17/04; [2004] VSCA 29

SUPREME COURT OF VICTORIA — COURT OF APPEAL

DPP v KORYBUTIAK

Winneke P, Chernov JA and Bongiorno AJA

27 February 2004

PROCEDURE – TRAFFIC INFRINGEMENT NOTICE – REQUIREMENT FOR NOTICE TO STATE ADDRESS TO WHICH NOTICE OF OBJECTION MAY BE SENT – NO EXPRESS INDICATION ON ONE PAGE OF NOTICE OF THE RELEVANT ADDRESS – FINDING BY MAGISTRATE THAT NOTICE FAILED TO SET OUT THE RELEVANT INFORMATION – NOTICE DECLARED INVALID – CHARGE DISMISSED – WHETHER STATUTORY REQUIREMENTS SATISFIED – WHETHER NOTICE VALID - WHETHER MAGISTRATE IN ERROR: *ROAD SAFETY ACT* 1986, SS88, 89A; *ROAD SAFETY (GENERAL) REGULATIONS* 1999, 603.

1. In relation to traffic infringement notices, the relevant legislative provisions set out what information must be provided to the alleged offender in order to enable him or her to make an informed decision whether to make an election to go to court. The legislation stipulates that an infringement notice must set out with whom and at what address the notice of objection is to be lodged.

2. Where an infringement notice provided on its face the address of the agency currently administering matters pertaining to infringement notices but no such address on the reverse side of the notice was given to which the notice of objection was to be sent, a sensible reading of the whole of the notice met the legislative requirements and their underlying purpose. Although the form of the notice left much to be desired, it was not so deficient that it could be properly said that it failed to comply with the relevant legislative directions. Accordingly, the magistrate was in error in holding otherwise.

CHERNOV JA:

1. This is a return of a summons filed by the Director of Public Prosecutions on behalf of the informant, Mark Higgins, by which leave is sought, pursuant to s17A(3A)(b) of the *Supreme Court Act* 1986, to appeal against the decision of a judge of the Supreme Court who upheld the dismissal by a Magistrate of a charge that the respondent drove a vehicle whilst his authorisation to do so was suspended. His Honour concluded that the respondent had not lost the authority to drive a motor vehicle because the traffic infringement notice, which purportedly suspended his licence, was invalid since it did not set out certain information, contrary to statutory requirements Consequently, said the primary judge, the Magistrate did not err as the Director contended. The Director seeks leave to appeal the decision on the basis that his Honour erred in law. Given the urgency of the case, and its relatively short compass, the Court indicated to the parties earlier this week that it would hear argument as if the hearing were an appeal and decide if leave to appeal should be granted and, if that were the case, would proceed to determine the appeal. The parties accommodated the short timetable so that we heard full argument on the issues from the counsel for the Director, and counsel for the respondent who also appeared in that capacity at the hearings below.

2. The events giving rise to the charge and the progress of the proceedings were these. On 1 March 2003 the respondent was intercepted by police in Frankston while driving his motor vehicle. When the police conducted a licence check it revealed that the respondent had received a traffic infringement notice on 10 October 2002 in respect of his alleged driving at an excessive speed which informed him that, after 28 days from its issue, his licence would be suspended for six months unless he contested the matter by lodging a notice of objection. The respondent did not lodge an objection, but paid the fine of $430 that was shown on the notice of infringement. Thus, as will be seen shortly, the suspension became effective, or so it was thought by the police, at the expiration of the 28 day period. When the police asked the respondent on 1 March 2003 why he was driving when his licence was suspended, he replied that he was not aware that this had occurred. In the event, the respondent was charged under s30(1) of the *Road Safety Act* 1986 ("the Act") with driving when his authorisation to do so was suspended. The informant was Constable Mark Higgins to whom I have already referred. The matter came on for hearing at the Magistrates'

