SUPREME COURT OF QUEENSLAND

CITATION:	*Clampett v Queensland Police Service* [2016] QCA 345
PARTIES:	**CLAMPETT, Leonard William** (applicant) **v** **QUEENSLAND POLICE SERVICE** (respondent)
FILE NO/S:	CA No 160 of 2016 DC No 4861 of 2015
DIVISION:	Court of Appeal
PROCEEDING:	Application for Extension of Time s 118 DCA (Criminal)
ORIGINATING COURT:	District Court at Brisbane – Unreported, 13 May 2016
DELIVERED ON:	20 December 2016
DELIVERED AT:	Brisbane
HEARING DATE:	18 October 2016
JUDGES:	Gotterson and Philippides JJA and Jackson J Separate reasons for judgment of each member of the Court, each concurring as to the orders made
ORDERS:	**1. The application for an extension of time in which to appeal is granted.** **2. The application for leave to appeal is refused.**
CATCHWORDS:	APPEAL AND NEW TRIAL – PROCEDURE – QUEENSLAND – WHEN APPEAL LIES – FROM DISTRICT COURT – where the applicant was convicted by a magistrate of driving while his driver's licence was suspended – where the applicant unsuccessfully appealed his conviction and sentence to the District Court – where the application for leave to appeal to this Court was filed four days out of time – where the applicant did not demonstrate error in the decision of the District Court judge – whether an extension of time in which to appeal should be granted – whether leave to appeal against the decision of the District Court should be granted TRAFFIC LAW – LICENSING OF DRIVERS – QUEENSLAND – DISQUALIFICATION, CANCELLATON OR SUSPENSION OF LICENCES – where the applicant was convicted by a magistrate of driving while his driver's licence was suspended – where the applicant's driver's licence had been suspended by operation of the *State Penalties Enforcement Act* 1999 (Qld) – where the applicant was notified of the suspension by the sending of a notice of intention to suspend to

his last known address – whether the sending of the notice to this address was sufficient

Acts Interpretation Act 1954 (Qld), s 39, s 39A
Criminal Code (Qld), s 23(2), s 24, s 36
District Court of Queensland Act 1967 (Qld), s 118(3)
State Penalties Enforcement Act 1999 (Qld), s 104, s 105, s 158
Transport Operations (Road Use Management) Act 1995 (Qld), s 78

ACI Operations Pty Ltd v Bawden [2002] QCA 286, cited
Atkinson v Gibson [2012] 2 Qd R 403; [2010] QCA 279, cited
Fancourt v Mercantile Credits Ltd (1983) 154 CLR 87; [1983] HCA 25, cited
Hayes v Surfers Paradise Rock and Roll Café [2011] 1 Qd R 346; [2010] QCA 48, cited
Ostrowski v Palmer (2004) 218 CLR 493; [2004] HCA 30, cited
Puschenjak v Wade [2002] QCA 190, cited
Pusey v Wagner; Ex parte Wagner [1922] St R Qd 181, cited
R v GV [2006] QCA 394, cited
R v Mrsic [1998] QCA 470, cited
R v Tait [1999] 2 Qd R 667; [1998] QCA 304, cited
Rodgers v Smith [2006] QCA 353, cited
Sancoff v Holford; Ex parte Holford [1973] Qd R 25, cited
Smith v Woodward [2009] QCA 119, cited
Tierney v Commissioner of Police [2011] QCA 327, cited
Widgee Shire Council v Bonney (1907) 4 CLR 977; [1907] HCA 11, cited

COUNSEL: The applicant appeared on his own behalf
D R Kinsella for the respondent

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

[1] **GOTTERSON JA:** I agree with the orders proposed by Philippides JA. As her Honour has explained, in order to succeed, the applicant was required to demonstrate error on the part of the District Court judge from whose judgment leave to appeal was sought. He has comprehensively failed to do so.

