

10/10; [2010] VSC 76

SUPREME COURT OF VICTORIA

***DPP v ANGELL***

Emerton J

10 February, 16 March 2010

**MOTOR TRAFFIC – DRIVING WHILE DISQUALIFIED – SERVICE OF DEMERIT POINT OPTION NOTICE – CERTIFICATE STATED THAT NOTICE SENT TO "THOMPSON STREET" RATHER THAN "THOMSON STREET" – TYPOGRAPHICAL ERROR IN THE CERTIFICATE – CHARGE DISMISSED BY MAGISTRATE ON TECHNICAL GROUND OF A TYPOGRAPHICAL ERROR IN CERTIFICATE – WHETHER MAGISTRATE IN ERROR: ROAD SAFETY ACT 1986, SS25, 30(1), 84.**

A. was intercepted whilst driving her motor vehicle while her authorisation to drive was suspended. At the subsequent hearing, the Prosecution tendered a Certificate under s84 of the *Road Safety Act 1986* (Act) which certified that a Demerit Point Reminder Notice had been sent to A. at 43 Thompson Street, Sale. In fact, A. lived at 43 Thomson Street, Sale. A. submitted that she had not been served in accordance with the provisions of the Act. The Magistrate upheld this submission and dismissed the charge.

**HELD: Dismissal set aside. Remitted to the Magistrate to be decided according to law.**

1. The question on appeal, which is a question of law, is not whether it was open for the Magistrate in the light of the evidence to find that the demerit point notice had not been served. The basis for the appeal is that in dismissing the charge because he was not satisfied that service had been effected in accordance with s25(4A), the Magistrate misunderstood what was required to be proved for a conviction to be entered. On a proper construction of the relevant provisions of the *Road Safety Act*, failure to serve the notice in accordance with s25(4A) was not determinative of whether the charge was proven or not.

2. It was common ground that A. was driving a motor vehicle on a highway while her licence was suspended and she defended the charge exclusively on the basis that the requirements for service in s25(4A) had not been satisfied. She did not submit that she did not receive the notice. Nor did she submit that she was unaware that her licence had been suspended. The defence of "fail to serve" was raised as a complete defence to the charge. The Magistrate accepted this submission. In so doing, he made an error of law.

3. The fact that the demerit point option notice was sent to a '43 Thompson Street' in Sale rather than to '43 Thomson Street' in Sale may well support a finding that A. did not receive the notice, which will be relevant to whether or not she was aware at the time of driving that her licence had been suspended. There was evidence in the informant's statement that the respondent told the police officers that she did not know her licence was suspended. Consideration of this evidence may have led the Magistrate to conclude that A. was not aware that her licence was suspended. However, the Magistrate confined his inquiry to whether service of the demerit point notice had been effected under s25(4A). He was not willing to consider other evidence that was before him that might have been relevant to A's awareness of her licence suspension or to draw any inferences from it.

4. In truncating consideration of the case before him in this manner, the Magistrate treated service of the demerit point notice in accordance with s25(4A) of the Act as an element of the offence under s30(1). This involved misconstruing the relevant provisions of the *Road Safety Act*. The Magistrate's finding that he could not be satisfied that service had been effected in accordance with s25(4A) of the *Road Safety Act* was not sufficient to dismiss the charge in the circumstances of this case.

5. Furthermore, a typographical error in the address of a person to whom a notice is required to be sent does not necessarily deprive the Corporation of the benefit of s25(4A). The Magistrate agreed that s25(4A) should be strictly interpreted, as it had the capacity to affect a person's rights. However, sub-s(4A) also confers a benefit on the licence holder, in that it guarantees the licence holder 14 days in addition to 21 days in sub-s(3A) to make an election to extend the demerit point period. It provides certainty to licence holders as to the deadline for the making of an election. Accordingly, s25(4A) ought not to be construed so as to be inapplicable where a typographical error of a relatively minor kind is made in an address for service.

**EMERTON J:**

1. By Notice of Appeal dated 30 July 2009, the Director of Public Prosecutions has appealed under s92(1) of the *Magistrates' Court Act* 1989 (Vic) against orders made on 30 June 2009 in the Magistrates' Court at Sale dismissing a charge of driving a motor vehicle on a highway while authorisation was suspended contrary to s30(1) of the *Road Safety Act* 1986 (Vic) ("the charge"). The Director seeks orders that the orders of the learned Magistrate be set aside and that the charge be remitted to the Magistrates' Court at Sale for hearing and determination according to law.

