[2018] QCA 169

COURT OF APPEAL

SOFRONOFF P
GOTTERSON JA
RYAN J

CA No 270 of 2017
DC No 193 of 2016

CROSSMAN, Ian Norman **Applicant**

v

QUEENSLAND POLICE SERVICE **Respondent**

BRISBANE

MONDAY, 30 JULY 2018

JUDGMENT

SOFRONOFF P: The applicant was detected travelling in a motor vehicle along Sheridan Street, Cairns at a speed of 67 kilometres per hour in a 60 kilometre per hour zone. He was issued with an infringement notice and elected to go to trial. He gave notice under s 120(7) of the *Transport Operations (Road Use Management) Act* 1995 that he intended to challenge the operational condition of the detection device.

The prosecution tendered the usual certificates required in such cases, namely, certificates proving that: the speed detection device was working properly at the time of the offence, that the vehicle in which the applicant was travelling was travelling at 67 kilometres per hour, that the car was 46 metres from the speed detection device when the speed was detected, that the

car was registered to a man called Bignall, that an infringement notice was sent to Bignall and that Bignall nominated the applicant as the driver at the relevant time.

Senior Constable Bartlett gave evidence at the trial affirming some of these matters. A senior technical officer also gave evidence about the workings of the device. All of this evidence proved the commission of the offence. The applicant cross-examined these witnesses to no effect. He did not challenge the fact that he had committed the offence. Magistrate Bentley delivered a carefully reasoned judgment and rightly convicted the appellant. The applicant appealed to the District Court, and Judge Harrison set out in detail the evidence that I have summarised and correctly dismissed the appeal. An appeal to this Court only lies by leave. As Justice Bowskill pointed out in *McDonald v Queensland Police Service* [2017] QCA 255:

> "[T]his Court's discretion to grant or to refuse leave to appeal is unfettered. It is exercisable according to the nature of the case but leave to appeal will not be given lightly, given that the applicant has already had the benefit of two judicial hearings… [Moreover,] the mere fact that there has been an error, or that an error can be detected in the judgment is not ordinarily, by itself, sufficient to justify the grant of leave to appeal – leave will usually be granted only where an appeal is necessary to correct a substantial injustice to the applicant and there is a reasonable argument that there is an error to be corrected."

There is no substantial injustice demonstrated here, nor is there any reasonable argument that there has been an error. The applicant's written ground for leave is that:

> "The QPS provided conflicting, confusing evidence."

That is not true. This application has no merit. It should be dismissed.

The section is silent about the costs of applications for leave to appeal. However, s 15 of the *Civil Proceedings Act* 2011 provides that:

> "A court may award costs in all proceedings unless otherwise provided."

There is no provision otherwise in relation to applications for leave to appeal under s 118 of the *District Court of Queensland Act*. This proceeding is simply an application to the Court of Appeal for particular relief. Consequently, this Court has power to make an order for costs

against an unsuccessful applicant for leave to appeal, and I would hear submissions on the subject of costs in due course. Otherwise, I would order that the application be dismissed.

GOTTERSON JA: I agree.

RYAN J: I agree.

SOFRONOFF P: Ms Marco, do you need to get instructions on the issue of costs or do you wish to make any submissions?

MS MARCO: I don't wish to pursue costs for the respondent.

SOFRONOFF P: All right. The order of the court is that the application is dismissed. Adjourn the court.