[2] **PHILIPPIDES JA:** The applicant seeks an extension of time in which to appeal against the judgment of the District Court dismissing his appeal from the Magistrates Court. If an extension of time is granted, leave is also required to appeal to this Court from the judgment of the District Court.[1]

[3] The applicant was convicted in the Magistrates Court on 7 December 2015, after a trial, of one count of driving a motor vehicle while his driver's licence was suspended under the *State Penalties Enforcement Act* 1999 (Qld) (SPEA), contrary to s 78 of the *Transport Operations (Road Use Management) Act* 1995 (Qld) (TORUM). The

[1] *District Court of Queensland Act* 1967 (Qld), s 118(3).

Magistrate ordered the applicant pay a fine of $350 and imposed a one month disqualification.[2] The applicant's appeal against that decision was dismissed by the District Court.

Background

[4] On 20 August 2015, the applicant, who was driving his vehicle, was pulled over by police for a random breath test and licence check. The police ascertained that the applicant's licence had been suspended under s 104 and s 105 of the SPEA. Section 104 permits the registrar to suspend a debtor's driver's licence subject to the service of a notice of intention to suspend the licence under s 105. Section 105(2) of the SPEA has the effect that, if an enforcement debtor does not pay the unpaid amount stated in the notice within 14 days, the enforcement debtor's driver's licence is suspended. It is an offence to drive whilst the person's driver's licence is suspended. The notice may be served on an individual by sending it by post to the address or the place of residence of the individual last known to the person sending the notice.[3]

[5] On 17 April 2015, two notices of intention were sent to two different addresses of the applicant by the registrar of the State Penalties Enforcement Registry (SPER). The applicant's driver's licence was subsequently suspended on 10 May 2015. On the basis of his being found to be driving his motor vehicle on 20 August 2015 whilst his licence was suspended, the applicant was charged with the offence that is the subject of this appeal.

[6] At the trial in the Magistrates Court, the applicant accepted that he was the driver of the vehicle; that his driver's licence had been suspended; and that he resided at one of the addresses to which the notice of intention to suspend was sent. He argued, however, that he did not know his driver's licence was suspended and that there was an error pertaining to the name under which he was prosecuted.

[7] The applicant's appeal to the District Court under s 222 of the *Justices Act* 1886 (Qld) was determined on 13 May 2016. He argued that there was bias or a denial of natural justice on the part of the magistrate; that deemed knowledge of the suspension was an error of law; that proof of *mens rea* was required under s 78 of the TORUM; and that he was prosecuted under the wrong name. The District Court judge dismissed the appeal and the further appeal against sentence.

Relevant principles

[8] Consideration of an application for an extension of time within which to seek leave to appeal requires an applicant to demonstrate[4] whether there is a good reason for the delay and whether it would be in the interests of justice to grant the extension of time.[5] Nevertheless, the lack of a good reason for the delay is not fatal to the exercise of the discretion to extend time if it is in the interests of justice.[6]

[9] An appeal to the Court of Appeal in a case, such as the present, requires a grant of leave under s 118(3) of the *District Court of Queensland Act* 1967 (Qld).[7] This exists

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2 TORUM, s 78(3)(f).
3 SPEA, s 158 and *Acts Interpretation Act* 1954 (Qld) (AIA), s 39, s 39A.
4 The onus lies upon the applicant: *R v Mrsic* [1998] QCA 470 at 1 per McMurdo P.
5 *R v Tait* [1999] 2 Qd R 667 at 668 [5]; *Puschenjak v Wade* [2002] QCA 190 at 4 per Jones J.
6 *R v GV* [2006] QCA 394 at [3].
7 *Smith v Woodward* [2009] QCA 119 at [14] per Keane JA; *Rodgers v Smith* [2006] QCA 353 at [4] per Keane JA.

alongside a general discretion under s 118 to grant or refuse leave to appeal according to the nature of the case.[8] Leave will generally only be granted where an appeal to this Court is necessary to remedy a substantial injustice and a reasonable argument exists that there is an error to be corrected.[9] An applicant is required to identify specific error in the reasons of the District Court.[10] Furthermore, in determining whether there is substantial injustice, the Court will generally consider:[11] whether the issue is a matter of public or community importance;[12] whether the case involves a question or principle of general importance;[13] or whether the matter considers an important point of law.

