

# SUPREME COURT OF QUEENSLAND

CITATION: *Crabbe v Queensland Police Service* [2013] QCA 312

PARTIES: **CRABBE, John**  
(applicant)  
v  
**QUEENSLAND POLICE SERVICE**  
(respondent)

FILE NO/S: CA No 176 of 2013  
DC No 82 of 2012

DIVISION: Court of Appeal

PROCEEDING: Application for Extension of Time s 118 DCA (Criminal)

ORIGINATING COURT: District Court at Rockhampton

DELIVERED ON: 18 October 2013

DELIVERED AT: Brisbane

HEARING DATE: 3 October 2013

JUDGES: Margaret McMurdo P, Mullins and Henry JJ  
Separate reasons for judgment of each member of the Court,  
each concurring as to the order made

ORDER: **Application for extension of time refused.**

CATCHWORDS: CRIMINAL LAW – APPEAL AND NEW TRIAL –  
PROCEDURE – NOTICES OF APPEAL – TIME FOR  
APPEAL AND EXTENSION THEREOF – where the  
applicant was convicted by a Magistrate after trial of driving  
over the speed limit – where the applicant’s appeal against his  
conviction and sentence to the District Court was dismissed –  
where the applicant seeks an extension of time within which  
to apply for leave to appeal against the dismissal of his appeal  
– where the prosecution tendered certified photographs and  
a certificate under s 120(2) and s 120(2A) of the *Transport  
Operations (Road Use Management) Act 1995* (Qld) – where  
the applicant failed to give notice of challenge under s 120(7)  
of the *Transport Operations (Road Use Management) Act  
1995* (Qld) – whether it is in the interests of justice to grant  
the extension

*Transport Operations (Road Use Management) Act 1995*  
(Qld), s 116, s 120

*Morrison v Bennett* [2010] QDC 488, distinguished  
*R v Tait* [1999] 2 Qd R 667; [\[1998\] QCA 304](#), followed

COUNSEL: The applicant appeared on his own behalf  
S J Farnden for the respondent

**SOLICITORS:** The applicant appeared on his own behalf  
Director of Public Prosecutions (Queensland) for the  
respondent

- [1] **MARGARET McMURDO P:** I agree with Mullins J’s reasons for refusing this application for an extension of time to apply for leave to appeal. I agree with the order proposed by Mullins J.
- [2] **MULLINS J:** The applicant was convicted after a hearing in the Magistrates Court at Rockhampton on 6 November 2012 of one charge of driving over the speed limit on 1 February 2012. He was fined \$400 with court costs of \$78.50. He appealed to the District Court against conviction and sentence. The appeal was heard on 15 March 2013 at Rockhampton. The learned District Court judge reserved his decision and published his reasons in Brisbane on 13 May 2013: *Crabbe v Queensland Police Service* [2013] QDC 122 (the reasons). On that day the judge dismissed the appeal and ordered the applicant to pay the respondent’s costs of the appeal fixed at \$1,800 within three months from delivery of the judgment.
- [3] On 10 July 2013 the applicant filed an application for extension of time within which to apply for leave to appeal against the dismissal of his appeal. The ground for seeking leave set out in the application is that he did not receive notification of the judgment by email until 31 May 2013, as he was having problems retrieving his email and had to wait seven days for that to be fixed. There is no affidavit from the applicant in support of the application.

#### **The Magistrates Court hearing**

- [4] The applicant’s vehicle was photographed by a speed camera that recorded he was driving at 71kph on a road with a speed limit of 60kph. The prosecutor did not call any witnesses, but tendered documents, including certified photographs under s 120(2) of the *Transport Operations (Road Use Management) Act 1995 (TORUM)* and a certificate under s 120(2A) of *TORUM*.
- [5] The applicant had not given any notice under s 120(7). The applicant tendered documents that he had obtained from the internet that were marked as exhibits and raised in submissions issues about the reliability of the speed camera, whether the operator of the speed camera was certified to operate it, and whether there were any impediments to the speed camera properly recording the speed of the vehicle. He did not otherwise give or call evidence.
- [6] In delivering his decision, the learned Magistrate noted that the “nub of the defence” was “to raise questions and then ask the court to find that because there are these questions the police have not established [the charge] beyond reasonable doubt.” The Magistrate referred to the effect of the failure of the applicant to give the relevant notice of challenge under s 120(7) of *TORUM*, noted there was no basis to reject the prosecution evidence, and found the charge was proved. In sentencing, the Magistrate expressly had regard to the fact that there had been a trial and the applicant’s previous history of speeding offences.

