

SUPREME COURT OF QUEENSLAND

CITATION: *Charrington v Commissioner of Police* [2007] QCA 355

PARTIES: **CHARRINGTON, Bradley Raymond**
(applicant/appellant)
v
COMMISSIONER OF POLICE
(respondent)

FILE NO/S: CA No 62 of 2007
DC No 2699 of 2006

DIVISION: Court of Appeal

PROCEEDING: Application for Leave s 118 DCA (Criminal)

ORIGINATING COURT: District Court at Brisbane

DELIVERED EX TEMPORE ON: 23 October 2007

DELIVERED AT: Brisbane

HEARING DATE: 23 October 2007

JUDGES: Williams and Keane JJA and Philippides J
Separate reasons for judgments of each member of the Court, each concurring as to the orders made

ORDER: **1. Grant leave to appeal.**
2. Allow the appeal.
3. Quash the conviction.
4. Set aside the orders made upon conviction and enter a verdict of acquittal.

CATCHWORDS: APPEAL AND NEW TRIAL – APPEAL - PRACTICE AND PROCEDURE – QUEENSLAND – WHEN APPEAL LIES – BY LEAVE OF COURT GENERALLY – where applicant convicted in the Magistrates Court on a charge of disqualified driving – where crown conceded that leave should be granted due to failure of primary judge to grant leave to adduce further evidence in relation to the registration of the vehicle in question – whether leave should be granted – whether appeal should be allowed

COUNSEL: The applicant appeared on his own behalf
B G Campbell for the respondent

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

WILLIAMS JA: Counsel for the respondent has conceded that the appeal to the District Court miscarried because the Court did not give leave to adduce further evidence in relation to the registration of the motor vehicle in question. The applicant produced to that Court a certificate which counsel for the respondent here concedes to be correct and which was inconsistent with evidence produced by the police before the Magistrate. That matter was potentially critical to the question of credibility. It could well have adversely affected the credibility of the police officers as to the reason for stopping the vehicle in question. In those circumstances, counsel for the respondent concedes that the conviction should be quashed.

The orders of the Court will therefore be grant leave to appeal, allow the appeal, quash the conviction and enter a verdict of acquittal.

KEANE JA: I agree.

PHILIPPIDES J: I also agree.

WILLIAMS JA: That will be the order of the Court.

Mr Charrington, you understand that the conviction has been quashed and a verdict of not guilty has been entered.

APPLICANT: So I can drive again?

WILLIAMS JA: Well, that's not for me to say. I don't know anything about other matters that may-----

APPLICANT: No, that's for this matter because it's a - it was a disqualified driving and one of the penalties was that I was disqualified for two years for holding a driver's licence. I've been disqualified - well, I've already served 12 months of it - or 13 months of it - but--

WILLIAMS JA: The-----

APPLICANT: Will I continue the other 12 months or do I - I just don't want to drive and

find out I misunderstood something.

WILLIAMS JA: Mr Campbell, what is the - is it necessary to say something specifically in relation to the disqualification?

MR CAMPBELL: Your Honour, the quashing of the conviction will result in that order.

WILLIAMS JA: I would have thought so too but-----

APPLICANT: I just want to be absolutely positive. I don't want to drive and find I'm committing an offence.

MR CAMPBELL: But I can't say whether there are other reasons.

WILLIAMS JA: No. Well, that's why I said to Mr Charrington that - I mean, it's subject to other reasons - but what that means is that the - what I'll do is add to the orders where I say quash conviction it will be and set aside the orders made upon conviction.

APPLICANT: Is that effective from today?

WILLIAMS JA: Yes. Yes.

The orders will be grant leave to appeal. Allow the appeal.

Quash the conviction. Set aside the orders made upon conviction and enter a verdict of acquittal.

As I say, Mr Charrington, that means that any orders made by the Magistrate in question are now-----

APPLICANT: No longer valid.

WILLIAMS JA: -----of no effect. I can't say what other matters might impact-----

APPLICANT: No, there is none.

WILLIAMS JA: -----upon your - that's a matter for you.