2. The grounds of appeal are –

1. It was not open to the Magistrate in the light of the evidence to find the charge not proven
2. The Magistrate erred in law in dismissing the charge.

3. For the reasons that follow, I propose to allow the appeal on the ground that the Magistrate erred in law when he dismissed the charge on the basis that a demerit point option notice was not served in accordance with s25(4A) of the *Road Safety Act*, and to make the orders sought by the appellant.

**Statutory framework**

4. Section 30(1) of the *Road Safety Act* provides:

Subject to section 30AA, a person must not drive a motor vehicle on a highway while the authorisation granted to him or her to do so under this Part is suspended or during a period of disqualification from obtaining such an authorisation.

Penalty: For a first offence, 30 penalty units or imprisonment for 4 months;

For a subsequent offence, imprisonment for not less than 1 month and not more than 2 years.

5. Section 25 contains a regime for the keeping of a 'Demerits Register' and the notification of demerit points. Subsection (1) requires the Roads Corporation of Victoria ("the Corporation") to keep a Demerits Register and to record against a person any demerit points that are incurred by that person. Sub-section (3) relevantly provides:

The Corporation must serve a notice (a demerit point option notice) containing the prescribed particulars on—

(a) the holder of a full driver licence if he or she incurs 12 or more demerit points within any three year period.

6. Sub-section (3A) then provides that a person on whom a demerit point option notice is served may, within 21 days after service of the notice, notify the Corporation that he or she elects to extend the demerit point period. If such an election is made, sub-s (3B) sets out the consequences if a person commits a further offence within the relevant period. Sub-section (3D) provides that if a person on whom a demerit point option notice is served does not notify the Corporation that he or she elects to extend the demerit period, unless the demerit point option notice is returned to the Corporation as undelivered, the Corporation must suspend the person's driver licence for a period calculated in accordance with sub-s (3E). However, sub-s (3D) provides that even if the demerit point option notice has been returned to the Corporation as undelivered, the Corporation may still suspend the person's driver licence.

7. Sub-section (4) provides that the suspension of the driver licence takes effect on and from the date determined by the Corporation and specified in the demerit point option notice.

8. Sub-sections (4A) to (4BA) then provide:

(4A) A demerit point option notice ... sent by post addressed to the holder of the licence or permit at his or her current address as shown in any record maintained under this Act must be taken to have been served on that person 14 days after the date of issue of the notice unless at any time after the period of 14 days the Corporation is satisfied that the notice has not been served on that person.

(4B) The service of a demerit point option notice ... is not a condition precedent to the suspension under this section taking effect but if at any time after the period of 14 days after the date of issue of the notice the Corporation is satisfied that the holder of the licence or permit has not been served with the notice, it must cancel the suspension with effect from the date on which it took effect, determine another effective date and specify that date in another notice served under sub-s(3) or (3B)(c), as the case requires.

(4BA) Sub-s(4B) does not apply if—

(a) a person is prosecuted under s30 for driving while a suspension under this section is in force; and

(b) he or she is found not guilty on the grounds that he or she was not aware at the relevant time that his or her licence or permit had been suspended.

### The facts

9. On 20 May 2008, the informant, Paul Barry Day, and Leading Senior Constable David Allen intercepted a vehicle driven by the respondent travelling along Benison Drive, Wurruk. A licence check was conducted which disclosed that the respondent's driver licence had been suspended. The respondent gave her name, date of birth and address as "Kelly Angell, 2nd June 1977 and 43 Thomson Street, Sale". When the respondent was asked whether she was aware that her driver licence was suspended she said, "No". She was asked if she had received any paperwork to say that her licence had been suspended and she said, "No, maybe, can't remember". She confirmed she was aware of a previous 'drink drive' conviction for which she had received 10 demerit points. When asked if she had received anything from the Corporation about her demerit points, she said, "No, one letter over six months ago saying I lost three". She confirmed that she had lived at her current address for 15 months. When asked why she was driving when her licence was suspended she said, "Going home from work to pick up my kids".

10. The respondent was charged with driving whilst her licence was suspended under s30(1) of the Act. On 30 June 2009, the respondent appeared in the Magistrates' Court at Sale. She pleaded not guilty to the charge.

