DISTRICT COURT OF QUEENSLAND

CITATION:	*Waterloo Car Centre Pty Ltd v Commissioner of Police* [2017] QDC 149
PARTIES:	**WATERLOO CAR CENTRE PTY LTD** (appellant) **v** **COMMISSIONER OF POLICE** (respondent)
FILE NO/S:	2594 of 2016
DIVISION:	Criminal
PROCEEDING:	Appeal
ORIGINATING COURT:	Magistrates Court at Brisbane
DELIVERED ON:	28 April 2017 (ex tempore)
DELIVERED AT:	Brisbane
HEARING DATE:	28 April 2017
JUDGE:	Smith DCJA
ORDER:	**1. The appeal is allowed.** **2. The orders made below are set aside insofar as the quantum of the fine and costs are concerned and in lieu thereof the appellant is fined the sum of $8,662.80 and ordered to pay to the respondent $90.20 costs.** **3. The respondent is ordered to pay the appellant's costs fixed in the sum of $2,192.50, to be paid within 60 days.**
CATCHWORDS:	TRAFFIC LAW- OFFENCES OF SPEEDING- Corporate defendant- whether fines imposed manifestly excessive *Justices Act 1886 (Q)* ss 222, 223 *AB v R* (1999) 198 CLR 111 *House v R* (1936) 55 CLR 499 *Sgroi v R* (1989) 40 A Crim R 197 *Teelow v Commissioner of Police* [2009] 2 Qd R 489
COUNSEL:	Mr J Hunter QC with Mr K Kelso for the appellant Ms A Stannard for the respondent

SOLICITORS: Holman Webb for the appellant

Director of Public Prosecutions (Qld) for the respondent

[1] This is an appeal by the appellant against penalties imposed in the Magistrates Court in Brisbane on the 8th of June 2016. The appellant pleaded guilty to 39 offences of disobeying the speed limit and one offence of failing to stop at a red light. The appellant was fined $39427 for the offences and ordered to pay costs of Court in the amount of $3608.

[2] The notice of appeal alleges the penalty imposed was manifestly excessive. It is also alleged the Magistrate erred in determining he was limited to the ticketed amount and the appellant could seek to recover the fine amounts from the drivers who hired the appellant's vehicles.

[3] The appeal is under section 222 of the *Justices Act* 1986. Section 222(2)(c) of the *Justices Act* provides that where the defendant pleads guilty then the person may only appeal on the sole ground that the fine, penalty, forfeiture or punishment was excessive or inadequate. Section 223 subsection (1) of the *Justices Act* provides the appeal is to be heard by way of rehearing on the evidence given in the proceedings before the justices.

[4] In *Teelow v Commissioner of Police* [2009] 2 Queensland Reports 489 at paragraph 4 Justice Muir held that it is a normal attribute of an appeal by way of rehearing that the powers of the appellate Court are exercisable only where the appellant can demonstrate the order is the result of some legal factual discretionary error. Also of course are the principles expressed in *House v King* (1936) 55 CLR 499 which are relevant to the exercise of judicial discretion and appeals therefrom.

[5] The appellant trades as Redspot Car Hire. As I indicated pleas of guilty were entered before the Magistrate. The appellant in the proceedings below relied on the affidavit of Dan Mekler. The appellant operates a number of car hire business depots in each of the eastern states of Australia with a corporate office in South Australia and franchise offices in Western Australia. Ms Aleksandra Mirceska, was employed in the position of fines, tolls and infringement officer in July 2014.

[6] When the tickets were received usually the relevant statutory declarations were completed and returned to the authorities nominating the hirer/driver responsible. However, in about July 2015 Ms Mirceska started not performing her job properly. Usually when a fine was issued to a particular driver the notice was sent to the corporate head office which is the registered address of each vehicle. Unfortunately she started to put the infringement notices under a drawer in the back of the filing cabinet and deemed some were lost. She has since resigned. The problem was first discovered in September 2015 when the appellant was contacted by the Victorian Police in respect of $1.2 million worth of fines and warned that cars would be repossessed unless the matter was attended to. As it turns out the Victorian Enforcement Registry has withdrawn all of the fines and reissued them to the

company which allowed the company to nominate the driver. However, an attempt to negotiate this withdrawal in Queensland was unsuccessful. The company has now put in place procedures with a new financial controller to ensure this does not happen again. Redspot has identified all but one of the hire drivers.

[7] It was submitted to the Magistrate that although $785 was the ticketable amount on many of the charges, $1178 being on 10 of them, as individuals, the hirers would only have to pay $157 on the $785 charges and $235 on the $1178 charges. It was submitted that despite the ticketed amount there was a broad discretion under the Penalties and Sentences Act. It was submitted that section 47 permitted the Court to impose a lesser fine than the fine stated on the ticket.

