DISTRICT COURT OF QUEENSLAND

CITATION:	*Van den Hoorn v Ellis* [2010] QDC 451
PARTIES:	**JOHAN HENDRICK VAN DEN HOORN** (Appellant) **v** **CRAIG ELLIS** (Respondent)
FILE NO/S:	1761/10
DIVISION:	Criminal Jurisdiction
PROCEEDING:	Appeal
ORIGINATING COURT:	Magistrates Court, Cleveland
DELIVERED ON:	30 November 2010
DELIVERED AT:	Brisbane
HEARING DATE:	22 November 2010
JUDGE:	Dorney QC DCJ
ORDER:	**1. The orders on appeal in this proceeding made in the Magistrates Court at Cleveland on 16 June 2010, both for conviction and sentence, are confirmed.** **2. The appeal is otherwise dismissed.** **3. Unless the respondent files written submissions on costs and serves the same by pre-paid post addressed to the appellant's postal address contained in his Notice of Appeal by 4 pm on 7 December 2010, there will be no order as to costs.**
CATCHWORDS:	APPEAL – from Magistrates Court – Constitutional Law - whether relevant State legislation concerning convictions valid and, if so, whether errors in interpretation – appeal against conviction and sentence *Acts Interpretation Act* 1954, ss 2, 9, 9(1)(a), 45, 45(1), 48A *Australia Act* 1986, s 3(2) *Australian Courts Act* 1828, s 24 *Bill of Rights* *Colonial Laws Validity Act* 1865 *Commonwealth of Australia Constitution Act*, s 107

Constitution Act 1867, ss 2, 30, 40

Constitution of Queensland 2001, ss 3, 4, 8

Evidence Act 1977, ss 42, 44, 95(4), 116

Judiciary Act 1903 (Cwth), s 78B

Justices Act 1886, ss 222, 223(2), 225(1), 226

Magna Carta, cl 29

Motor Accident Insurance Act 1994, s 3(a), 4, 18

Police Powers and Responsibilities Act 2000, s 365(1)(a)

Six Statutes of Edward III

State Penalties Enforcement Act 1999, ss 104, 105, 105(3), 106(1), 107, 107(2), 107(3), 121, 157(3)

The Criminal Code, s 3(4)

Transport Operations (Road Use Management) Act 1995, ss 60, 60(2)(d), 78, 124, 124(1)(n), 124(1)(r), Schedule 4

Transport Operations (Road Use Management) Regulation 1999, s 5

Transport Planning and Coordination Act 1994, ss 37, 37(1)

Black's Law Dictionary (9th ed)

Magna Carta (2nd ed) (JC Holt) (Cambridge University Press)

Statutory Interpretation in Australia (6th ed) (Pearce & Geddes)

The Reception of English Law Abroad (BH McPherson CBE)(Supreme Court of Queensland Library 2007)

Barton v Beattie & Ors [2010] QCA 100

Bone v Mothershaw [2003] 2 Qd R 600

Carnes v Essenberg; Lewis v Essenberg [1999] QCA 339

Clampett v Hill & Ors [2007] QCA 394

House v The King (1936) 55 CLR 499

Hubner v Erbacher [2004] QDC 345

Kobylski v Queensland Police Service [2007] QCA 50

Osgood v Queensland Police Service [2010] QCA 242

Sharples v Arnison & Ors [2001] QCA 518

Skyring v Commissioner of Taxation [2007] FCA 1526

	Teelow v Commissioner of Police [2009] 2 Qd R 489
	Widgee Shire Council v Bonney (1907) 4 CLR 977
COUNSEL	Appellant in person
	J. O'Brien for the Respondent
SOLICITORS:	Appellant appeared on his own behalf
	ODPP for the Respondent

Introduction

[1] This is an appeal by a person who has described himself in the Notice of Appeal filed 18 June 2010 as "Sovereign Freeman JOHAN", an agent and a "Freeman on the Land" appearing on behalf of "J. H. VAN DEN HOORN". The appeal, which I have taken to be against both conviction and sentence – although that is not immediately clear from the Notice of Appeal – concerns convictions made on 16 June 2010 at the Magistrates Court at Cleveland pursuant to four charges brought concerning: using on a road a vehicle that was not a registered vehicle; driving an uninsured vehicle on a road; without reasonable excuse, using on a road a vehicle whilst a number plate attached to it was cancelled; and driving a motor vehicle on a road while not being at that time the holder of a driver licence.

[2] The appellant, who appeared in person, while conceding that I could address him as Mr Van den Hoorn, asserted, as he had done in the Magistrates Court, that he was merely the "owner of the created fictions known as JOHAN HENDRICK VAN DEN HOORN and JOHN HENRY VAN DEN HOORN, being created fictions fraudulently owned and controlled by legal fictions" which included "australia inc" and "queensland inc", as well as "queensland transport inc" and "numerous other incorperations and deciets": see Exhibit 10 (filed in the lower court at trial).

[3] I have, as Greenwood J did in *Skyring v Commissioner of Taxation* [2007] FCA 1526 at [5], closely examined the evidence, the appellant's written submissions, the content of the constitutional and other legal points that he made, as well as his oral submissions concerning his arrest by one of the investigating police officers, subsequent "injustice" and other "exceptional" circumstances.