11. Transcript of the hearing before the learned Magistrate was exhibited to the affidavit of the prosecutor Leigh Groves, Acting Sergeant of Police, filed in the appeal. It reveals that the hearing and determination of the charge unfolded in the following way.

12. At the outset, his Honour was informed that the matter was contested. Counsel for the respondent, Mr Sullivan, told the Magistrate that the respondent's defence was "fail to serve".

13. The prosecutor, Mr Grove, informed the Court that the informant's evidence in the matter was conceded and the informant's statement was read. The prosecutor tendered two certificates under s84 of the *Road Safety Act*. Section 84(1) of the *Road Safety Act* relevantly provides –

A certificate containing the prescribed particulars purporting to be issued by the Corporation ... certifying as to any matter which appears in or can be calculated from the records kept by the Corporation ... is admissible in evidence in any proceedings and, in the absence of evidence to the contrary, is proof of the matters stated in the certificate.

14. The first certificate set out the status of the respondent's driver licence; the second also contained details of the respondent's driver licence, and included a listing of demerit points and dates of offences, together with details of notices sent to the defendant.

15. The first certificate certified that on 20 May 2008, Ms Angell of "43 Thomson Street, Sale" was the holder of a Victorian motor vehicle driver licence which was suspended under s25(3) of the *Road Safety Act*.

16. The second certificate under s84 dealt with a number of matters. It certified that Ms Angell held a current Victorian car licence and that she had accumulated 15 demerit points from 6 December 2005 to 1 January 2008. The offences were set out. The certificate then provided:

On 5 February 2008, the Roads Corporation mailed an Option Notice under s25(3) and s25(3D) of the *Road Safety Act 1986* to Ms Angell at 43 Thompson Street, Sale Victoria 3850.

On 4 March 2008, the Roads Corporation mailed Ms Angell at 43 Thompson Street, Sale Victoria 3850 a Demerit Point Reminder Notice as her election of a 12 month option had not been received. On 18 March 2008, the Roads Corporation suspended Ms Angell's licence for three months commencing 18 March 2008 and ending at midnight 17 June 2008 under s25(3D) of the *Road Safety Act* 1986.

A search of the Roads Corporation records on 30 July 2008 confirmed that no correspondence had been received from Ms Angell concerning a 12 month option.

All notices referred to in this Certificate were mailed to Ms Angell and have not been returned to the Roads Corporation as unclaimed or undelivered. The Roads Corporation is satisfied that the notices were served in accordance with s25(4A) and s93 of the *Road Safety Act* 1986.

17. It is apparent that in the two certificates, the respondent's address is spelt differently. In fact, the respondent lives at 43 Thomson Street, without a "p". The first certificate correctly records her current address. The second certificate records that the demerit point option notice and a reminder notice were sent to 43 Thompson Street, with a "p".

18. Having been alerted that the defence of "fail to serve" was based on the second certificate recording that the notices had been mailed to "43 Thompson Street" rather than "43 Thomson Street", the informant gave brief evidence from his own knowledge as a local person about Thomson Street in Sale. He confirmed that it was not spelt with a "p". However, he said that the only other Thomson Street in the vicinity of Sale that he was aware of was in Stratford.

19. The informant was asked one question in cross-examination about whether the respondent had any other prior matters. That concluded the prosecution case.

20. The respondent's case was opened by Mr Sullivan as follows:

Your Honour, the case for the defendants (sic) put simply under sub-s (4A) of s25 of the *Road Safety Act* that states that:

"A demerit point option notice sent by post, addressed to the holder of the licence or permit, at his or her current address, as shown in any record maintained under this Act, must be taken to have been served on the person 14 days after the date of issue of the notice."

21. Mr Sullivan submitted that the address to which the demerit point option notice was sent was not the respondent's address as shown in the records of the Corporation. The second certificate, which was relied upon for the giving of notices, stated that the notices were sent to another address spelt "Thompson" with a "p".

22. Mr Sullivan said, "I appreciate it is a technical defence". His Honour responded, "Yes. Very technical". The transcript then records the following exchange:

HIS HONOUR: Can I rely on an assumption here that it was addressed to 43 Thompson with a "p" in Sale. The post office wouldn't deliver it to Thomson without a "p" or is that not a consideration?

MR SULLIVAN: It is not a relevant ...

HIS HONOUR: In (sic) strict compliance with the statutory provision required?