Court at Frankston on 30 July 2003. It was the respondent's case then, as it was before the judge below and before us, that the infringement notice of 10 October 2002 was invalid because it did not contain certain information as was mandated by the legislation. The Magistrate essentially accepted that submission and on that basis concluded that the respondent's licence was not in fact suspended in March 2003 as was alleged by the police. In the result he dismissed the charge and ordered the Chief Commissioner of Police to pay costs of $2000. The Director appealed against that decision on behalf of the informant pursuant to s92 of the *Magistrates' Court Act* 1989 and on 29 August 2003 a Master of the Supreme Court ordered that the appeal raised three questions of law for determination. The primary judge concluded, as I have said, that the Magistrate was correct in dismissing the information on the ground that the notice of infringement was invalid because it failed to comply with statutory requirements as to the provision of certain information to which I will refer shortly. His Honour did not, however, answer the questions of law that were identified by the Master in the circumstances I have described.

3. I now turn to the relevant legislative provisions and the form of the impugned infringement notice. Part 7 of the Act and certain provisions of the *Road Safety Act (General) Regulations* 1999 provide for a scheme which seeks to facilitate the disposition of, *inter alia*, traffic infringement notices issued by the police in respect of the driving of a motor vehicle at excessive speed without resort to curial process. Absent such legislation the police would ordinarily have been required to attend court to establish the infringement notwithstanding that the defendant may not appear to contest the breach. It is not difficult to see that, given the high volume of infringement notices which are issued by the police, many of which are relatively minor and most of which are not contested, the necessity for the police to establish each breach in court would create an administrative bottleneck in the courts such that other court users would suffer, as would the administration of justice and the community's faith in the judicial system. It seems that the legislation now under consideration seeks to strike a balance between the need to streamline the procedure for disposing of infringement notices without resort to the courts, on the one hand, and, on the other, the need to preserve the right of the alleged offender to have the matter determined by the courts[1] Thus, the legislation prescribes a range of penalties that are to apply to specified infringements committed in particular contexts and places on the alleged offender the onus of electing, within a limited period, to contest in court the police allegations as to the infringement. It is in that context that the legislation has prescribed what information must be provided to the alleged offender in the notice of infringement in order to enable him or her to make an informed decision whether to make the election to go to court. And it has also provided a mechanism by which such an election is to be effected and in that context has stipulated that an infringement notice must set out with whom, and at what address, the notice of objection is to be lodged. The only real issue in this case is whether the notice in question contains this stipulation. As I explain below, in my view, whether that is the case is to be determined by a commonsense reading of the whole of the notice.

4. More specifically, s88(1) of the Act effectively provides that where a police officer has reason to believe that a person has committed a traffic infringement of a prescribed kind – such as speeding or drink driving – he or she may issue and serve upon the person "a traffic infringement notice in accordance with the regulations". Sub-section 88(2) of the Act requires the infringement notice to contain "the prescribed particulars". I will come back to what are the prescribed particulars. By virtue of s89A(2) of the Act such a traffic infringement notice takes effect "28 days after the date of the notice, as a conviction for the offence specified in the notice, unless the person to whom the notice was issued objects, within that time and in accordance with this section, to the infringement notice". The form and effect of the notice of objection are then dealt with in sub-ss(4) to (6). It is sub-s(4) that is of particular relevance. It provides that the recipient of a notice of infringement "may object to [it] by giving notice in writing of the objection to the person specified for that purpose in the infringement notice". Sub-section (5) states what are to be the contents of such a notice of objection and sub-s(6) provides, in effect, that the consequence of giving such a notice is to cancel the infringement notice and that the recipient of it may only be proceeded against by "a charge filed for the alleged offence".

5. I now turn to Regulation 603 which specifies the prescribed particulars for the purposes of s88(2) of the Act. So far as is relevant, paragraph (g)(ii) of that regulation requires the infringement notice to state that "unless the notice of objection is received at the address specified in the notice within 28 days after service of the notice, the notice will take effect as a conviction and will result

in cancellation or suspension of the licence ... of the person on whom it is served". Furthermore, paragraph (o) requires the infringement notice to state "the address of the person to whom a notice of objection is to be sent".