Constitutional notices

[4] In conformity with the approach adopted by the Queensland Court of Appeal in *Kobylski v Queensland Police Service* [2007] QCA 50, since there is vexation in the appellant's pursuit of unmeritorious constitutional arguments, it is appropriate that no notices under s 78B of the *Judiciary Act* 1903 (Cwth) were given in relation to this appeal. As noted by Mullins J, with whom McMurdo P and Keane JA expressly agreed, s 78B operates "only when the circumstances in which it applies appear to the Court to be present and not because a party asserts that those

circumstances are present": at [10], relying on earlier cited authority. In *Kobylski*, reliance had been placed upon, among other laws and sources, the *Commonwealth of Australia Constitution Act*, *Magna Carta*, the *Bill of Rights,* and the Bible: at [6].

Grounds of appeal

[5] The grounds of appeal stated in the Notice of Appeal require reference to an attached list, while expressly stating in the Notice that they include jurisdiction, standing, authorisation, false imprisonment and errors in law. The attached list, of 7 pages, contains mainly grounds that are unintelligible without reference to other documentation (to which I will presently refer). It includes asserted reasons for the purpose of justifying a general grant of leave in circumstances where no such grant of leave is necessary, although special grounds for leave to adduce new evidence would be necessary: see s 223(2) of the *Justices Act* 1886. Lastly, for present purposes, it states that, on the hearing, the appellant intends to rely upon various documents including "a trial notice", "documentations posted on the web" and, after noting "this free man cannot swear" in reference to an affidavit to be sworn (but which was not), refers to various passages from the New Testament (King James version).

[6] The additional documents mentioned earlier, were, first, some 18 pages contained in a document entitled Certificate of Readiness, filed 29 September 2010, and, earlier, and secondly, an Outline of Argument (although otherwise described) the appellant had filed on 1 July 2010. That document comprises 245 pages. It provided the basis for the appellant's oral submissions before me.

[7] Because I will deal with, mainly, the Outline of Argument, the document which comprises the Certificate of Readiness has not been the subject of much further consideration. This is not only because it is essentially incomprehensible in isolation but also because the much more detailed Outline of Argument appears to better encompass the notion of what is attempted to be described in the former document.

Respondent's contentions

[8] Although it may be seen to be somewhat unusual to address the respondent's arguments at such an early stage, besides contending that the learned Magistrate did

not fall into error and that the decision reached was open on the evidence and not contrary to law, it states – importantly for the present consideration - that the appellant's Outline of Argument is "incomprehensible" and shows no reason why any statute in Australia should be constitutionally invalid (specifically, with respect to the reference to the *Magna Carta*, contending that this was an area of "settled law").

Appeal principles

[9] As mandated by the Queensland Court of Appeal in *Osgood v Queensland Police Service* [2010] QCA 242, an appeal such as this, brought by way of s 222 of the *Justices Act* 1886 from a decision of a magistrate, is a rehearing on the evidence given at trial and on any new evidence adduced by leave: at [20]. Furthermore, the powers of such an appellate court are exercisable only where it is demonstrated that, having regard to all the evidence then before the appellate court, the order that is the subject of the appeal is a result of some legal, factual or discretionary error, in the absence of there being some statutory provision indicating that such powers may be exercised whether or not there was error at first instance: also at [20], referring to observations by Muir JA in *Teelow v Commissioner of Police* [2009] 2 Qd R 489. With respect to conviction, even if I were not to have concluded that there was relevant error, I would have proceeded on the basis that error need not be established [noting that s 225(1) of the *Justices Act* 1886 gives power to "confirm" the appealed order] and, that, therefore, it is necessary anyway to conduct a thorough examination of the record and a real review of the evidence, weighing any conflicting evidence and drawing any necessary inferences and conclusions, so as to make a new determination of relevant facts in issue from the evidence, while giving due deference, and attaching a good deal of weight, to the magistrate's view: at [21]. As to sentencing, the principles expounded in *House v The King* (1936) 55 CLR 499 apply: at 504.

Magistrate's reasons

[10] After briefly referring to the conclusion about the manner in which the police officers in question came "in contact with" the appellant and the motor cycle that he was riding (bearing Queensland registration plates with the number "WP-670"), the learned Magistrate considered the various relevant statutory provisions, including

those going to the facilitation of proof. He concluded that there was sufficient evidence to satisfy the prosecution's obligation of proving the appellant guilty of the charges he faced "beyond a reasonable doubt". In particular, he stated that there was nothing which would dissuade him from concluding that the status of the motor cycle at the relevant time was other than unregistered, uninsured and bearing cancelled licence plates. In addition, he stated satisfaction that, at the time that the appellant was intercepted, he was riding the motor cycle in circumstances where his licence had been suspended.

[11] It will be necessary, later, to canvas the various statutory provisions in detail, particularly because of the alleged invalidity or misinterpretation of them. But with respect to the actual facts that were in contest before the lower court, the magistrate did not deal with the major one in contest – namely, that the appellant alleged that the primary investigating officer, Senior Constable Craig Leslie Ellis, was not a credible witness. The learned Magistrate failed to make any express finding about such credibility, although there was a reference (noted earlier) about how the police came into contact with the appellant. On the related issue of the potential effect of the appellant being arrested at the scene of interception, the learned Magistrate, when determining penalty, merely stated that the appellant had "suffered the indignity of eight hours in custody" and that that was taken into account in not further punishing him further in relation to driving while his driver licence had been suspended.