MR SULLIVAN: As required.

23. In reply, the prosecutor argued that the charge should not be dismissed because of a typographical error in one of the certificates. It was a question of construing the legislation in accordance with its spirit. The words in the legislation (s25(4A)) were there to prevent reliance on a notice sent to a completely different address to the address on the record, not one that had been slightly misspelt. It was a relevant consideration that the post office would have been able to identify the correct address, as there were no other Thomson Streets in Sale.

24. His Honour then decided to dismiss the charge in the following terms:

HIS HONOUR: Well. Yes, it is a very technical point, but I think it is a valid point. This legislation should be strictly interpreted, and if there is any ambiguity, it should be interpreted in favour of the defendant as it affects her rights, and the legislation does provide that the notice sent to her address

as shown in the record is shown to have been served on the person. And it has not been addressed to the holder of a licence at her current address as shown in any records. It is true that one may well – one could otherwise, perhaps in other circumstances find that it is likely that the post office would have delivered it to Thomson without a “p”. But I don’t think I can look at that: I think I must look at the strict compliance with the legislation. So in those circumstances, I find it has not been served and, therefore, the charge is dismissed.

### **Appellant’s submissions**

25. The appellant argued, in essence, that service of the demerit point option notice had been incorrectly treated by the learned Magistrate as an element of the offence under s30(1). It was not open to the Magistrate to dismiss the charge on the basis of a finding that the notice had not been served. The relevant elements of the offence under s30(1) of the *Road Safety Act* had been satisfied by the evidence given by the informant and, in particular, the matters set out in the certificates given under s84. It had been established that the respondent was driving a motor vehicle on a highway and that her driver licence was suspended at the time. The Magistrate could not dismiss the charge simply on the ground that there had not been strict compliance with the requirements of s25(4A) of the *Road Safety Act* and therefore no ‘deemed’ service of the notice.

26. Further, the appellant submitted that there was no basis for the Magistrate to find that service of the notice had not been effected in accordance with s25(4A) of the *Road Safety Act*. Section 25(4A) refers to the current address of the licence holder “as shown in any record maintained under [the *Road Safety Act*]”. The certificates given under s84 were not challenged. It should therefore be inferred that they reflect the records kept by the Corporation. Had there been a challenge to the second certificate on the basis that that there weren’t any Corporation records that showed Thompson spelt with a “p”, that might have made a difference. However, in the absence of a challenge, the certificate was proof of the matters contained in it, one of which was that the Corporation had sent the notices to an address given in its records pertaining to the respondent, in which Thompson Street was spelt with “p”. Moreover, the certificate given under s84 was itself a record maintained under the Act and it showed the address of the respondent as being in Thompson Street, with a “p”.

27. The appellant conceded that lack of awareness by the respondent that her driver licence was suspended would be a defence to the charge of driving whilst suspended. However, the respondent had not raised lack of awareness of the suspension as a defence. Her defence rested solely on whether she had been served the demerit point option notice in accordance with s25(4A) of the *Road Safety Act*.

28. In the appellant’s submission, it was not a question of the Magistrate going against the weight of the evidence. The certificates weren’t challenged, and his Honour could not go behind them. Once the certificates were tendered and uncontradicted evidence was given by the informant, all the elements of s30(1) had been established. For this reason, it was not open to the Magistrate as a matter of law to find the charge not proven.

### **Respondent’s submissions**

29. The respondent raised as a preliminary point the competency of the appeal. It was submitted that the appeal was not competent, because the Notice of Appeal did not disclose a question of law. The question in the Notice of Appeal, “Was it open to the Magistrate in the light of the evidence to find the charge not proven?” was a question about the evidence before the Magistrate concerning the service of the demerit point option notice. Before his Honour, the respondent had raised the argument that there had not been proper service, which required the learned Magistrate to determine whether or not there had been service of the demerit point notice. On the evidence before him, the Magistrate was not satisfied that there had been service of the demerit point notice. This was clearly a question of fact: was the Magistrate satisfied to the relevant degree that service of the notice had been effected?

30. If the Court was against her on this point, the respondent submitted that the appeal must nonetheless fail because it was open to the Magistrate to dismiss the charge on the ground that he could not be satisfied that the demerit point notice had been served on the respondent. The matters to be proved by the prosecution included that the respondent had been served with the notice. The service of the notice was required by s25(3) of the *Road Safety Act*. However, the prosecution could not rely on deemed service under s25(4A), because the notice had been sent by



post to an address which was not the respondent's current address as shown in the Corporation's records. Service could be proved by an affidavit of service, but no such affidavit had been filed.