6. It is now convenient to describe briefly the relevant parts of the impugned infringement notice.[2] At the foot of its face it is printed: "**WHAT YOU MUST DO NOW TO PAY THE PENALTY**". Immediately below that the reader is told in clear print that payment can be effected in one of three ways:

(a) by mailing a cheque or money order to **CIVIC COMPLIANCE VICTORIA** G.P.O. Box 2041S Melbourne Vic 3001
(b) in person - at **CIVIC COMPLIANCE VICTORIA**, Ground Floor, 120 Spencer Street Melbourne
(c) by telephone or Internet as is there set out at the top of the reverse side of the notice there is set out in print a box ("the objection box"), the heading of which, in bold print, is as follows:
"NOTICE OF OBJECTION (APPLICATION TO APPEAR AT COURT)"

In the space below, but still within the objection box, there is provision for the recipient who wishes the matter to be dealt with by a court to indicate that position. He or she is then required to provide his or her name and sign the form as well as provide an address for the service of a summons (which will contain the charge that reflects the claim in the infringement notice). Immediately below the objection box there is printed another box ("the warning box") which contains a heading, in bold print:

"WARNING IF YOU DECIDE TO LODGE A NOTICE OF OBJECTION, IT MUST REACH CIVIC COMPLIANCE VICTORIA WITHIN 28 DAYS OF THE DATE OF THIS NOTICE."
Below that, the reverse side of the notice goes on to describe, again in printed form, the consequences of paying the penalty on time and other matters pertaining to the effect that the offence may have on the driver licence and on the accumulation of demerit points It is then stated under the heading, "**DRIVER LICENCE LOSS INFRINGEMENTS**":

> "Unless you lodge a notice of objection to Civic Compliance Victoria in time, the infringement will take place as a conviction and the suspension or cancellation of your right to drive will apply 28 days after the date of this notice".

7. It is important to note that, although the reverse side of the infringement notice makes it fairly clear that the recipient has a choice of having the matter dealt with by a court and that the onus is on him or her to deliver the notice of objection to Civic Compliance Victoria within the period stated, there is no express indication *on that page* what is the address to which the notice of objection is to be sent. The only place in the infringement notice where the address of Civic Compliance Victoria is provided is on its face and, as I have said, that is set out in the context of describing how and where the penalty may be paid. It was the respondent's case, as I have indicated, that the infringement notice must expressly state the name of the person to whom, and the address to which, the notice of objection must be sent. In particular, counsel for the respondent argued that the address should be set out near the place where Civic Compliance Victoria is referred to as the addressee of the objection notice. Counsel drew the Court's attention to the fact that the infringement notices formerly issued by the police contained, and like notices now issued in respect of other infringements contain, *within the objection box,* the postal address to which the notice of objection may be sent.

8. It is plain enough, and the respondent's counsel did not contend to the contrary, that his Honour erred in at least one aspect of the construction of Regulation 603(g)(ii). More particularly, he wrongly considered that the word "notice", as it appears on three occasions on the second line of sub-para.(ii), is a reference to the *notice of objection*, whereas it is clearly a reference to the *infringement notice*. This led to his Honour's further error, namely, the conclusion that the prescribed information had to be set out in the objection box, which he described as "the Notice of Objection"[3], and that, since the relevant material was not there set out, the infringement notice was invalid.

9. Notwithstanding this plain error, the question remains whether, on a proper construction of the legislation and the infringement notice, it can be said that the impugned infringement notice

satisfies the relevant statutory requirements. So far as is relevant, their underlying purpose is to ensure that the recipient of the notice, who wants to challenge its allegations in the courts, knows from a sensible reading of the materials to whom, and to what address, he or she can direct the notice so as to trigger the operation of s89A(6) of the Act. In my view, for the reasons I now give, I consider that a sensible reading of the *whole* of the notice in question meets these legislative requirements and their underlying purpose.

