

19/79

SUPREME COURT OF VICTORIA

HARRIS v SUMNER

Menhennitt J

20 February 1979 — [1979] VicRp 36; [1979] VR 343

MOTOR TRAFFIC – TAMPER WITH A MOTOR CAR – MEANING OF "TAMPER", "TAMPERS" OR "INTERFERES" – OPENING OF LEFT-HAND DOOR AND ROCKING MOTOR VEHICLE – WHETHER TAMPERING – FINDING BY COURT THAT DEFENDANT GUILTY OF THE OFFENCE OF TAMPERING – WHETHER COURT IN ERROR: MOTOR CAR ACT 1958, S82A.

HELD: Conviction set aside. Charge dismissed.

1. Tampering with a motor vehicle involves touching or handling in such a way as to change it. That is the ordinary natural meaning of the word. This is a criminal offence and the word should be construed according to its ordinary, plain, natural meaning.

2. It was not open to the Justices on the evidence to find that the defendant tampered with the motor vehicle. All that the evidence established was that the defendant touched the vehicle, he opened the door and shut it and then he rocked the vehicle; there was no evidence that he did anything to change the vehicle in any way. Accordingly, the court was in error in finding the charge proved.

MENHENNITT J: Order to review a decision of two Justices of the Peace constituting a Magistrates' Court at Moonee Ponds in that Sumner did without just cause or excuse tamper with a motor car owned by another person. Section 82A reads:

"Any person who without just cause or excuse (the proof whereof shall lie upon him) tampers or interferes with a motor car owned by any other person shall be guilty of an offence against this Act".

The issue accordingly was whether the evidence established that the defendant did tamper with a motor car. In the section "tampers" and "interferes" are used in the alternative. As a matter of ordinary language it appears to me that the word "tampers" involves the concepts that a person interferes in some way with an object so as to change it. The word "interferes" does not involve necessarily the same concepts. But in my view the word "tampers" means interference which produces some change.

Evidence before the Court was that there was a vehicle (and I use that word without conveying any more than description of what was there) on the apron of a service station. ... One D., the occupant of a nearby house saw Sumner and another man stop at the service station and inspect the vehicle at about 7.45pm and at about 10.45pm he saw the same two men return. He identified Sumner and Sumner's car. He saw Sumner walk around the car paying close attention to the panels: open the near side door, look inside and close the door. Sumner rocked the vehicle by holding it by the body above one of the rear wheels. After 10-15 minutes Sumner and the other man with him returned to Sumner's car and drove out of the service station into the street where they were intercepted by the police.

In cross-examination D. said he did not know whether the two men took anything from the car, and there was nothing unusual in the way Sumner drove from the service station and that it did not appear that Sumner was fleeing. Informant gave evidence of interception and in cross-examination said that when he searched Sumner's car he found no items which appeared to be taken from the car and no tools which appeared to be designed or intended for use in obtaining parts from a car. He ensured that Sumner and his passenger were unable to communicate to concoct a story accounting for their actions and that when interviewed separately each gave the same account of their activities on the evening and of the reasons for so acting.

Sumner gave evidence on oath that on driving to his girlfriend's flat he stopped at the

garage for about 30 or 40 seconds and noticed that there were no mudguards on the car and forgot about it. He later spoke to his passenger male friend relating to his intention on the way home of stopping. He then said "In fact on the way home we stopped off and I opened the boot of my car and took out a torch to examine the doors (of the vehicle). The torch did not work so I threw it in the back seat and I proceeded to walk to the other side of the car in the garage. I opened the left door of the car and it almost fell off when I opened it; the corner of the door actually hit the ground. I think there were no hinges on the door. I looked at the interior panel of the door and noticed it was a light cream colour; I then repositioned the door and walked back to my car. As I walked back to my car, Mark (that is, his friend) got out of the car and we proceeded to examine the back mudguard and raised and lowered the back of the car to see what the springs were like and I told Mark that I'd come back next day in daylight and have a closer look at the vehicle."

In my view it was not open to the Justices on that evidence to find that the defendant tampered with the Monaro vehicle. All that evidence establishes is that the defendant touched the vehicle, he opened the door and shut it and then he rocked the vehicle; there is no evidence that he did anything to change the vehicle in any way. In my view tampering with the vehicle involves touching or handling in such a way as to change it. That in my view is the ordinary natural meaning of the word. This is a criminal offence and the word should, in my view, be construed according to its ordinary, plain, natural meaning.

Order absolute that the order of the Magistrates' Court at Moonee Ponds ... convicting Sumner ... of the offence of tampering with a motor car ... be set aside and that the information against the defendant (the applicant) be dismissed.