31. According to the respondent, the Magistrate was entitled to make the finding that he did on the state of the material that was presented to him. The notice was sent to 43 Thompson Street with a "p" and that was not the respondent's current address. There was nothing else to suggest that the respondent had received the demerit point notice. Although there was some evidence that the respondent had received a demerit point notice some months earlier, the respondent did not concede that she had received a notice telling her that her licence had been suspended.

32. The respondent submitted that if the prosecution wished to rely on service being effected by reason of s25(4A) of the *Road Safety Act*, then there had to be strict compliance with its terms. Near enough was not good enough, as the provision was one for the benefit of the Corporation. This being the case, the learned Magistrate found that he was not satisfied to the requisite degree that the respondent had received the demerit point notice. If the respondent didn't receive the demerit point notice, then the prosecution must fail.

#### **Did the Magistrate err in dismissing the charge?**

33. In the circumstances in which the charge was dismissed by the learned Magistrate, the questions in the Notice of Appeal are questions of law. The question on appeal is not whether it was open for the Magistrate in the light of the evidence to find that the demerit point notice had not been served. The basis for the appeal is that in dismissing the charge because he was not satisfied that service had been effected in accordance with s25(4A), the learned Magistrate misunderstood what was required to be proved for a conviction to be entered. On a proper construction of the relevant provisions of the *Road Safety Act*, failure to serve the notice in accordance with s25(4A) was not determinative of whether the charge was proven or not.

34. It was common ground that the respondent was driving a motor vehicle on a highway while her licence was suspended. The respondent defended the charge exclusively on the basis that the requirements for service in s25(4A) had not been satisfied. The respondent's counsel described the defence as "technical". He did not submit that the respondent did not receive the notice. Nor did he submit that the respondent was unaware that her licence had been suspended. Although the respondent's written submissions assert that the respondent put in issue the respondent's lack of awareness that her licence had been suspended, there is no sign of this in transcript of the hearing before the learned Magistrate. The defence of "fail to serve" was raised as a complete defence to the charge. The Magistrate accepted this submission. In so doing, he made an error of law.

35. The fact that the demerit point option notice was sent to a '43 Thompson Street' in Sale rather than to '43 Thomson Street' in Sale may well support a finding that the respondent did not receive the notice, which will be relevant to whether or not she was aware at the time of driving that her licence had been suspended. There was evidence in the informant's statement that the respondent told the police officers that she did not know her licence was suspended. Consideration of this evidence may have led the learned Magistrate to conclude that the respondent was not aware that her licence was suspended. However, the Magistrate quite deliberately confined his inquiry to whether service of the demerit point notice had been effected under s25(4A). He was not willing to consider other evidence that was before him that might have been relevant to the respondent's awareness of her licence suspension or to draw any inferences from it.

36. In truncating consideration of the case before him in this manner, the learned Magistrate treated service of the demerit point notice in accordance with s25(4A) of the Act as an element of the offence under s30(1). This involved misconstruing the relevant provisions of the *Road Safety Act*.

37. The appeal must be upheld on this basis. A finding that the Corporation cannot rely on a particular provision of the *Road Safety Act* to prove service of a demerit point notice is not co-extensive with a finding that the respondent did not receive the notice, let alone that the respondent was not aware that her licence had been suspended. The Magistrate's finding that he could not be satisfied that service had been effected in accordance with s25(4A) of the *Road Safety Act* was not sufficient to dismiss the charge in the circumstances of this case.

38. Furthermore, I am not persuaded that a typographical error in the address of a person to whom a notice is required to be sent necessarily deprives the Corporation of the benefit of s25(4A). It was submitted by the respondent that as s25(4A) benefits the Corporation, it must be strictly construed. The learned Magistrate agreed that s25(4A) should be strictly interpreted, as it had the capacity to affect a person's rights. However, I consider that sub-s(4A) also confers a benefit on the licence holder, in that it guarantees the licence holder 14 days in addition to 21 days in sub-s(3A) to make an election to extend the demerit point period. It provides certainty to licence holders as to the deadline for the making of an election. Accordingly, s25(4A) ought not to be construed so as to be inapplicable where a typographical error of a relatively minor kind is made in an address for service.