10. First, I consider that the infringement notice plainly tells the reader to *whom* the notice of objection is to be sent, or, put another way, "specifies" the person to whom it is to be given as is required by the legislation. Subject to the question whether Civic Compliance Victoria is a "person" for the purposes of the legislation, a matter to which I will refer later, it is clear enough that the notice tells the reader that the notice of objection must be lodged with that body. That is stated in the warning box and again at the foot of the reverse side of the notice.[4] Thus, this aspect of the requirements of s89A of the Act and Regulation 603 has been satisfied. The remaining question, therefore, is whether the infringement notice sufficiently tells its recipient to what address he or she can send the notice of objection so that, upon its receipt, the infringement notice is cancelled by the operation of s89A(6) of the Act.

11. It is obvious, as I have noted, that the provision of such an address in the notice is a very important aspect of the legislative requirements as to its contents given that the delivery of the notice of objection to that address will cancel the notice of infringement and, importantly, will preserve the alleged offender's right to have the matter determined by the courts. It is therefore incumbent upon the authorities to ensure that the notice makes it plain to what address the notice of objection is to be directed. Although the present form of notice leaves much to be desired in that respect, I am satisfied that it is not so deficient that it can be properly said that it fails to comply with the relevant legislative directions. I say this for the following reasons. Section 89A(4) of the Act and Regulation 603(g)(ii) contemplate that the relevant information will be stated "in" the infringement notice, in which case the *whole* document may be considered to determine if that material is disclosed in it. Thus, for example, if some part of the prescribed information were to be set out on the face of the notice and the balance were found on the other side of it, providing the two items of information could be read together, I consider that the relevant legislative requirement would be satisfied. More specifically, if, say, the warning box also contained in an appropriate place words such as: "for address of Civic Compliance see other side", in my view, that would convey to the reasonable reader that the notice of objection can be posted to Civic Compliance Victoria at the specified post office box (or 120 Spencer Street Melbourne) or delivered in person at the last-mentioned address. The provision of such information would satisfy the statutory requirements that the relevant address be "specified". I consider that the impugned notice is not far removed from the hypothetical situation which I have just postulated, in the sense that, on a reasonable reading of the whole document, it is apparent that the address to which the notice of objection can be mailed is one of the two addresses for Civic Compliance Victoria referred to earlier or, if delivered in person, to the address in Spencer Street. There is no suggestion in the notice that the addresses so provided are limited to the payment of penalty. Moreover, if a duly completed objection notice were posted to such an address the authorities could not be heard to say that it was sent to the wrong address and that, therefore, sub-s89A(6) of the Act did not operate. Thus, I do not agree with his Honour's views that it is not possible to import "into the notice of objection the name and address of Civic Compliance Victoria printed on the other side of the infringement notice ...". Moreover, contrary to what his Honour said, it seems to me that such a reader would not be confused in that regard by the reference on the face of the notice to the instructions relating to the payment by "Phone or Internet". It is clear enough, in my view, that the objection box and the warning box contemplate that what has to be lodged is the *original* notice of objection, duly completed and signed by the objector. Obviously this could not be done by telephone or, in the circumstances, through the Internet and this would be apparent to a sensible reader.

12. I also consider that there is no basis for his Honour's view that, even if the addresses of Civic Compliance Victoria shown on the face of the notice were to be notionally incorporated into the warning box, since there would then be two addresses to which the notice of objection could be posted, this could not constitute "the address" for the purposes of Regulation 603. It was said that, at most, such a reference to addresses would amount to the provision of "an" address, allowing the recipient to choose between the addresses, something that is not contemplated by the regulation. The short answer to that claim is that, on a plain reading of the regulation, it requires

the infringement notice to specify each address at which the notice of objection may be lodged by the objector. It would defy commonsense to say that an infringement notice which states that the notice of objection can be lodged either at an address at Geelong or at an address in Melbourne does not comply with Regulation 603 simply because the objector is given the choice where to lodge his or her objection. Moreover, as is provided for in s37 of the *Interpretation of Legislation Act* 1984, words of the legislation that are in the singular include the plural, so that "the address" in the regulation can be properly read to include two or more addresses.