[12] With respect to that arrest, the learned Magistrate did remark during oral addresses to him that he had listened intently to what Senior Constable Ellis had said in relation to the arrest and that that witness did have, in his mind, that he had the power to arrest under the *Police Powers and Responsibilities Act* 2000, particularly s 365(1)(a). Concerning the main attack on credibility mounted by the appellant (with respect to this witness losing the audio recording he stated that he had made at the scene of the interception), the learned Magistrate expressed no conclusion, even a preliminary one, about the issue during those addresses. With respect, though, it is clear that the appellant's oral address did not directly canvas that issue either. Despite all that, the oral address by the prosecutor at the trial below specifically referred to "a certain issue" being "raised today with respect to the tape-recording" and the fact that it was "very unfortunate that the actual tape was lost": see

Transcript, p 1-107. Immediately following that part of her oral submission, the prosecutor contended that both police officers "should be found credible because they conducted themselves very professionally despite … an extreme bombardment of insults from the defendant": Transcript, p 1-107.

[13] Accordingly, it is necessary that I directly address this issue later in these Reasons.

Constitutional arguments

[14] Insofar as it is discernible, particularly from the Outline of Argument of the appellant, the constitutional arguments are centred on what has been termed an "assumed" jurisdiction "over a free man" because the magistrate "lacked lawful standing to judge a free man" who was "in good standing". The apparent basis for this lack of jurisdiction is that the *Constitution* (Cwth) accords sole relevant legislative powers to the Federal Government or, alternatively, that any adverse (to the appellant) precedential authority, if it previously has existed, ended when the *Constitution* (Qld) was rewritten in 2001. Additionally, there was the puzzling contention that, before the lower court, the appellant was assumed to be a "corperation [sic]" by the fact of the court accepting the alleged "capitalisation of (his) family name" which so led to him being deemed to be a "corporative fiction of limited liability" when he was "a living/breathing soul … of full liability". Its "liability" relevance, if any, seems to be limited to the statutory requirement of mandatory third party personal injury insurance for motor vehicles. The "person" aspect will be canvassed when discussing the relevant Queensland legislation.

[15] This constitutional argument is a variant on those constitutional arguments that have been soundly rejected in previous appellate and other decisions. The variation is the bringing into play of the *Constitution of Queensland* 2001, which commenced on 6 June 2002. Before turning to its effect, if any, on the arguments previously rejected, it is necessary to turn to the consideration of those earlier arguments.

[16] Concerning *Magna Carta*, the Queensland Court of Appeal decision in *Carnes v Essenberg; Lewis v Essenberg* [1999] QCA 339 obliges me to conclude that it is "completely inaccurate" to say that colonial parliaments, or indeed the Parliament of Westminster, could not alter, modify or even repeal the provisions of centuries old legislation: see Chesterman J (as he then was) at p 4. Accordingly, after the

Australian Courts Act 1828, enacted by the Imperial Parliament, became part of the law of Queensland upon its separate establishment in 1859, the *Colonial Laws Validity Act* 1865, also passed by the Imperial Parliament, removed doubts about the extent to which Australian Colonial Parliaments could alter imperial legislation as it applied to the colonies: at p 5. This had the consequence that no colonial law was void on the ground that it was repugnant to the fundamental principles of English law: also p 5. As Chesterman J goes on to note, the matter is made even more explicit by s 3(2) of the *Australia Act* 1986, which provides that no law and no provision of any law made after it by the Parliament of a State shall be void or inoperative on a ground that it is repugnant to the laws of England or to the provisions of an existing or future Act of Parliament of the United Kingdom: also p 5.

[17] Thus, as is clearly concluded in *Carnes (supra)*, both *Magna Carta* and the *Bill of Rights* are *not* untouchable and unalterable sources of private rights or immunities. As for the Bible, it never has had civil effect in this State. This has the result that the legislation in Queensland which was the subject of consideration by the learned Magistrate at first instance, as well as the *Justices Act* 1886, are Acts that have both abrogated the rights of citizens to do as they wish and have changed the manner in which prosecutions may be brought. Thus, where, as here, the appellant was charged with offences for which he may be summarily convicted by a Magistrates Court [s 3(4) of *The Criminal Code*], he had no right to a trial by jury, being subject to that specific legislation that was referred to in the Reasons for Judgment at first instance.

[18] As for the authority of Queensland Courts, the Queensland Court of Appeal decision in *Clampett v Hill & Ors* [2007] QCA 394 binds me to conclude that, since the respective Queensland Courts were duly constituted by the Queensland Parliament when it passed their constituting legislation, the commissions given to judicial officers, under the hand of the Governor, are valid because the authority of the Governor has been unaffected adversely by Acts such as the *Constitution Act* 1867 (Qld): at [14]. As the Court there unanimously remarked, any such argument so agitated had been previously rejected in *Sharples v Arnison & Ors* [2001] QCA 518: also at [14].

[19] Hence, it is now appropriate to consider the effect, if any, on the above conclusions, of the *Constitution of Queensland* 2001. As stated in s 3 of that legislation, the Act declares, consolidates and modernises the *Constitution of Queensland*, though noting that certain earlier Constitutional provisions, because of their special additional procedures - including approval by the majority of electors at a referendum - that such may require were they to be so consolidated, in addition to ss 30 and 40 of the *Constitution Act* 1867, were not consolidated.