Application for extension of time

[10] The application for leave to appeal against the decision of the District Court was filed by the applicant on 14 June 2016. It was out of time by four days.

[11] The applicant applies to extend time to seek leave on the ground that he was unable to lodge his application for leave due to being hospitalised with severe back pain over the period 3 to 7 June 2016 and being under the influence of oxycodone and lyrica until 13 June 2016.

[12] In those circumstances, the application to extend time in which to seek leave to appeal should be granted.

Application for leave to appeal

Submissions

[13] As to the reasons why the Court should grant leave to appeal from the decision of the District Court, the applicant stated in a written outline as follows:

> "The magistrate who heard the matter at Pine Rivers made no allowance for the fact that there was no mens rea involved in the alleged offence, as neither CLAMPETT LEONARD WILLIAM, the entity to which the DRIVER licence in question was issued, nor Leonard William© TM®, the authorised representative for that entity, were advised in any way that the DRIVER licence in question had been, or was to be, suspended. As it turned out to be a criminal matter, which was not made clear to CLAMPETT LEONARD WILLIAM until it was noted that judge MOYNIHAN was wearing a particular set of robes including a red sash, which it is claimed indicated a criminal court, **there was never any indication or claim that the matter was determined beyond reasonable doubt**. There is no doubt that the holder of the licence in question was never aware that the licence was to be, or had been, suspended by the State Penalties Enforcement Registrar. There is no indication in the TORUM Act that the matter in question is a Strict Liability matter, and, as it is not Absolute Liability matter, and the holder of the licence was never advised of any

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8 *Tierney v Commissioner of Police* [2011] QCA 327 at [34] per Margaret Wilson AJA.

9 *Rodgers v Smith* [2006] QCA 353 at [4] per Keane JA.

10 *Smith v Woodward* [2009] QCA 119 at [18] per Keane JA.

11 *ACI Operations Pty Ltd v Bawden* [2002] QCA 286 at 4 per McPherson JA.

12 *Hayes v Surfers Paradise Rock and Roll Café* [2010] QCA 48 at [14] per Fraser JA.

13 *Atkinson v Gibson* [2010] QCA 279 at [63] per McMurdo P.

suspension there should not have been a conviction. It has been made very clear by a number of magistrates that they believe police and other workers over **THE PEOPLE** as they, the police and others have sworn oaths and wear uniforms. This is mostly applicable to those who present themselves and are unable to afford re-presentation by the legal profession. It cannot possibly be believed that the parliament intended for innocent persons to be found guilty of actions about which they had no knowledge, by way of bureaucrats making decisions and not advising anybody of those decisions, with the resultant being that the government gains increased funds at the expense of innocent parties. It appears that the courts simply believe that bureaucrats have done their duty, regardless of circumstance, even when a simple 50 cent telephone call followed by a registered letter requiring a signature for delivery would ensure natural justice is done in all cases. There has been no natural justice in this matter at all so far. A Statutory Declaration to demonstrate that no claims of suspension were received by the holder of the DRIVER licence concerned from SPER is included herewith. Further, no attention has been given to the fact that the prosecutor at the Pine Rivers tribunal … offered a bribe to Leonard William© TM® to plead guilty to the alleged offence of DRIVING whilst suspended as he could act as a " .... complicitor" and have the sentence set at only a fine of $350 with no disqualification period thereby establishing that he could conspire … the magistrate, and pervert the course of justice. A bribe is described as an inducement, a backhander, an enticement, a carrot, a sweetener, a kickback, to induce, to corrupt. In other words Leonard William© TM® was being asked to lie in court."

[14] The applicant made further submissions to the effect that his guilt had not been determined beyond reasonable doubt and that he had never been aware that his licence was to be, or had been, suspended by SPER. He argued that there was no indication in the TORUM that the offence was one of strict or absolute liability and, in any event, since he was not advised of the suspension, he should not have been convicted. The applicant further argued that the service of the notice of intention to suspend was insufficient and that the proceedings amounted to a denial of natural justice. He contended that it was "simply unbelievable" that it was permissible to suspend a licence without "the courtesy of a telephone call followed up by a registered letter to the victim requiring a signature for delivery as proof/evidence/fact that the victim received such information".

