go to the police station when you come back”. She was talking about not bringing grog back to Wadeye. He did not tell his wife that he was going to bring grog back. That was his idea. He got money from other family that wanted grog and took off with his cousin-brothers. Henry Jinjair was driving the car as he did not have a license. His wife did not know that other family had given him money. When they got to Daly River the hotel was shut so they went to Noonamah where they brought some grog. The police located them drinking alcohol by the side of the road and he was really drunk. This was near the Kumajung Creek. When his wife found out that the car had been taken by the police she was upset.

11. Vincent Jinjair then gave evidence. He agreed that all the statements in Exhibit A3 were true. He agreed that he had signed the document. Exhibit R7 was shown to him and he agreed that the convictions relating to bring and consume liquor from 2005 were his convictions. In re-examination, he had said that he had not previously discussed the 2005 conviction with his wife.
12. Exhibit R4 is the registration details with respect to the relevant motor vehicle. The registration is in the name of a Mr Brodie. It has not been transferred into the name of the applicant. The vehicle is a 1988 Blue Holden Commodore sedan registration number NT 777-204. Registration of the vehicle expired on 28 August 2008, that is the day after the sale of the vehicle to the applicant. The vehicle was inspected as part of the hearing. It is currently located behind the Wadeye Police Station. Whilst somewhat dirty and muddy most likely due to the length of time the vehicle has been in the rear of the Police Station, it appears in relatively good repair.
13. Exhibit R5 is the license details with respect to Henry Jinjair. It sets out that his license C class expired on 13 February 2006. It also sets out that the license was suspended by the Fine Recovery Unit. Accordingly, Henry Jinjair did not hold a current Northern Territory driver's license at the relevant time.
14. Exhibit R6 is the Information for Courts with respect to Henry Jinjair. Offences prior to 30 August 2008 which are relevant are as follows:

Offence date 31 August 2007 – control liquor in a restricted area - Wadeye Court of Summary Jurisdiction - 18 September 2007. Convicted and placed on a 12 month good behaviour bond. Driving unlicensed offence date 27 October 2006 - Court date Darwin 6 March 2007 - convicted and fined.

Bring liquor into a restricted area - offence date 22 October 2004 - Court date Wadeye Court of Summary Jurisdiction - 10 March 2005 - convicted and fined.

15. Exhibit R7 is the antecedent report with respect to Vincent Jinjair. Vincent Jinjair inspected this document and agreed that it related to him. On 11 November 2008 in the Wadeye Court of Summary Jurisdiction, Vincent Jinjair appeared before the Court with respect to a series of offences which included the offence of bringing liquor into a restricted area under the *Liquor Act* as amended by the *Northern Territory Emergency Response Act* offence date 30 August 2008 where he was convicted and fined \$450.00. This offence relates to the seizure of the motor vehicle. On that day, he was also convicted of unrelated traffic offences. Relevant offences prior to 30 August 2008 are as follows:

Bringing liquor into a restricted area and consume liquor in a restricted area - offence date 28 October 2005. Finalised in the Wadeye Court of Summary Jurisdiction on 13 December 2005. Convicted and fined \$200.

That completes the summary of the evidence.

16. Some time after I had finalised the Local Court evidence, and after the lawyers in this case had left Wadeye on the afternoon flight, it became apparent that Vincent Jinjair had Court matters in the Court of Summary Jurisdiction on 11 August 2009. I was told that he had been at Court earlier, but when called at 5.40pm he did not appear. The Court was told that Mr Jinjair 'had gone to Peppi'. Given that he had been at Court earlier in the day, a warrant was ordered to lie to 12 August 2009. A warrant issued on 12 August 2009 due to his non-attendance on that day. On 13 August 2009 he was arrested on the warrant. Before the Court of Summary Jurisdiction were two sets of charges, some relating to driving matters from 12 June 2008 and secondly, charges of driving under the influence and bringing liquor (and some other traffic matters) dated 16 November 2008. The defendant appeared in custody and pleaded guilty to all matters before the Court on 13 August 2009 and he was placed on a supervised good behaviour bond, fined and disqualified from holding or obtaining a driver's license. Submissions were made that he had not gone to Peppi on 11 August 2009, but rather he

had employment with the Night Patrol and he had been waiting for Court, but as Court was sitting so late he then went to work. This explanation for his non-attendance on 11 August 2009 was accepted. In making this decision in the Local Court, I do not take into account any of the matters before me relating to Vincent Jinjair's matters which were finalised on 13 August 2009. The decision to be made in this Court is based upon material tendered in this matter. The decision to be made in this case relates to what the applicant could reasonably have known about the commission of the offence as at 30 August 2008 and accordingly, the matters with respect to 16 November 2008 are not and could not be relevant in this decision.