[20] It is difficult, of course, to fully comprehend what particular argument was presented on this front. The appellant pointed to the fact that the Act does not include the word "Act" in its title, that a referendum had not been held and that the Act refers to the Queen or King "for the time being": see, for instance, s 4. Further, it is elsewhere contended that it has "never been ratified by HRH". Necessarily, if it is contended – which is not clear – that this particular Act was invalid (for one, or some, or all of those reasons), it is difficult to see how it could possibly affect the continuance of the application of the conclusions just canvassed as outlined in those Court of Appeal decisions. Beyond that, to the extent to which the "grounds of appeal" refer to the issue, they appear to assert that the very enactment of the *Constitution* (Qld) had the effect that any authority that the learned Magistrate had then lapsed. But it is impossible to see how that could possibly occur because of that particular Act. As is clear in merely stating the three arguments presented, none of them have the effect of invalidating the *Constitution of Queensland* 2001. First, there is no requirement for this legislation to have the word "Act" in its "title". Secondly, the reason that a referendum was not held is that it was not required (as is obvious from the Note to s 3). Thirdly, the reference to the Queen or King "for the time being" does not offend any legal principle, or at least one that has any effect on the validity of this particular legislation. The mere fact that the earlier constitutional Act in 1867 did not recite such words is irrelevant. As for "ratification", even if it was the case that the present Queen were personally to have a role in enacting present Queensland legislation, there was no evidence led concerning any relevant failure by Her or Her Governor.

[21] Lastly, to the extent to which any issue was raised that there are no valid Queensland Acts because the *Constitution* (Cwth) does not allow such acts to have validity, in a case which specifically refers to the *Constitution of Queensland* 2001,

the Queensland Court of Appeal in *Barton v Beattie & Ors* [2010] QCA 100 concluded that the Queensland Parliament is empowered to make "laws for the peace, welfare and good government" of Queensland, as provided for by s 8 of the *Constitution of Queensland* 2001, s 2 of the *Constitution Act* 1867, and s 107 of the *Constitution* (Cwth): at [9]. As the Court of Appeal there stated, that legislative power undoubtedly comprehends legislation which amends existing State legislation concerning, there, the system of local government: also at [9]. Analogously, such legislative power undoubtedly comprehends the legislation in question here.

[22] A further argument of the appellant, which was not developed at all by him in oral submissions, contended that the learned Magistrate's authority had lapsed when the Parliament of Queensland "decided to retire one constituted house of govt". Such an argument was not developed to a stage where it was shown to have any legal effect on the validity of the presently concerned legislation.

[23] In terms of constitutional validity, the appellant, in a way which was not clearly developed, also relied upon Instructions given by the King (for the time being) to Governor Phillip on 25 April 1787. The gist of the argument seemed to be that such Instructions should have the same effect as that accorded to *Magna Carta*. Necessarily, to that extent at least, the conclusions reached about *Magna Carta* above dictate that there can be no continuing reliance upon those Instructions, where, as here, any different conclusion regarding validity of later legislative enactments is in issue. In dealing with the issue of royal instructions in his comprehensive text, *The Reception of English Law Abroad* (BH McPherson CBE) (Supreme Court of Queensland Library 2007), the former Justice of Appeal wrote that the language of such royal instructions has obvious links with cl 29 of *Magna Carta* and the *Six Statutes*: at pp 211-212; and see *Magna Carta* (2nd ed) (JC Holt) (Cambridge University Press) at pp 10-11. Nevertheless, he concludes (consonant with the conclusions reached above and citing relevant authority), that, like any other legislation, the provisions of *Magna Carta* are liable to repeal expressly, or by implication, by later enactments that are inconsistent with it, in the absence of constitutional entrenchment: at p 218. Again, analogously, the royal Instructions here would similarly be subject to repeal, there being no evidence of constitutional entrenchment.

[24] By way of further clarification, McPherson JA (as he then was), speaking generally for the Queensland Court of Appeal in *Bone v Mothershaw* [2003] 2 Qd R 600, noted that the common law received in Australia under the *Australian Courts Act* 1828 (particularly by s 24) was received as a body of common law and not of enacted law, with the effect that the common law so received in Australia in 1828 was not so received as a body of statute law: at 610 [19]. As McPherson JA goes on to observe, the whole notion of such conversion is opposed to the established view that local laws or by-laws are capable of altering the received English law [as was recognised by the High Court in *Widgee Shire Council v Bonney* (1907) 4 CLR 977]: also at 610 [19]. The legal outcomes that I have considered, even though I have also referred to cases that have occurred subsequent to 2004, were utilised by White DCJ in *Hubner v Erbacher* [2004] QDC 345 in determining that one of the pieces of legislation involved here [namely, the *Transport Operations (Road Use Management) Act* 1995, and Regulations made thereunder] was a valid enactment made pursuant to the legislative power of the Queensland Parliament and prevailed over all common law or other rights and freedoms to the extent that they were inconsistent therewith: at [13]. Though he expressed the conclusion as being subject to the *Constitution* (Cwth), he later concluded that there was no relevant inconsistency.

[25] I, too, have reached the conclusion that, guided by relevant precedent and proper statutory interpretation, there is no successful attack on the validity of the legislation under consideration here.

Relevant interpretation provisions

[26] Attention for this purpose was directed to the *Acts Interpretation Act* 1954. It was first contended that since, by s 2, this Act applied to all Acts, s 9 was an important limitation on what the Queensland Parliament could do. By s 9(1)(a), an Act needs to be interpreted as operating "not to exceed Parliament's legislative power".