[15] He also made allegations against the police prosecutor and magistrate. The applicant also took issue with the validity of the notice to appear and the juridical status of government entities such as the police and SPER. He claimed that the police had made multiple errors in referring to him by incorrect names in court documents.

[16] The respondent contended that there was no basis to grant leave to appeal. Moreover, there was no substantial injustice and the applicant had not demonstrated that the District Court judge had erred. It was submitted by the respondent that his Honour had carefully and comprehensively addressed each of the points raised by the applicant and that the applicant had not identified any error in those reasons. It was submitted that, given the appropriate disposition of the appeal under s 222 of the *Justices Act*, there existed no matter of public or community importance, no question or principle of general importance nor any important point of law. In all the circumstances, it was said that the applicant had not suffered any injustice, much less a substantial injustice.

Consideration

[17] The District Court judge reviewed, in some considerable detail, the evidence, the legal arguments and the magistrate's findings in determining that the only conclusion to be drawn from the accepted evidence, given the manner in which the trial and appeal under s 222 of the *Justices Act* was conducted, was one of guilt.

[18] As the respondent pointed out, the applicant accepted at trial that not only was he the driver of the vehicle but also that his licence was suspended. The effect of the legislation was such that the alleged non-receipt of the notice of intention to suspend was irrelevant, as delivery of the notice is deemed to have occurred.[14] Furthermore, any mistaken belief on the part of the applicant as to whether his driving was lawful or authorised was, as the primary judge also found, a mistake of law[15] and so the defence of mistake of fact in s 24 of the *Criminal Code* (Qld) (the Code) was not applicable. As the primary judge correctly stated, the doctrine of *mens rea* does not apply to s 78 of the TORUM, as the offence is one of strict liability.[16] Given the effect of the legislation and the mistake being one as to law and not fact, the magistrate's findings were plainly supported by the evidence, as the respondent submitted.

[19] I accept the respondent's submission that the District Court judge rightly found that there was no bias or denial of natural justice on the part of the magistrate. Procedural fairness had been accorded by efforts made by the magistrate to explain the proceedings and provide adequate opportunities to be heard. The District Court judge was also correct to conclude that there was no misnomer due to the applicant's admission as to the name on the licence that he was issued and the applicant's birth certificate.

[20] In short, having considered the strict liability imposed by s 78 of the TORUM, the requisite notice and proper service of the notice of intention to suspend and the potential defence of mistake of fact under s 24 of the Code, the District Court judge correctly held that proper service of the notice had occurred, that s 24 of the Code was not engaged and that the elements of s 78 had been made out on the evidence. The District Court judge, thus, rightly concluded that there was no legal, factual or discretionary error and dismissed the appeal. After consideration of the nature of the offence and the applicant's traffic history, his Honour concluded that the sentence was not unreasonable or plainly unjust. The sentence of one months disqualification was the minimum required to be imposed[17] and the fine was within the magistrate's discretion.[18] No error or substantial injustice was evident in the sentence under appeal.

Orders

[21] The orders I propose are:

1. The application for an extension of time in which to appeal is granted.
2. The application for leave to appeal is refused.

[22] **JACKSON J**: I agree with Philippides JA.

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14 AIA, s 39 and s 39A; *Fancourt v Mercantile Credits Ltd* (1983) 154 CLR 87 at 95-97.

15 *Ostrowski v Palmer* (2004) 218 CLR 493 at [11]-[13]; [59] and [90]; *Pusey v Wagner; Ex parte Wagner* [1922] St R Qd 181 at 184-185; *Sancoff v Holford; Ex parte Holford* [1973] Qd R 25 at 27.

16 See s 23(2) of the Code, applied to the TORUM by s 36 of the Code. The effect is that intent is immaterial unless it is expressly declared to be an element of the offence: *Widgee Shire Council v Bonney* (1907) 4 CLR 977 at 981-982.

17 TORUM, s 78(3)(f).

18 See TORUM, s 78(1).