17. I make the following findings. The application was filed on 16 December 2008. The motor vehicle has not been forfeited under s 99 of the *Liquor Act*. The proceedings for the prosecution of the relevant offence relating to the vehicle have ended. The applicant was not the defendant in the proceedings. The criminal charges laid as against Vincent Jinjair were finalised on 11 November 2008. The relevant offence is that of bringing liquor into a restricted area under the *Liquor Act* as amended by the *Northern Territory Emergency Response Act* offence date 30 August 2008 where Vincent Jinjair was convicted and fined \$450.00 on 11 November 2008. The application is made within sixty days after the end of those proceedings. The applicant has given notice to the Commissioner of Police.
18. If the Court is satisfied that the applicant owns or has an interest in the motor vehicle and the applicant did not know or could not reasonably have known about the commission of the offence, the Court must make an order under s 98 of the *Liquor Act*. If these matters are not satisfied, the Court must refuse the application.
19. The respondent conceded that the applicant had an interest in the motor vehicle. While that concession is made, I must make findings on this question. I am satisfied that the applicant owns or has an interest in the

vehicle. In particular, I am satisfied that the sum of \$2,000.00 was transferred by Centrelink on the appellant's behalf to the registered owner of the vehicle, from her monies held by Centrelink. As it transpired, registration of the vehicle was not transferred from the registered owner to the applicant. The vehicle was purchased for the sum of \$2,000.00. The vehicle was inspected as part of the hearing. Whilst somewhat dirty and muddy, it appears in relatively good repair. It is a modest vehicle and I am satisfied that the vehicle would be still be valued at \$2,000.00.

20. I note that Centrelink approved the transfer of the vehicle after being satisfied it had the driver's license details of the nominated driver. According to the motor vehicle records, the driver's license number for Henry Jinjair was the license number given to Centrelink. Nevertheless, Henry Jinjair's license expired on 13 February 2006 and was then subsequently suspended by the Fine Recovery Unit. So whilst enquiries were made about a licensed driver, it seems that Centrelink accepted the information given as to the license number without checking whether the license was up to date and current. Given that the vehicle was not to be transferred until Centrelink had the license details and when license details were given, the vehicle was then transferred, it is not surprising that the applicant did not realise Henry Jinjair did not have a current driver's license. I do not believe that that issue directly impacts upon the applicant's credit. While the vehicle was registered on the day of the sale, registration expired the day after the sale.
21. The applicant was not travelling with her husband and the other persons in the motor vehicle and had no actual knowledge as to the use that they were making of the motor vehicle after it had left Wadeye. On 11 November 2008, Vincent Jinjair was convicted of an offence of bringing liquor into a prescribed area, offence dated 30 August 2008 which related to liquor which had been brought into a restricted area using this vehicle. That is the relevant offence with respect to s 98(4) of the Act. While that is *the* relevant

conviction in this case, it does not go to the applicant's state of mind when she agreed to loan the car, as it occurred after that date. I am satisfied that the applicant did not know about the commission of the offence. She was not travelling with the vehicle and in my view, was in no position to know of the actual offence.

22. The question arising in this case is whether the applicant could not reasonably have known about the commission of the offence. This section uses new terminology and whilst the cases considered have been of assistance, there are no cases which are able to give the Court direct guidance as to how to consider this provision.
23. The background to the purchase of the vehicle is a relevant matter when considering this question. I am satisfied on the evidence before the Court that the idea for the purchase of the vehicle from the applicant's money she had saved from Centrelink payments was the applicant's husband's idea. I find that the applicant's husband was the instigator of the proposal to purchase the vehicle. The applicant's husband and his cousin-brother travelled to Darwin to collect the vehicle from the previous owner. The applicant's husband was instrumental in ensuring that the vehicle arrived in Wadeye for handover to the applicant.
24. The very next day after the vehicle arrived in Wadeye, the applicant's husband sought permission from her to use the vehicle to travel to a location to purchase and consume alcohol. It is accepted that there would be no offence committed by what was proposed, providing alcohol was purchased from a licensed premises in accordance with the licensing rules.
25. The vehicle was purchased from the applicants Centrelink money which she had received for the benefit of her children. The applicant was a non-drinker and a non-driver and the vehicle was intended for use to assist the applicant in child related and shopping matters, as well as taking the children out bush. The day after the vehicle arrived in Wadeye the proposed use of the