[27] Seemingly irrelevant to exceeding legislative power, the contention appears to be that the Queensland Parliament's legislative power was given up at federation or, alternatively, was superseded or brought undone by the *Constitution of Queensland* 2001.

[28] As for the former argument, that has already been dealt with in *Barton*. And, in any event, on such an argument ss 2 and 9 could not be valid themselves. As for the latter argument, if, as originally asserted by the appellant, the 2001 Act is invalid, it cannot supersede anything. If it does supersede, then there was nothing identified in it that shows any negation of then existing or subsequent legislation. Also, it is difficult, if not impossible, to consider how, at least relevantly, the 2001 Act offends s 9(1)(a) of the *Acts Interpretation Act* 1954. And if the argument is meant to contend that the 2001 Act extinguished Queensland Parliament's legislative power, then it must be rejected as an absurd interpretation.

[29] A second provision in the *Acts Interpretation Act* 1954 to which attention was directed is s 45. Necessarily, if the initial contention were to be accepted, then this particular provision would be invalid. Nevertheless, assuming its validity for present purposes, the argument appears to be that, since s 45(1) prohibits an offender from being punished more than once for the same offence, the fact that the appellant was arrested and not released for eight hours should be interpreted as "punishment". The next step in the argument is, apparently, that having been so punished, he could not be punished again in the way that the learned Magistrate purported to do in the sentencing procedure undertaken on 16 June 2010. But if, as was held by the learned Magistrate, Senior Constable Ellis was entitled to exercise the power to arrest under s 365(1)(a) of the *Police Powers and Responsibilities Act* 2000, the consequences of it cannot be said to be a punishment for the offences which are the subject of the various Bench Charge Sheets. The learned Magistrate did hold that it was a proper concern of Senior Constable Ellis that the appellant would continue offending if he were not to be arrested. Is it, therefore, necessary to determine both whether Senior Constable Ellis had the appropriate power and that it was a valid exercise to do as he did? I conclude that even if there has been an unlawful arrest and detention, it does not go to punishment for the offences that are the present subject of this appeal. While it may have consequences elsewhere, it does not constitute a violation of s 45(1) of the *Acts Interpretation Act* 1954.

[30] The third aspect of the *Acts Interpretation Act* 1954 relied upon is s 48A. That section deals with verification of documents and states that, relevantly, if an Act requires that, for the purpose of that Act, a document, or information or document included in, attached to or given with a document, be verified in a specified way, the

purpose is not fulfilled unless the requirement is satisfied. The appellant's apparent contention is that all the relevant documents tendered needed to be originals and, therefore, to the extent to which any such document was a copy, it was in breach of s 48A, with the consequence that the purpose of the law with respect to such a document was not fulfilled.

[31] The only relevant documents that are copies are: Exhibit 2 (a Statement of Licence Details for the appellant dated 13 January 2010, showing that an Australian Capital Territory driver licence, issued 9 February 2005, was suspended on 23 June 2006); Exhibit 4 (an Instrument of Delegation under the *State Penalties Enforcement Act* 1999, dated 17 December 2009 - although it is stamped with an original signature accompanying a certification that the document is a true copy of the original, and is dated 20 January 2010); and Exhibit 6, [an Instrument of Delegation under the *Transport Operations (Road Use Management) Act* 1995, dated 29 November 2009, containing a similar signed original certification that it is a true copy of the original, and is dated 20 January 2010]. Additionally, there is an unsigned, though original, document dated 13 January 2010 which refers to a signed original Certificate of Registrar under the *State Penalties Enforcement Act* 1999.

[32] The Instruments of Delegation, being respectively Exhibits 4 and 6, purported to evidence a delegation by the Chief Executive of the Department of Transport and Main Roads, as provided by s 37 of the *Transport Planning and Coordination Act* 1994. Section 37(1) of that Act gives the relevant power to delegate to a person a function or power of the delegator under that, or another, Act. For Exhibit 4, the other Act is the *State Penalties Enforcement Act* 1999 and for Exhibit 6 it is the *Transport Operations (Road Use Management) Act* 1995. There appears to be nothing in the *Transport Planning and Coordination Act* 1994, or regulations made thereunder, which deals with proof by way of a copy (for example, similar to s 44 of the *Evidence Act* 1977). But it is clear that, by s 42 of that last mentioned Act, judicial notice must be taken of the signature of a person who is a Justice of the Peace and the fact that that person holds that office. That provision, taken together with s 116 of the *Evidence Act* 1977 which permits copies to be given in evidence where the relevant court is satisfied that the copy was made from the original document by means of a photographic or other machine which produces a facsimile copy (being so admissible in evidence to the same extent as the original document,

without proof that the copy was compared with the original document or that a notice to produce the original document was given), means that it was open to the learned Magistrate, as he did, to accept both Exhibit 4 and Exhibit 6. Correspondingly, it is also open to me, on review, to be satisfied – which I am (particularly bearing in mind: the certificate by the JP on each stating that it is "a true" copy of the original which was "sighted" by the certifier; and the definitions in s 104).

[33] As for Exhibit 3, which is a Certificate of the Registrar of the State Penalties Enforcement Registry dated 13 January 2010, and Exhibit 7, which is a Certificate of the relevant delegate of the Chief Executive of the Department of Transport dated 18 January 2010, they are, respectively, admissible pursuant to s 157(3) of the *State Penalties Enforcement Act* 1999 and s 95(4) of the *Evidence Act* 1977, and ss 60(2)(d) and 124(1)(n) of the *Transport Operations (Road Use Management) Act* 1995. See, also, s 60 of the latter Act for evidentiary aids to proof, particularly by certificate, s 124 for facilitation of proof, and s 44 of the *Evidence Act* 1977.

