

03/74

SUPREME COURT OF VICTORIA

FORAN v KAY

Kaye J

25 July 1973

MOTOR TRAFFIC – SPEEDING – SPEED ZONES – SPEED SIGNS AT ALL ENTRANCES WHERE THE DRIVER WAS OBSERVED – NO DE-RESTRICTION SIGNS IN THE AREA – FINDING BY MAGISTRATE THAT CHARGE PROVED – WHETHER MAGISTRATE IN ERROR: ROAD TRAFFIC REGULATIONS, CI 1001(1)(b).

The defendant was convicted of an offence under the provisions of the *Road Traffic Regulations* Clause 1001(1)(b) – i.e. driving a vehicle in a speed zone at a speed exceeding the speed in miles per hour indicated by numerals on the restriction sign at the beginning of the speed zone. The informant had described the area where the excessive speed took place as a highway in the Gardens, saying that, "All the highways in the Gardens are 25 m.p.h. zones. Twenty five mile per hour signs are at all entrances. These signs are white with a numeral 25 inscribed in black on them. There are no de-restriction signs in the Gardens". It was contended on behalf of the defendant that there was no evidence that the area in which the alleged offence took place was in fact a "speed zone" as defined by Regulation 102 Clause 42, i.e. "a length of carriageway defined by means of a restriction sign at the beginning and a de-restriction sign or a restriction sign at the end. (Clause 8 and 39 of the same Regulation defines de-restriction and restriction signs). The Magistrate found the charge proved. Upon order nisi to review—

HELD: Order nisi absolute. Conviction set aside.

1. It was necessary for the Informant to prove that the restriction signs did in fact conform with the description set out in Regulation 101. More particularly in this case it was necessary for the Informant to prove the existence of a de-restriction sign in the form set out in Clause 8, namely, 'A white rectangular sign inscribed in black with the words "end 25 speed" erected near the left boundary of a carriageway so as to face an approaching driver.' The Magistrate was not entitled to infer that the presence of 25 miles per hour signs at all entrances were in fact on the left boundary of the carriageway so as to face an approaching driver.

2. Accordingly, the Magistrate was in error in finding the charge proved.

KAYE J: ... Mr Graham, on behalf of the Informant, has submitted that, in the absence of evidence describing the area in the terms set out in the Regulation, the Magistrate was nonetheless entitled to draw an inference that the sign was one indicating a speed zone. He said that there was evidence that there was a 25 miles per hour speed limit sign and from that the Magistrate was entitled to infer that this was a speed zone.

It must be remembered that these proceedings against the defendant were in respect of the commission of an offence against a Regulation and therefore are either criminal or quasi-criminal. It was incumbent upon the Informant to prove all matters beyond reasonable doubt. I am not satisfied that it was proper, for the Magistrate to draw inferences that this was a speed zone area merely from the evidence that all highways in the Gardens are 25 miles per hour zones, 25 miles per hour signs are at all entrances, these signs are white with numerals, '25' inscribed in black on them.

It was necessary for the Informant to prove that the restriction signs did in fact conform with the description set out in Regulation 101. More particularly in this case it was necessary for the Informant to prove the existence of a sign, de-restriction sign, in the form set out in Clause 8, namely, 'A white rectangular sign inscribed in black with the words "end 25 speed" erected near the left boundary of a carriageway so as to face an approaching driver.' The Magistrate was not entitled to infer that the presence of 25 miles per hour signs at all entrances were in fact on the left boundary of the carriageway so as to face an approaching driver. I am therefore not satisfied that this information was heard according to law. In the result, the order nisi must be made absolute and the conviction set aside.