#### **Should the matter be remitted?**

39. Counsel for the respondent submitted that if the appeal were to be allowed, the Court should exercise its discretion not to remit the charge back to the Magistrates' Court for hearing and determination according to law. The respondent has already served the period of suspension. There is nothing to be gained by convicting her and requiring her to pay a penalty. He also submitted that having the matter reheard would expose the respondent to a form of double jeopardy.

40. In *DPP v Marell*,<sup>[1]</sup> Dodds-Streeton J confirmed that the discretion conferred by s92(7) of the *Magistrates' Court Act* is not, in its terms, limited by any particular factor. In the unusual circumstances of that case, her Honour decided that charges of breaching suspended sentences should not be remitted to the Magistrates' Court. The respondent had already been subjected to the extension of the suspended sentences by twelve months.

41. In this context, her Honour referred to *Willcoxson v Legal & General Insurance of Australia Ltd*,<sup>[2]</sup> which concerned a review of a magistrate's dismissal of two charges under the *Insurance Act 1973* (Cth). Miles CJ held that the magistrate had fallen into error in holding that there was no evidence of an essential element of the charges, namely that the respondent was at the time of the alleged offences a body authorised to carry on the business of insurance. However, his Honour declined to remit the case to the Magistrates' Court. According to his Honour, this would involve "an invasion of the rule against double jeopardy and is not to be lightly taken".<sup>[3]</sup> There was the potential for the respondent to suffer injustice if the matter were remitted —

... If the matter is remitted to the Magistrates Court, but not to the same magistrate, the prosecution will have the opportunity to present its case again and to supplement the evidence, a course which is clearly against the normal principles of criminal justice. If the case goes back to the same magistrate, the magistrate may be asked by the prosecution to exercise his discretion to allow the prosecution to reopen its case. The exercise of that discretion lies with the magistrate and not with this Court and it is not appropriate to direct the magistrate how to exercise it, although I would think that in the interest of fairness the discretion should be exercised against allowing the prosecution to reopen and add to its case. If the case goes back to the same Magistrate and no further evidence is presented on behalf of the prosecution or the defence, the magistrate will proceed to decide the facts on the evidence as it now stands. Whilst it may be within his legal power to decide, after hearing submissions from both sides, that he is in a position of doubt and to dismiss the informations on that ground (see *May v O'Sullivan* [1955] HCA 38; (1955) 92 CLR 654; [1955] ALR 671) that would appear to be a perverse finding of fact. It is of course impossible to predict what might happen if the defence calls evidence.

42. Miles CJ observed that the prosecution might have easily avoided that unsatisfactory state of affairs by tendering a certificate stating that the respondent was still authorised to carry on an insurance business at the initial hearing.

43. In the present case, the error of law occurred through no fault of the prosecution. The learned Magistrate accepted as a complete defence a matter which could at best constitute a step in establishing a defence. A defence that was described as "technical" was put before the Magistrate by the respondent, and the Magistrate mistakenly accepted it.

44. The course of remitting the matter to the Magistrates' Court at Sale to be heard according to law is plainly open on the terms of s92(7) of the *Magistrates' Court Act*. In respect of a criminal proceeding in the Magistrates' Court, the legislature has made provision for both the prosecution and the defendant to appeal a final order in the proceeding on a question of law and for the case to be remitted for rehearing where error of law is established.

45. The respondent was caught driving while her licence was suspended and was duly charged under s30(1) of the *Road Safety Act*. The demerit point system and the suspension of driver licences is directed to securing compliance with road safety rules. The importance of securing compliance with road safety rules can scarcely be overstated, given the potential for carnage on our roads if road safety rules are disobeyed. It is therefore important that charges under s30(1) of the *Road Safety Act* are dealt with by the Magistrates' Court according to law, and that the demerit point system is seen to be effectively enforced.

46. The matter should be remitted to the learned Magistrate to be decided according to law.

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[1] [2005] VSC 430; (2005) 12 VR 581.

[2] (1990) 101 FLR 1; (1990) 6 ANZ Insurance Cases 60-980;.

[3] Ibid 7.

**APPEARANCES:** For the appellant DPP: Ms G Cannon, counsel. Office of Public Prosecutions. For the respondent Angell: Mr A Larkin, counsel. Sullivan Braham, solicitors.

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