[34] As for Exhibit 5, given the terms of Exhibit 3, it was, and is, unnecessary for either the trial court or this court to have recourse to the information contained in that document.

[35] As for Exhibits 1 and 2, it is unnecessary to have any regard to them, dealing as they do with a licence from the ACT. They are not relevant for present purposes since a copy of the licence (made by the Court itself) was admitted as Exhibit 1 only because it was the "licence" produced by the appellant to the police officers on 10 December 2009; and therefore part of the history of what occurred. See, also, s 106(1) of the *State Penalties Enforcement Act* 1999 which deals with such an ACT licence as being irrelevant to suspension, even if it were to be properly proved that it was a valid, continuing licence.

Relevant transport provisions

[36] Of primary concern to the appellant was the definition of a "vehicle". The definition is relevant to all four charges. There having been no evidence given by the appellant in rebuttal of the relevant averments under s 124(1)(r) of the *Transport*

Operations (Road Use Management) Act 1995, the attack here is on the proper interpretation of the underlaying premise of those averments.

[37] Turning first to the definition of "vehicle" in the *Transport Operations (Road Use Management) Act* 1995, Schedule 4 defines it in a way which "includes" any type of "transport" that moves on wheels. In turn, "transport" is defined "in relation to" dangerous goods "to include" each of specified ways which are set forth in subparagraphs (a) to (e). "Include" is contended by the appellant, by reference to *Black's Law Dictionary* (5th ed), to mean to "shut in" or "keep within" and therefore "limiting" the subject to the specified objects: cf (9th ed) at p 831. Hence, the interpretation advanced by the appellant is that "transport" is limited to the transport of goods and that, in turn, means that the only objects that are vehicles are those that transport goods. The argument must fail. First, it is clear that the actual definition of the word "transport" is limited to defining such "in relation to" dangerous "goods". Secondly, both in the definition of "vehicle" and of "transport", "includes" is not intended to be an exhaustive definition: see *Statutory Interpretation in Australia* (6th ed) (Pearce & Geddes) at [6.56] – [6.59]. The vehicle involved here is a motorcycle.

[38] A second interpretive argument is based upon there being evidence that the particular "vehicle" had details which were "on" the register. Exhibit 7 certified that as at 10 December 2009 the "register of vehicles" showed that a "2001 Suzuki GSXR 750 Motorcycle, Vehicle Identification Number JS1BD12130010043 and registration number WP670" was "cancelled" by Queensland Transport on 9 February 2009. The *Transport Operations (Road Use Management) Act* 1995 defined "registered" as meaning registered "in a register of vehicles" kept by the chief executive under a transport Act. In the relevant *Transport Operations (Road Use Management) Regulation* 1999, s 5, for this regulation, stated that a vehicle is "taken to be" a "registered vehicle" if it has "current registration" under the regulation. The appellant, in his Outline of Argument, included 12 pages of definitions which included a definition of "registration" as meaning the transfer of "superior ownership to the entity accepting the registration", adding that once an item has been registered, "you are no longer the OWNER … but instead you become the KEEPER". Accordingly, so the argument runs, if the relevant vehicle was, as here, "on" the register, it must mean that the vehicle registration was

"registered". This is contended to have the consequence that it was thus not "cancelled".

[39] Such an approach to interpretation blatantly ignores the fact that the definition of "registered" means entered in a register as "registered". It does not mean simply that, if there are details of a vehicle on or in a register, then it must be "registered". It is inherently contradictory to accept that the relevant Certificate contains details that the registration of the vehicle was "cancelled", yet at the same time contend that the mere recording of details means that the vehicle is relevantly registered. The meaning of "registered" depends on context and it is clear from the whole of the relevant Act that being "registered" does not encompass any registration which has been cancelled.

[40] The third attack on the legislation is that, since "driver" in the *Transport Operations (Road Use Management) Act* 1995 is defined as meaning the "person" driving the vehicle (including the "rider" of a vehicle), the appellant is not a person who falls within the Act because, from the same definitions just referred to, a person "includes" a "corporation" and the appellant is not a "corporation". Besides misunderstanding, as discussed before, about what "includes" means, it is clear from the context of the definition – and reality - that a corporation could never drive or ride a vehicle. Such an interpretation is therefore absurd, and must be rejected. A similar fate follows from any argument that a "person" is only a fictitious legal entity.

[41] Here, again, reference is made to the definition of "vehicle". So, for the reasons canvassed above, the limitation of such to being one of transportation must again be rejected. The last part of the argument would appear to be that, since there was actually no vehicle, there could be no driver. But there was a motorcycle – and it was a "vehicle".

