

COURT OF APPEAL

**MARGARET McMURDO P
HOLMES JA
HENRY J**

**CA No 268 of 2012
DC No 6 of 2012**

THE QUEEN

v

ASHTON, Geoffrey John

Applicant

CAIRNS

DATE 29/04/2013

JUDGMENT

HOLMES JA: The applicant seeks an extension of time to seek leave under s 118 of the *District Court of Queensland Act 1967* to appeal against a decision of a District Court judge made on 29 August 2012. That decision dismissed his appeal under s 222 of the *Justices Act 1886* against a magistrate's decision. The magistrate had convicted the applicant of a failure to give way at an intersection, contrary to s 69(2) of the *Transport Operations (Road Use Management) Road Rules Regulation 2009*.

The application for an extension of time, and proposed application for leave to appeal, were filed on 11 October 2012; shortly out of time. The applicant says that he took the matter to the High Court and what I think he described as the Human Rights Commission in Geneva, and that is the explanation for the delay. That does not seem to me to amount to a proper explanation, but the delay was not great, and in considering whether an extension of time should be granted, it is appropriate to consider the merits of the proposed appeal.

The relevant intersection in the charge before the magistrate was that of Edith Street and Rankin Street in Innisfail. The principal evidence against the applicant came from a witness named Webber, whose evidence was that he was driving south on Rankin Street and saw the applicant's vehicle pull out at the intersection ahead of him without stopping. Mr Webber said he was unable to stop his vehicle in time, with the result that his vehicle scratched the back right side of the applicant's vehicle. The applicant's account seems to have been that his vehicle was travelling five kilometres an hour south on Rankin Street when Mr Webber drove his vehicle parallel to the applicant's. The applicant stopped his vehicle and Mr Webber, in an act of road rage, turned his vehicle into the applicant's vehicle, damaging it.

As to the proposed grounds of appeal, the applicant complains that neither the magistrate nor the District Court judge took into account the police officer's notes, which recorded Mr Webber saying that he had seen the applicant's vehicle between the courthouse and the post office, and that it pulled out onto Rankin Street. It does not seem that the notes were adverted to at all in cross-examination, so they are irrelevant to this application. But in any event, the point seems to be that Mr Webber did not mention Edith Street by name in the version recorded by the police officer. It is difficult to see how that would be material to his credibility, or to the way in which the incident took place. But in any case, the question of Mr Webber's credibility was an assessment which the magistrate was properly placed to make.

The applicant's next complaint in his written submissions was that the magistrate accepted Mr Webber's evidence, describing him as a "straightforward, frank witness." She observed from his traffic history that it did not show any reckless driving in the past. She also described as absurd the proposition that Mr Webber, having avoided the collision, would then have deliberately driven into the applicant's vehicle.

According to the applicant, the finding as to the absence of reckless driving was not open, because Webber had a traffic history which consisted of two speeding offences in 1993 and 1994, another in 2002 and another in 2009. I do not consider that that would preclude the observation the magistrate made.

The applicant also raised an argument about the possible braking distance of Mr Webber's vehicle, asserting that it must have been out of control. That was on the basis of the measurement which he says here he made, and which he mentioned in cross-examination, but it was not before the Magistrates Court in the form of evidence and, again, is immaterial.

The applicant also contended that Mr Webber should have been regarded as responsible for the accident because he admitted he was driving at 50 kilometres an hour on Rankin Street where, according to the applicant, the speed limit was 40 kilometres per hour. It is not clear whether the latter was the subject of evidence. None of those matters concerning the failure to mention Edith Street or Mr Webber's manner of driving appear to be inconsistent with the magistrate's finding as to how the incident occurred, or such as to require the District Court judge to set aside a conviction.

The remaining proposed grounds of appeal in the written submissions are scurrilous and/or do not make sense. The applicant made some assertions, including that the magistrate's conviction of him was a reprisal for the death in 1959 of a man who he says he was suspected of killing. He also sought to put before the Court material relating to a 1993 prosecution of him and what occurred in relation to the prosecution witness. He asserted, out of all that, that there was some collusion between the Court and the Director of Public Prosecutions to protect the prosecution witness in that case, which in some way influenced the current prosecution. I would not receive any of that material which is in no way relevant to the current prosecution or application.

The applicant also raised in oral argument application for removal of the matter to the High Court, saying that he was entitled to have a constitutional matter dealt with. That seemed to turn on his argument that the fine imposed on him constituted a tax mandated by the International Monetary Fund, or the United Nations, which the State had no power to impose because it was a tax. He says that he has raised that in the High Court, which wrongly refused to accept his argument. It seems improbable that it has any substance, but it was not raised below and therefore need not concern this Court on this application.

Finally, the applicant maintains also that the matter raises a constitutional point in that he was denied his constitutional right to trial by jury. That right, of course, applies only to trial on indictment; this was a summary prosecution.

The applicant has raised no argument which would suggest any prospect of success if he were granted an extension of time for leave to appeal. I would refuse the application.

THE PRESIDENT: I agree.

HENRY J: I also agree.

THE PRESIDENT: The order is: The application for an extension of time is refused.