13. His Honour also raised the question, without deciding it, whether Civic Compliance Victoria was a juristic person capable of being categorised as "person" in s89A(4) of the Act and Regulation 603(o). Although the respondent's counsel claimed before us that there was no evidence below to establish that that body was a juristic person and, therefore, the notice of infringement was deficient, no notice of this contention was given to the Informant prior to the hearing before the Magistrate and no evidence was led on the respondent's behalf on this issue. Thus, there was no evidence before the Magistrate on this point and, in the circumstances, the matter cannot now be definitively disposed of by us. Nevertheless, it seems to me, that the word "person" in these provisions probably cannot be sensibly confined to a juristic person. An underlying purpose of the requirement that the infringement notice specify the addressee of the notice of objection is to accommodate the administrative need that, when completed and sent or delivered, it will reach those who will process it. The legislation left the drafter of the notice free to nominate who that entity is to be. No doubt, as the administration associated with the processing of infringement notices changes, so might the entity which is concerned with such matters. Hence, the law enforcement agency is given flexibility to nominate the relevant addressee. It seems that Civic Compliance Victoria currently administers matters pertaining to infringement notices, or at least those of the kind considered here, hence the nomination of that body as the entity to which the notice of objection is to be directed. It is difficult to see how the offender's relevant rights would be detrimentally affected if that body is not a juristic person. It is no different to a notice that specifies as the relevant addressee an unincorporated organ of the Government such as the Police Department or the Department of Justice. If a notice of objection were sent to such an addressee as specified in the infringement notice the authorities could not later claim that, because the addressee was not a juristic person, s89A(6) of the Act has not been triggered. It would probably defeat the above mentioned purpose of the legislation if the meaning of "person" were to be confined to a juristic person as was suggested by his Honour and as was pressed by counsel.

14. I also note that his Honour seems to have assumed that "the ordinary citizen" may become confused by the reference in the notice to Civic Compliance Victoria because he or she was likely to assume, in the first place, that the notice of objection had to be sent to the person "lodging" the infringement notice, namely, the police, but the word "Civic" would cause him or her to think that Civic Compliance Victoria has something to do with civil rather than criminal compliance. His Honour went on to say: "it seems extraordinary to assume that a person who objects to the [infringement notice] and wants to have access to a court, should be told to return the [infringement notice], not to a court, but to some other body". It is not clear, however, on what basis his Honour made these assumptions. In any event, none of these considerations is to the point. What the recipient of the infringement notice may think as to the function of Civic Compliance Victoria is irrelevant to the issue before the Court.

15. I mention for completeness that I consider that the authorities relied on by his Honour to support his conclusion, and by counsel for the respondent, are readily distinguishable. I refer by way of example to *Agricultural, Horticultural and Forestry Industry Training Board v Kent* [1970] 2 QB 19, on which the respondent's counsel principally relied. The reason why in that case the Court of Appeal held that the provision of the board's *general* address in the levy notice was insufficient to satisfy the requirement of the ministerial order that such a notice state the board's address for the service of a *notice of appeal* was that the address provided would not tell the recipient that he or she had a right to appeal against the levy, as was required under the Act. Here, on the other hand, as I have said, the infringement notice specifically tells its recipient that he or she can object to it by sending a notice of objection to the specified addressee at an address which could be readily deduced on a fair reading of the whole of the impugned notice. In *Kent* the Act empowered the Minister to establish a training board and authorize it to impose a levy on a certain category of farmers, provided the levy order gave any person so assessed a right of appeal to a tribunal established under the Act. The Minister duly made a levy order authorizing the