[42] Considering, then, the *Motor Accident Insurance Act* 1994 – relevant to the charge that the appellant did drive an "uninsured vehicle" – the appellant contends that he has insurance since all persons are taken to be "insured" through the Nominal Defendant provisions. Further, since he is a "free man", he contends that he has unlimited liability and thus he cannot be "uninsured" within the meaning of that Act. A "motor vehicle" within the provisions of this Act means a "vehicle" for

which registration is required under the relevant regulation concerning vehicle registration made pursuant to the *Transport Operations (Road Use Management) Act* 1995. As noted, Exhibit 7 shows "cancellation". The argument as to being a free man is to contrast such an entity to a corporation which the appellant states has "limited" liability. Passing on from that argument (which has no merit at all), even if there was an "insurance" component in all registration payments, in circumstances where Exhibit 7 certifies that the records of the Chief Executive do not show that there was "in force" a Compulsory Third Party insurance policy in relation to the vehicle bearing registration WP670 and containing the above designated Vehicle Identification Number, it cannot mean that the vehicle was not "uninsured" according to the governing legislation. Although the Act states, for example, that the Nominal Defendant is "taken to be" a licensed "insurer" in s 18, it is clear from the context of the Act as a whole that such is "statutory insurance" only: see, for instance, s 3(a), concerning the "objects" of the Act. The definitions of "insured motor vehicle" and "uninsured motor vehicle" in s 4 make the position abundantly clear.

[43] With reference to the registration number and the Vehicle Identification Number of the relevant motorcycle, the photographs which comprise Exhibit 8, despite being challenged on unsupportable grounds by the appellant, show both numbers to have been attached to the relevant motorcycle on the day and at the times in question.

[44] In summary, there can be no successful challenge to this legislation being applicable in this case.

SPER

[45] The fourth of the charges on the Bench Charge Sheet is brought pursuant to s 78 of the *Transport Operations (Road Use Management) Act* 1995. It depends upon proving that the appellant's licence was suspended pursuant to the provisions of the *State Penalties Enforcement Act* 1999 ("SPER").

[46] Exhibit 3, dated 13 January 2010, is valid for reasons canvassed earlier. The contents of it "certify", among other things, that a debt arising from an infringement notice, issued on 13 December 1999 to the defendant, was registered and, later, converted to a debt pursuant to SPER for enforcement after the "implementation" of

the Act on 27 November 2000. As a result of notices posted by ordinary mail to the appellant's address (being one that the appellant himself acknowledges in his Notice of Appeal to be his address) on 8 August 2003, a Notice of Intention to Suspend Driver Licence was issued to the appellant, being posted by ordinary mail, again to that address. It was further certified that such notice has not been returned unclaimed.

[47] From that evidence, it is clear that the relevant criteria for suspending the driver licence of the appellant pursuant to s 104 of SPER have been established. By s 105(3) of SPER, such suspension remains until the "enforcement debtor" pays the unpaid amount or the amount is otherwise discharged under SPER. The appellant contends that the amount is "discharged". The argument is based upon s 107 of SPER, which deals with a review of suspension of the licence. By s 107(2), as soon as practicable after the end of each three months of the suspension (where the driver licence has been suspended for three months or more), the registrar "must" review the suspension. As a result of that review, the registrar is given a discretion pursuant to s 107(3) to issue an arrest and imprisonment warrant without notice. The appellant's argument proceeds on the basis that since there is no evidence that the registrar did review the suspension - as required to do by the use of the term "must" - there has been a relevant "discharge" under the Act. The premise is stated to be that the right of the registrar, and therefore the prosecuting authorities, to continue to act on the basis of the suspension generated under s 105 has necessarily "lapsed" because of the registrar's failure to act. Obviously, as an issue of statutory interpretation, this consequence has not occurred. No issue was taken at trial with the alleged failure to review; and, even if it had, as just indicated, it would not avail the appellant. A second aspect of this argument relies upon s 121, dealing with the imprisonment of an enforcement debtor. It states that, if an enforcement debtor is imprisoned, a period of imprisonment discharges the unpaid amount "in the reverse order to the order of satisfaction" as it would have applied if the person had not been imprisoned. Again, this is a reference to the arrest and detention for eight hours, mentioned earlier. Whatever consequence that particular arrest and detention had, it was not relevant imprisonment under s 121.

Credibility of Senior Constable Ellis

[48] There was a two-pronged attack on the credibility of Senior Constable Ellis.

[49] The first was on the basis that he perjured himself because his statement that was prepared for the purposes of the trial referred to the an audio recording of a conversation alleged to have been held on the day and at the times in question between Senior Constable Ellis and the appellant and yet no such recording was produced by that witness at trial. A consideration of the evidence given by Senior Constable Ellis shows that it was in examination-in-chief that he told the court that he had lost the relevant audio recording. In any event, he proceeded to give his evidence on the basis of his recollection and when the "failure" to produce the relevant audio recording became an issue, a recording made contemporaneously, although beginning some short time after the beginning time of the missing recording, was tendered during the evidence of the second police officer, Constable Brendon Francis Fulmer. It became Exhibit 9.

[50] So far as is discernible from the transcript of the trial, the essence of the objection appeared to be that the evidence of Senior Constable Ellis was "hearsay" because he had made an "original" audio recording of the relevant conversation. Obviously, that is a misunderstanding of what hearsay is. But also the objection appeared to be that the witness should not be believed on his oath because of the alleged reason that he was not producing the recording as it contradicted much of the evidence that was being given: see, for instance, Transcript p 1-37.

[51] In circumstances where the magistrate has, at least inferentially, wholly accepted the evidence of Senior Constable Ellis and where it has not been shown that there is any basis for the assertion that the audio recording was not produced in order to deceive anyone, on a full review of all of the evidence I find that it is open to me to accept, which I do, that the failure to produce – where a satisfactory explanation has been given for its non-production – the audio recording has not in any way tainted the evidence of this witness, particularly where both the photographs that were taken and the audio recording that became Exhibit 9 in no way detract from the veracity of the evidence given by this witness.