[8] The Magistrate took into account the pleas of guilty and found the whole mess could have been avoided with closer supervision of the employee. He said he discounted the matters by only fining the company the amount which would have been payable had it paid the infringement notice and imposed the penalty to which I referred earlier.

[9] In written submissions, the appellant submits it was relevant that Ms Mirceska had been employed in the 12 months prior to the offences as the fines, tolls and infringement officer. She had been responsible for preparing numerous statutory declarations in relation to the infringement notices.

[10] The appellant hired about 1600 vehicles per week and during the relevant period would receive an average of up to 120 infringement notices per week. It seems that Ms Mirceska became delinquent insofar as her responsibilities were concerned. The appellant became responsible for the offences when it failed to notify the relevant authority within the 28-day time frame of the hirer/driver of the vehicle in respect of each infringement notice. No issue was taken with respect to the corporatized fine of $795 with respect to the offence on 10 July 2015.

[11] Aside from this one the appellant was able to nominate the hirer/driver responsible for each of the other 39 offences. It is submitted the Magistrate erred in imposing the corporatized fine amounts; failed to give sufficient weight to the plea of guilty; erred in failing to give sufficient weight to the fact that aside from the one offence on 20 July 2015, it had provided the names of the hirer/drivers responsible; failed to give sufficient weight due to the delinquency of Ms Mirceska; erred in giving weight to a relevant consideration, that is, the fact that fines could be recovered from the hirer/drivers and failed to give sufficient weight to the positive steps taken by the appellant since the offending.

[12] In those circumstances it is submitted the appropriate total fine to be imposed should be $8662.80 being calculated as follows. (a) $785 with respect to the speeding offence committed on 10 July 2015 and (b) $7877.80 being the total of the individual fine amounts pertinent to the other offences calculated by $151.80, 26 x $157, 10 x $235, $392, $549 and $353.

[13] Mr Hunter in oral submissions today relied on these submissions. He particularly relied on the fact the Victorian Police withdrew the infringements and pointed out that it was the appellant which went to Court rather than paying the ticketed amounts. He also points out that the fine is at large under section 47 of the Penalties and Sentences Act. He submits an error was made by the Magistrate in failing to regard the delinquency of Ms Mirceska as a mitigating factor and in failing to take into account the steps taken by the company to improve the situation. He also points out that the complaints could have been brought in one single complaint which would have less – led to a cost of $90.20 rather than the $3000 or so ordered by the Magistrate.

[14] The Crown, on the other hand, submits that the sentence imposed cannot be said to be excessive. It submits the Magistrate did take into account the plea of guilty and cooperation and it submits the sentencing discretion was wide and the fines imposed were not beyond the acceptable scope of judicial discretion. It is submitted the Magistrate did not place undue weight on any irrelevant consideration.

[15] In oral submissions Ms Stannard pointed out that the Magistrate correctly considered that usually a higher fine would be imposed when a matter goes to Court. By implication the Magistrate took into account the matters of mitigation. The fine is not excessive. She does concede though that the matters could have been brought by way of one complaint and does not impose an adjustment to the cost of it.

[16] The reasons given by the learned Magistrate here are very brief.

[17] It is my opinion the Magistrate failed to give weight to the mitigating factors mentioned by the appellant. It seems to me to be a mitigating factor that the offences had come about as a result of a delinquent employee and, importantly, the appellant had put in place steps to rectify the situation. I consider this to be a material error and in those circumstances propose to resentence the appellant. (See *AB v R* (1999) 198 CLR 111). Further, the principle of totality applies to fines. (See *Sgroi v R* (1989) 40 Australian Criminal Reports 197).

[18] Taking into account the matters mentioned in section 9 of the Penalties and Sentences Act; the pleas of guilty; the explanation given by the appellant which I consider is a significant mitigating factor and the totality principle, it is my view that a combined fine should be imposed. In my view, in light of the reasons for liability and the steps the company has taken to resolve the situation, I consider the appellant should have been fined in the amount contended for by the appellant.

[19] Even if I am in error in my approach as to the error, in my view it has been shown the penalty in light of the circumstances is manifestly excessive and for that reason I would interfere with the decision imposed by the Magistrate. I also find that the order for costs was excessive and propose to interfere with that order.

[20] So my orders are as follows. (1) the appeal is allowed (2) the orders made in the Magistrates Court in this matter are set aside insofar as the quantum of the fine and costs are concerned and in lieu thereof the appellant is fined the sum of $8662.80 and I order the appellant pay the respondent's costs fixed in the sum of $90.20.

[21] I order the respondent pay the appellant's costs fixed in the sum of $2192.50 to be paid within 60 days.