DISTRICT COURT OF QUEENSLAND

CITATION:	*Mowen v QPS* [2022] QDC 089
PARTIES:	**BEVAN ALLAN MOWEN** (Appellant) **v** **QUEENSLAND POLICE SERVICE** (Respondent)
FILE NO:	51/21
DIVISION:	Traffic
PROCEEDING:	Appeal - *Justices Act 1886* (Qld) s 222
ORIGINATING COURT:	Magistrates Court at Rockhampton
DELIVERED ON:	19 April 2022
DELIVERED AT:	Rockhampton
HEARING DATE:	11 April 2022
JUDGE:	Clarke DCJ
ORDER:	**1. The appeal be dismissed** **2. No order as to costs**
CATCHWORDS:	TRAFFIC — UNLICENCED DRIVING – summary hearing – whether error of law
LEGISLATION:	*Justices Act 1886* (Qld) ss 222, 223 and 225 *Transport Operations (Road Use Management) Act 1995* (Qld) s 78 (1), (3)(H) *State Penalties Enforcement Act 1999* (Qld)
CASES:	*Fox v Percy* (2003) 214 CLR 118 *Allesch v Maunz* (2000) 203 CLR 172 *Teelow v Commissioner of Police* [2009] QCA 84 *Robinson Helicopter Company Inc v McDermott* (2016) 90 ALJR 679 *McDonald v Queensland Police Service* [2018] 2 Qd R 612
APPEARANCES:	The appellant appeared on his own behalf Ms M. Yousufzai, Office of the Director of Public Prosecutions for the respondent

[1] The appellant chooses not to acknowledge an order of driver licence disqualification imposed upon him in the Magistrates Court on 4 October 2019. He considered his conviction on that occasion for driving while his licence had been suspended by the State Penalty Enforcement Register ('SPER') to be "void" or "invalid". The appellant's licence had been suspended following an earlier conviction in 2015 for "refusing" to vote.[1] The appellant confirmed that the fine imposed in 2015 remains unpaid and he has no intention of paying the fine. Much of the appellant's contentions in this appeal relate to his beliefs about a constitutional conflict between the *Commonwealth Electoral Act 1918* (Cth) and the *Electoral Act 1992* (Qld) about the age a voter becomes eligible, which in turn impacts whether voting is compulsory. He further argues that because he lives in an isolated location and experiences ill-health, he needs a driver licence, and he is being victimised contrary to s 42 of the *Disability Discrimination Act 1992* (Cth).

[2] Police intercepted the appellant driving on 27 December 2020. He told police he knew he wasn't licenced and was deliberately driving so that he could get caught and return to court to argue about the unlawfulness of the earlier disqualification of his driver licence. The appellant confirmed during the hearing of this appeal he has not sought to challenge (or appeal) the convictions in 2015 or 2019. The circuitous argument appears to be that there was no need to appeal orders which were void or invalid.

[3] The appellant was subsequently convicted of unlicenced driving repeat offender by an acting Magistrate on 26 August 2021.[2]

[4] The ground of appeal is succinctly, yet unhelpfully, framed as "error of law".

[5] The respondent says the appeal against the appellant's conviction should be dismissed on the misconceived basis that the appellant is only entitled to appeal against the penalty imposed because it is contended the appellant's out of court statements at the time of the interception admitted "the truth of the complaint" and the appellant failed to challenge those elements at the hearing.[3] The case authorities

[1] Pursuant to *State Penalties Enforcement Act 1999* (Qld).
[2] *Transport Operations (Road Use Management) Act 1995* (Qld) s 78(1), (3)(H).
[3] *Justices Act 1886* (Qld) s 222(2)(c).

confirm that the provision (and its precursor) relates to the situation where a defendant pleads guilty or admits the truth of the complaint (presumably including a defendant who has made a written plea of guilty - which can now be submitted online). This has been shown to include a defendant who challenges the sentence or costs order made, or where the plea of guilty was equivocal.[4] Although Mr Mowen conducted his case in an unconventional manner, he was not admitting the truth of the complaint and the provision does not apply. The respondent does not seek to be indemnified for their costs in responding to this appeal.

[6] Section 223 of the *Justices Act 1886* (Qld) confirms an appeal under s 222 is by way of a rehearing of the original evidence that was given in the proceeding to which the order is appealed against.[5]

[7] Courts have regularly determined the basic following principles apply: it is for the appellant to demonstrate some legal, factual or discretionary error;[6] the court is obliged to conduct a "real review", and to make its own findings of fact, or draw its or draw its own inferences and conclusions.[7]

[8] In *Mbuzi v Torcetti*[8] Fraser JA said the following:[9]

> The appeal proceeded under s 223(1) on the evidence given in the Magistrates Court. On such an appeal the judge should afford respect for the decision of the magistrate and bear in mind any advantage the magistrate had in seeing and hearing the witnesses give evidence, but the judge is required to review the evidence, to weigh the conflicting evidence, and to draw his or her own conclusions: *Fox v Percy*[10] at [25]; *Rowe v Kemper*[11] at [5].

