

# SUPREME COURT OF QUEENSLAND

CITATION: *Crossman v Queensland Police Service* [2017] QCA 112

PARTIES: **CROSSMAN, Ian Norman**  
(applicant)  
v  
**QUEENSLAND POLICE SERVICE**  
(respondent)

FILE NO/S: CA No 8 of 2017  
DC No 134 of 2016

DIVISION: Court of Appeal

PROCEEDING: Application for Leave s 118 DCA (Criminal)

ORIGINATING COURT: District Court at Cairns – Unreported: 15 December 2016

DELIVERED ON: 31 May 2017

DELIVERED AT: Cairns

HEARING DATE: 30 May 2017

JUDGES: Sofronoff P and Gotterson JA and North J  
Separate reasons for judgment of each member of the Court,  
each concurring as to the order made

ORDER: **Leave to appeal refused.**

CATCHWORDS: CRIMINAL LAW – APPEAL AND NEW TRIAL – OTHER MATTERS – where the applicant was convicted for disobeying the speed limit – where the applicant appealed his conviction to the District Court with his appeal being dismissed – where the applicant seeks leave to appeal to the Court of Appeal under s 118 of the *District Court Act* – where the applicant submitted that amendments to s 124 of the *Transport Operations (Road Use Management) Act* were difficult to administer – where the applicant submitted that a reverse onus was imposed in the District Court hearing due to the admission of certificates under s 124 of the *Transport Operations (Road Use Management) Act* – whether leave to appeal the conviction should be granted

*District Court Act of Queensland Act 1967 (Qld), s 118*  
*Transport Operations (Road Use Management) Act 1995 (Qld), s 124, s 124(4), s 124(5)*

COUNSEL: The applicant appeared on his own behalf  
N Rees for the respondent

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

- [1] **SOFRONOFF P:** This is an application for leave to appeal an order of a District Court judge who dismissed an appeal under s 222 of the *Justices Act* 1886.
- [2] The applicant was convicted on 1 August 2016 of driving at a speed of 96 kilometres per hour in a zone where the speed limit was 80 kilometres per hour. He appealed his conviction to the District Court where his appeal was dismissed. His grounds of appeal to that Court were two. First, that a covert recording by the police officer who detected his speed was inadmissible and that it had been edited so that it was misleading. Second, that the Prolaser hand held speed detector “was used outside its ‘range’ re the operator’s manual”.
- [3] Harrison DCJ, who dismissed the appeal, found that the fact that the applicant did not know that his words were being recorded did not render the recording inadmissible. That is, of course, true. His Honour also considered whether the admission of the recording had been in any way unfair. He held that the use of the recording was not unfair. On the contrary, in reliance on the decision of Atkinson J in *Schulz v Johnstone* [2011] QSC 221, his Honour held that by ensuring the accuracy of evidence of a relevant conversation, the recording was of assistance to the Court in disposing of an issue concerning what had been said. His Honour found that the parts of the recording that had been excised had been properly excised as either irrelevant or prejudicial to the applicant (as the applicant actually admitted to his Honour).
- [4] As to the second ground of appeal which challenged the proper use of the laser speed detector, his Honour adverted to what had happened at the trial. The applicant had cross examined the police officer who had detected his excessive speed. He began what was, apparently, intended to be a line of cross examination that might demonstrate that the way in which it had been used may produce a false reading. He was stopped because no notice had been given by the applicant of his intention to mount such a challenge. Section 124(4) of the *Transport Operations (Road Use Management) Act* 1995 (“the Act”) requires that written notice of such an intention must be given to the prosecution and s 124(5) requires that it be given no less than 14 days before the hearing. The magistrate who conducted the trial offered the applicant an adjournment so that he could give such notice. The offer was declined.
- [5] The evidence adduced by the prosecution included certificates issued under the Act which proved the accuracy of the device. The police officer gave evidence that the speed of the applicant’s car shown on the instrument was 96 kilometres per hour. During the recorded conversation the applicant had admitted that his speed was “probably going 90 kilometres”.
- [6] To justify leave to appeal, the applicant must show not only that an appeal is necessary to correct a substantial injustice, but also that there is an arguable ground of appeal.
- [7] In a case in which the evidence of the prosecution, properly admitted, proved the offence and in which that evidence included an indisputable admission of guilt by the applicant, the prospect of leave being granted must be remote.

- [8] In his application to this Court the applicant has raised as his first ground why leave should be granted that the amendments to the Act were “unworkable” and that “Police, Prosecution and Judiciary are struggling to administer” its provisions. Speaking for myself only, as a member of the Judiciary, I have not found myself struggling to understand or to apply s 124(4) of the Act. Mr Rees, who appeared for the respondent prosecutor, likewise did not appear, at least to me, to be struggling with his understanding of the Act.
- [9] In any case, there can be nothing in such a ground.
- [10] The applicant’s second ground to justify leave was that the use of certificates as permitted by s 124 meant that the proceedings were carried out under a “Reverse Onus”. However, that is not so. The certificates that had been tendered were merely prima facie evidence of their contents. Subject to notice being given of an intention to challenge them, they could be challenged and disproved.
- [11] There being no grounds that would justify the grant of leave, I would refuse leave to appeal.
- [12] **GOTTERSON JA:** I agree with the order proposed by Sofronoff P and with the reasons given by his Honour.
- [13] **NORTH J:** I agree with the reasons of the President and with the orders his Honour proposes.