#### **The District Court appeal**

- [7] The District Court judge set out in detail the arguments advanced by the applicant in relation to the appeal which largely replicated those before the Magistrate. The

judge dealt in detail with each of the arguments advanced by the applicant, explaining why each argument was unsustainable.

- [8] In essence, the applicant was stymied by his failure to give the notice required under s 120(7) of *TORUM* to challenge the accuracy of the photographic detection device and the evidence of the things depicted in the image from the photographic detection device, including the marking or writing made by the photographic detection device on the image: [6], [15], [22], [25], [26] and [41] of the reasons. To the extent that the applicant argued that the prosecution had failed to show that the speed camera complied with the requirements of the *National Measurement Act 1960* (Cth), the judge explained why it was not necessary for the prosecution to prove that the measurements had occurred in accordance with the requirements of that Act: [2] to [11] of the reasons.
- [9] On the appeal against sentence, the judge could identify no error in the sentencing process or that the sentence was manifestly excessive: [28] to [39] of the reasons.

**Is it in the interests of justice to grant the extension?**

- [10] The principles to be applied to whether an extension of time should be granted in a criminal appeal are those set out in *R v Tait* [1999] 2 Qd R 667, 668. Although the delay in filing the application was only about one month, there is no point in granting the extension, if the appeal is not viable.
- [11] The first ground of the applicant's application for leave to appeal (if the extension of time were granted) is that the Magistrate failed to explain to him as a self-represented defendant the advantages of giving evidence from the witness-box. It is apparent from the transcript of the proceeding before the Magistrate that the applicant was aware before the hearing date of the requirement under s 120(7) of *TORUM* (which is consistent with the effect of s 116(1)(c) of *TORUM*). It is mischievous for the applicant to suggest that his conviction arose from his failure to give evidence, when it was his failure to give notice under s 120(7) of *TORUM* that entitled the prosecution to rely on certified photographs and the certificate tendered respectively under s 120(2) and s 120(2A) of *TORUM*.
- [12] Another ground proposed for the application for leave to appeal is that the Magistrate showed bias when he stated during the hearing to the effect that cases such as the one before him could not be dismissed merely because they were challenged. Such a statement reflects the reality of such hearings. The question for the Magistrate which he did decide was whether the prosecution proved the charge beyond reasonable doubt.
- [13] The other grounds set out in the application for leave to appeal against conviction reflect the arguments that did not succeed before the Magistrate or the District Court judge, because the prosecution had the benefit of the evidentiary provisions of s 120 of *TORUM*.
- [14] At the hearing of this application the applicant relied on *Morrison v Bennett* [2010] QDC 488 where Mr Morrison successfully appealed against his conviction for a speeding offence on the basis that the police had not proved that the relevant photographic detection device was producing accurate results at the time Mr Morrison's motor vehicle was photographed by it. In that case the police had failed to tender the certificate under the provision of *TORUM* that was then

equivalent to s 120(2A). As such a certificate was tendered against the applicant, the decision in *Morrison v Bennett* does not assist the applicant.

- [15] The applicant cannot point to any arguable error by the District Court judge in his review of the sentence.
- [16] There are absolutely no prospects whatever of the applicant successfully appealing against his conviction or sentence for the speeding offence. The interests of justice therefore do not support granting the extension.

**Order**

- [17] The application for extension of time should be refused.
- [18] **HENRY J:** I agree with the reasons of Mullins J and the order proposed.