board to impose such a levy but required that the assessment notice state "the board's address for service of the notice of appeal or of an application for an extension of time for appealing". The impugned assessment notice gave the board's *general* address but did not give an address for service of a notice of appeal and did not otherwise indicate that there was such a right. The Court of Appeal held that the legislative scheme mandated the board to set out in the assessment notice its address for service of a notice of appeal so that the notice would indirectly satisfy the statutory requirement that the recipient of it be informed of his or her right of appeal against the levy. Absent such an address, said their Lordships, the farmer served with the notice would not be aware from its terms that there was a right of appeal. It is understandable, therefore, that their Lordships considered that the provision of the board's *general* address was insufficient to satisfy this legislative requirement. As I have briefly explained, the situation here bears no relevant resemblance to that in *Kent.*

16. For these reasons, I would grant the leave sought and uphold the appeal and I would answer the questions in the Master's orders accordingly.

WINNEKE, P.:

17. I agree for the reasons given by Chernov JA that the application for leave to appeal should be granted and the appeal should be allowed.

BONGIORNO AJA:

18. I agree and would add only these comments in relation to the notice.

19. Our community contains a large number of people whose first language is not English or whose level of education is not high or both. The traffic infringement notice that forms the subject of this case is, in my opinion, far from satisfactory in a number of respects.

20. Although it does comply with the statutory requirements, it barely does so, and it does not do so in a way which should be acceptable to a modern law enforcement system sensitive to the needs of those members of our community who do not enjoy easy facility with the written English language.

21. The form should be seriously revised to ensure that there can be no doubt or confusion whatsoever as to what rights a citizen who receives a traffic infringement notice has and steps he or she must take to protect those rights.

WINNEKE P:

22. The formal orders of the Court will be as follows:

23. The application for leave to appeal against the decision of Nathan, J of 30 January of this year is granted, the appeal is treated as having been instituted and heard instanter. It is allowed. The orders made by his Honour are set aside and in lieu this Court orders that the answers to the questions set out in the order of Master Wheeler made on 29 August 2003 be as follows:
(1) (a) Yes; (1) (b) Yes; (1) (c) Yes.

24. The Court further directs that the proceedings be remitted to the Magistrates' Court to be dealt with in accordance with the reasons of this Court. (Discussion ensued.)

25. The costs ordered by Nathan J of the proceedings before him and the orders for costs made by the Magistrate will be set aside. (Discussion ensued.)

26. The costs of appeal will go in the normal fashion, in favour of the appellant. We will order an indemnity certificate in your favour, Mr Hardy, and you will have to attend to the drawing up of that certificate and submit it to my associate.

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[1] See article by Richard Fox, "*On Punishing Infringements*", 7-37 at 16-17 in *Sentencing: Some Key Issues,* 1995, edited by Andros Kapardis Also see Richard Fox, *Criminal Justice On the Spot: Infringement Penalties in Victoria*, at 283.
[2] It seems that the format of the notice in question is common to numerous like notices that have been

issued to other Victorian motorists Notably, however, since his Honour's decision, the police have changed the form of such notices so that the address to which the notice of objection is to be sent is plainly set out on the reverse side of the infringement notice.

[3] It is apparent that the judge considered that the warning box (and remainder of the reverse side of the notice) did not form part of what he described as "the Notice of Objection". It is true that his Honour acknowledged that the warning box contained the name of the entity to which the notice of objection was to be forwarded, namely, Civic Compliance Victoria, but effectively disregarded it because he considered that that part of the notice did not form part of the "Notice of Objection".

[4] See para.[7] above.

APPEARANCES: For the appellant DPP: Mr J McArdle, QC, counsel. Ms K Robertson, Solicitor for the Office of Public Prosecutions. For the respondent Korybutiak: Mr SP Hardy, counsel. Law Offices of Barry Fried.