[52] The second aspect of the alleged perjury arises from the evidence given by Senior Constable Ellis that he utilised a "minder device" to make inquiries with respect to the motorcycle that the two police officers observed the appellant was riding. The evidence given by Senior Constable Ellis was that he utilised both that device and an "in-car computer system" which indicated to him that the vehicle that the appellant was riding was unregistered and uninsured. The witness said that he manually typed the registration into the device and it came back with relevant information, accompanied by a "beeping" noise.

[53] On appeal, the appellant revealed that he had discovered a document which he included in his Outline of Argument concerning the system known as an Automatic Licence Plate Recognition. To the extent to which this document might be seen to be fresh evidence, it is unnecessary to consider whether that evidence can now be led by the appellant: see s 223(2) of the *Justice Act* 1886. This is because there is nothing which shows that the two police officers in question actually used such a system - which the document asserts can be used inside a vehicle. This means that this second arm of the perjury allegation must also be dismissed.

[54] As observed earlier, the learned Magistrate did not canvas the issue of the credibility of Senior Constable Ellis. For the reasons that I have canvassed here, on a full review of the whole of the transcript (which includes the evidence of Constable Fulmer), taken together with the exhibits, and giving due deference to such conclusions as were reached by the learned Magistrate, I find that there is no basis upon which to do other than accept the evidence that he gave in court, particularly when it was at the appellant's own election that he gave no contrary evidence himself. It should be noted that the evidence given by Constable Fulmer did not contradict in any material way the substance of the evidence given by Senior Constable Ellis.

Currency and "odious debt"

[55] The only direct way that these issues were raised was in an oral submission before me that the appellant was unable to pay the fines levied on him because he did not accept that a tender of notes in discharge of his obligations would be constitutionally competent. As for "odious debt", it would seem to be part and

parcel of the argument about the use of paper money and the existence of what is called the "fraudulent national debt".

[56] As noted in *Skyring v Commissioner of Taxation* [2007] FCA 1526, there are numerous authorities which have held that the particular argument concerning the illegality of Australia's currency as legal tender has no merit: see, in particular, the conclusion reached by Greenwood J at [24]. The "odious debt" argument adds nothing which in any way would gainsay that conclusion.

Double recovery

[57] This argument depends upon the court, pursuant to s 223(2) of the *Justices Act* 1886, permitting the relevant additional evidence to be led. It is unnecessary to even rule on that, because any argument based upon this additional "evidence" would only be unsuccessful. The source of the contention is two standard form Enforcement Orders issued under the provisions of SPER, each of which sought the payment of the sum of $300.00 for the penalty imposed for the offence which was the first of the four charges brought, and for which the learned Magistrate had duly convicted the appellant. Those Enforcement Orders both referred to the same court order number and sought exactly the same amount (namely, $300.00) but contained different due dates (being, respectively, 15 July 2010 and 16 August 2010).

[58] It is clear from the transcript concerning sentencing that only one fine of $300.00 was imposed concerning that offence. The circumstance of issuing two Orders may have occurred because that sentencing on 16 June 2010 gave the appellant "two months to pay": Transcript p 1-11. Thus, the explanation for the second Enforcement Order would seem to have its genesis in the realisation that the first "Order" was issued prematurely.

[59] But a more significant reason why that evidence should not be admitted is that it is evidence about post-decision facts, which cannot possibly have any effect on the decisions of either conviction or sentence.

Sentences

[60] Concluding that the appellant cannot succeed on contesting conviction, it is necessary to consider the sentencing. As can be seen from the sentencing remarks (Transcript pp 1-10, 1-11), the learned Magistrate imposed fines which are of a moderate level only. Furthermore, he granted time to pay, being two months for each of the three fines which he imposed for the first three charges.

[61] Additionally, with respect to the suspension of the appellant's licence pursuant to the provisions of SPER, as earlier noted, he took into account the suffering of the "indignity" of eight hours in custody and did not further punish him in relation to that offence.

[62] Lastly, with respect to the suspension of the licence for a further period, considering that the range was from one to six months, a formal period of disqualification of three months is obviously moderate.

[63] It is clear, applying the relevant principles of *House v The King,* that the magistrate has not erred in any relevant way in imposing those sentences.

Costs

[64] No costs were awarded at first instance.

[65] Although costs can be awarded on appeal, given the nature of this particular proceeding and given the glaring lack of understanding (although firmly held) of relevant legal issues by the appellant, even though the appellant would not be entitled to any costs and even though the "event" is such that the respondent would otherwise have obtained his costs, I conclude that the appropriate outcome is that there ought to be no order for costs under s 226 of the *Justices Act* 1886.

[66] Nevertheless, since I have not given the respondent the opportunity to argue this issue, I will make an order that, unless the respondent files written submissions and serves the same by post on the appellant by 4 pm on 7 December 2010, there will be no order as to costs.

Orders

[67] The orders that I make are as follows:

(a) the orders on appeal in this proceeding made in the Magistrates Court at Cleveland on 16 June 2010, both for conviction and sentence, are confirmed;

(b) the appeal is otherwise dismissed;

(c) unless the respondent files written submissions on costs and serves the same by pre-paid post addressed to the appellant's postal address contained in his Notice of Appeal by 4 pm on 7 December 2010, there will be no order as to costs.