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4 See *Long v Spivey* [2004] QCA 118; *Dore v Penny* [2005] QCA 150; *Phillips v Spencer & Anor* [2005] QCA 371; *Smith v Ash* [2010] QCA 112; *Newey v Queensland Police Service* [2021] QDC 231.

5 *Justices Act 1886* (Qld) s 222.

6 *Allesch v Maunz* (2000) 203 CLR 172; *Teelow v Commissioner of Police* [2009] QCA 84.

7 *Fox v Percy* (2003) 214 CLR 118; *Robinson Helicopter Company Inc v McDermott* (2016) 90 ALJR 679; *McDonald v Queensland Police Service* [2018] 2 Qd R 612.

8 [2008] QCA 231.

9 Ibid [17].

10 (2003) 214 CLR 118.

11 [2008] QCA 175.

[9] Pursuant to s 225 of the *Justices Act 1886* (Qld), among other things, on hearing the appeal I may either confirm, set aside, vary the appealed order or make any other order I consider just.

[10] In conducting a real review of the evidence, I am satisfied the hearing proceeded according to law. At the outset, the appellant pleaded not guilty, argued that all decisions to "remove" his driver licence were void *ab initio* and that the issue came down to a matter of law. He claimed the Magistrate had already made his mind up, the decision would be "obviously void", that the Magistrate could go ahead and do what he wanted to and that he would be leaving the court room as soon as he started to feel ill. The appellant informed the Magistrate he was going to appeal the decision, stating "this is going to the High Court". Understandably, the Magistrate observed the indication to appeal was premature prior to having heard any evidence and proceeded to correctly explain the hearing process to the self-represented litigant.[12]

[11] So that his ill-health was not further compromised, his Honour allowed the appellant to remain seated throughout the hearing and invited him to ask for an adjournment rather than leave court if he was not feeling well.

[12] The prosecution led unchallenged evidence providing proof of the earlier driver licence disqualification; proof of service of the notice of intention to allege the previous convictions; proof that the appellant was not licenced on the day of the intercept, and tendered the recorded conversation at the time of intercept when the appellant made statements against interest.

[13] An anomaly occurred where the Magistrate formally admitted the evidentiary certificates about the status of the appellant's driver licence into evidence after the prosecution case had closed and the appellant had confirmed he elected to neither give nor call evidence. However, the documents had been tendered without objection and marked for identification during the presentation of the prosecution case. I detect no error in the circumstances: the documents were *prima facie* admissible.[13]

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12 See *Rowley v Commissioner of Police* [2017] QDC 88; *MBL v JP* [2011] QCA 220.

13 *Transport Operations (Road Use Management) Act 1995* (Qld) ss 123C, 124, sch 1.

[14] The certificates also confirmed the appellant renewed his driver licence a few days after being intercepted on 27 December 2020. This was despite telling police that his licence did not expire until 5 January 2021.

[15] Although brief, his Honour gave sufficient reasons for decision. The case against the appellant was made out on the evidence presented. The Magistrate was entitled to find the appellant's constitutional argument lacked merit.

[16] The clear, uncontroversial facts established by the evidence was the appellant drove on 27 December 2020 after not having renewed his licence following a period of disqualification. No legal, factual or discretionary error has been identified by the appellant and none emerged from conducting a review or re-hearing of the original evidence.

[17] In my view, there is simply no merit to the appellant's argument about the lawfulness of earlier court proceedings. An appeal against the conviction on 26 August 2021 for driving unlicenced on 27 December 2020 cannot be used to disturb other convictions.

[18] These matters are indisputable:

(i) A court may fine an offender;[14]

(ii) In default of payment of a fine, the court registrar may give to SPER, for registration, the prescribed particulars of the unpaid amount;[15] and

(iii) The SPER registrar "may suspend an enforcement debtor's driver licence… if the registrar is satisfied that the debtor is not taking steps to pay or otherwise discharge the enforceable amount of the debtor's SPER debt".[16]

[19] It is ordered that:

1. The appeal be dismissed; and
2. There be no order as to costs.

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14 *Penalties and Sentences Act 1992* (Qld) s 45.
15 *State Penalties Enforcement Act 1999* (Qld) s 34.
16 *State Penalties Enforcement Act 1999* (Qld) s 104.