vehicle was neither for the benefit of the applicant nor her children. It was being used for a purpose which was not deposed by the applicant as one of the vehicle's proposed uses. The person who initiated the use of the vehicle to go drinking was the person who had also initiated the purchase of the vehicle and the facilitation of the vehicle coming back to the Wadeye community – the applicant's husband. In submissions I was asked to consider that the applicant had no choice but to agree that her husband could use the motor vehicle to go drinking. I have no evidence to support that proposition. I decline to make such a finding.

26. There is a relevant and significant inconsistency on the evidence in the applicant's case. The applicant's evidence is that her husband said he was going to Peppi to drink. This is a reference to the Peppimenarti Social Club, a licensed premises approximately 100 kilometres east of Wadeye, albeit on a dirt road which is usually quite rough. The Peppimenarti Social Club is the nearest licensed premises to Wadeye. There are no takeaway facilities at these premises. The opening hours at the Peppimenarti Social Club are limited. The applicant's evidence is that she was told her husband would be staying overnight and would be away for two days (Exhibit A1). In re-examination the applicant said that her husband asked if he could go to Darwin and she had said no. The applicant's husband's evidence is that he said to her he would like to use the car to go to the Daly River Pub. Further he deposed that he said he was planning to come back the same day. He deposed that he told his wife that if they couldn't get anything to drink at Daly River they would go to Noonamah instead. This evidence means that the applicant's husband had said he would be travelling to Daly River which is a drive of approximately two and a half to three hours from Wadeye, quite a deal further away than Peppimentarti. The Daly River Hotel includes a takeaway license. Noonamah is approximately 400 kilometres from Wadeye and 40 – 50 kilometres south of Darwin. It is located on the Stuart Highway and is a licensed premise with a takeaway license. The applicant's

husband's evidence is then that his wife said to him that "if you go to Darwin, I don't want to see this car go to the Police Station when you come back". In cross examination, the applicant agreed she had this conversation with her husband, even though it was not in her affidavit or in her evidence in chief. There is evidence before the Court that what she meant by this was that she did not want him breaking the liquor rules which would mean the car would be seized.

27. The onus of proof is on the applicant in this matter. On one of the most crucial points in the applicant's case there is inconsistent evidence. The inconsistency of such a significant nature that the Court is not able to make a finding that the conversation as to where the applicant's husband was intending to drink occurred as the applicant deposed.
28. The next issue of relevance is whether the applicant was aware of her husband's relevant prior conviction for a liquor offence. I am satisfied that the applicant knew her husband had been in trouble with the police for bringing alcohol back into the Wadeye community. I can not be entirely satisfied that she knew of the prior conviction from 2005.
29. The applicant knew that her husband and two other adult males were intending to go drinking. The applicant knew they were driving the vehicle to go drinking. She had concerns that her husband may break the liquor rules and said to her husband that she did not want to find her vehicle at the Police Station after his trip. The applicant knew her husband had been in trouble with the police for bringing alcohol into the Wadeye community. The vehicle was used by the applicant's husband and his relatives the day after the vehicle had arrived in Wadeye, only a few days after it was purchased. The vehicle was not being used for the purpose it had been purchased for. The applicant has not persuaded the court that she was told they were only going to Peppi – where there are no takeaway facilities. It

was in the back of her mind that those in the car, including her husband, might bring alcohol back in the car.

30. I have considered all the material before the court and the findings made. I find that the applicant has not satisfied the court that she could not reasonably have known about the commission of the offence. Accordingly the application made under section 98 of the Liquor Act is refused pursuant to section 98(4)(b) of the Liquor Act. I make orders accordingly. I now publish these reasons.

Dated this 2nd day of November 2009.

Melanie Little
STIPENDIARY MAGISTRATE