

MAGISTRATES COURTS OF QUEENSLAND

CITATION: *Queensland Police Service v BAN* [2024] QMC 1

PARTIES: **QUEENSLAND POLICE SERVICE**
(Prosecution)
V
BAN
(Defendant)

FILE NO/S: MAG-00152528/23(0)

DIVISION: Magistrates Courts

PROCEEDING: Criminal Trial

ORIGINATING COURT: Gympie

DELIVERED ON: 8 January 2024

DELIVERED AT: Gympie

HEARING DATE: On the Papers

MAGISTRATE: Magistrate Hughes

ORDER: **1. The *Certificate of Evidence – Driver Disqualified by Court* dated 8 November 2023 is admissible evidence of the Defendant’s driver licence disqualification.**

CATCHWORDS: CRIMINAL LAW - PARTICULAR OFFENCES – DRIVING OFFENCES – EVIDENCE – ADMISSIBILITY – where Defendant charged with 38 offences – where seven charges of ‘Driving of motor vehicle without a driver licence disqualified by Court Order Repeat Offender’ – whether *Youth Justice Act 1992* (Qld) prohibits evidence of disqualification – where *Youth Justice Act 1992* (Qld) does not limit Court to disqualifying child only upon being found guilty – where evidence of disqualification does not obviate from policy objectives of *Youth Justice Act 1992* (Qld) nor Youth Justice Principles

EVIDENCE - JUDICIAL DISCRETION TO ADMIT OR EXCLUDE EVIDENCE – OTHER PARTICULAR MATTERS – whether Certificate of Evidence Driver Disqualified should be admitted – where Certificate not on its face evidence of finding of guilt – where Certificate does not impute Defendant was found guilty of offence as child –

where no warrant to imply finding of guilt if statutory or common law does not mandate it

Children (Criminal Proceedings) Act 1987 (NSW), s 15

Transport Operations (Road Use Management) Act 1995 (Qld), s 123C, s 78, s 124, Schedule 1

Youth Justice Act 1992 (Qld), s 2, s 3, s 148, s 254, Schedule 1

Certain Lloyd's Underwriters Subscribing to Contract No 1H00AAQS v Cross (2012) 248 CLR 378

Griffiths v The Queen (1976-77) 137 CLR 293

R v Justin Moroney [2007] NSWDC 154

R v MBQ; ex parte Attorney-General (Qld) [2012] QCA 202

SOLICITORS: Sergeant C Mahoney for Queensland Police Service
Jeffrey Cuddihy & Joyce for the Defendant

Does section 148 of the *Youth Justice Act 1992* (Qld) prevent the Magistrates Court from admitting evidence of the Defendant's driver licence disqualification?

- [1] The Defendant has been charged with 38 offences. These include seven charges of *Driving of motor vehicle without a driver licence disqualified by Court Order Repeat Offender* at varying dates.
- [2] The facts for each charge of disqualified driving are not in dispute.¹
- [3] However, the Defence contested these charges on the basis that as a matter of law, the *Youth Justice Act 1992* (Qld)² prohibits the Prosecution from averring the disqualification because it is evidence of a "conviction" as a child.
- [4] The provision relevantly states:

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- (1) In a proceeding against an adult for an offence, there must not be admitted against the adult evidence that the adult was found guilty as a child of an offence if a conviction was not recorded.
- ...
- (3) This section does not prevent a court that is sentencing an adult from receiving information about any other sentence to which the adult is subject if that is necessary to mitigate the effect of the court's sentence.

¹ Joint Statement of Agreed Facts and Issues for Determination dated 14 November 2023.

² s 148.

- [5] The Defence submitted that averring the disqualification contravenes section 148 because it is evidence that the Defendant has been sentenced - which can only occur should the Defendant be found guilty (either after trial or upon a plea of guilty) of an offence.³ I do not accept this submission.
- [6] The evidence for the averment is the *Certificate of Evidence – Driver Disqualified by Court*.⁴ That Certificate is merely evidence of disqualification for a specific period from a specific date and is not on its face evidence of a finding of guilt.
- [7] Certainly, ‘disqualification’ as an element of the relevant offence does not occur within a vacuum but only by Court order.⁵ Because the *Youth Justice Act* is a Code to deal with children who have committed offences,⁶ a Court may only disqualify a child offender pursuant to that Act.⁷
- [8] Critically, the Act defines ‘disqualification’ to encompass a child being disqualified from holding or obtaining a driver licence if found guilty of an offence or acquitted of a charge for an offence.⁸ This means the *Youth Justice Act* does not limit the Court to disqualifying a child only upon being found guilty.
- [9] Because the Court does have power to order disqualification other than upon the Defendant being found guilty of an offence, the Certificate - as a matter of law – does not impute the Defendant was found guilty of an offence as a child. There is no warrant to imply a finding of guilt if the statutory or common law does not mandate it.⁹
- [10] Because ‘disqualification’ is a discrete legal consequence not confined to a finding of guilt, evidence of its disclosure does not obviate from the policy objectives of the *Youth Justice Act 1992 (Qld)*¹⁰ nor the Youth Justice Principles¹¹ underlying its operation.¹² If the Legislature intended to extend the operation of section 148 of the *Youth Justice Act* beyond these policy objectives to evidence of ‘disqualification’, it could have done so with express language.¹³ It did not.¹⁴
- [11] Section 148 of the *Youth Justice Act 1992 (Qld)* therefore does not prevent admitting evidence of the Defendant’s driver licence disqualification to a properly directed jury or summary trier of fact.

³ Submissions for Defendant, [7].

⁴ *Transport Operations (Road Use Management) Act 1995 (Qld)*, s 123C, s 124, Schedule 1.

⁵ *Transport Operations (Road Use Management) Act 1995 (Qld)*, s 78(1)(a).

⁶ *Youth Justice Act 1992 (Qld)*, s 2(b).

⁷ *R v MBQ; ex parte Attorney-General (Qld)* [2012] QCA 202, [33].

⁸ *Youth Justice Act 1992 (Qld)*, s 254.

⁹ *R v Justin Moroney* [2007] NSWDC 154, [14], citing *Griffiths v The Queen* (1976-77) 137 CLR 293.

¹⁰ *Youth Justice Act 1992 (Qld)*, s 2.

¹¹ *Youth Justice Act 1992 (Qld)*, Schedule 1 – Charter of youth justice principles.

¹² *Youth Justice Act 1992 (Qld)*, s 3.

¹³ *Certain Lloyd’s Underwriters Subscribing to Contract No 1H00AAQS v Cross* (2012) 248 CLR 378.

¹⁴ See for example the *Children (Criminal Proceedings) Act 1987 (NSW)*, s 15(3) which instead of the words “evidence that the adult was found guilty” uses the words “The fact that a person has been dealt with by a warning, caution or youth justice conference under the Young Offenders Act 1997 (being in respect of an alleged offence committed when the person was a child) is not to be admitted in evidence (whether as to the guilt or the imposition of any penalty) in any criminal proceedings subsequently taken against the person in respect of any other offence.” (Emphasis added)

What is the appropriate order?

- [12] There being no other objection to evidence of the Defendant's driver licence disqualification, the appropriate order is that the *Certificate of Evidence – Driver Disqualified by Court* dated 8 November 2023 is admissible evidence of the Defendant's driver licence disqualification.