

16/82

SUPREME COURT OF VICTORIA

POWELL v TSIVOGLOU

Crockett J

3 February 1982

MOTOR TRAFFIC - OVERLOADING OF TRUCK - DEFENDANT MISTAKENLY THOUGHT HE COULD CARRY A CERTAIN MAXIMUM WEIGHT - DRIVER CHOSE WEIGHT GIVEN BY POLICE OFFICER WHICH WAS WRONG - WHETHER DEFENDANT HAD AN HONEST AND REASONABLE BELIEF THAT HE WAS CARRYING THE LEGAL WEIGHT: MOTOR CAR ACT 1958, S35.

Defendant charged under s35 of *Motor Car Act 1958* in that gross weight of driving axle of truck exceeded that which was allowed in a permit issued. At hearing, defendant said that he did not know he was overweight, thinking that he could carry 18 tonnes. The CRB and Police had given two different versions as to what weight could be carried and he chose the weight given by the police because it was higher. Permit was not received until after apprehension. The Magistrate dismissed the information on the basis that defendant had an honest and reasonable belief that he was carrying the legal weight.

HELD: The evidence before the Magistrate did not support a finding of an honest and reasonable mistake of fact on the part of the respondent. The defendant's belief could not be said to be based on any reasonable grounds. It was based upon the taking of a chance as to which figure was correct and the evidence did not sustain a finding that the defendant possessed a state of mind based on a honest and reasonable mistake.

CROCKETT J: ... The belief as to the legality of what he is doing must be reasonably held by the respondent. Such belief as he had was one based on an enquiry made out as to what permission any permit he had relating to weight carrying extended to him with respect to his vehicle, but it was a belief based upon what some police officer had told him was permissible under the law. I think the contention of counsel for the applicant is correct; namely, that such a belief was one of law and not a mistake of fact. In any event it was not a belief as to what the conditions of the permit were.

Furthermore, I think the applicant's counsel's contention is correct when he submits that the belief, such as it was, could not be said to have been based on any reasonable grounds. It was based upon the taking of a chance as to which figure, as given to the respondent, was correct and therefore I think it is plain that if any answer rests upon possession of a state of mind resulting from an honest and reasonable mistake, the evidence in this case would not sustain any such finding. ...

[Ed note: His Honour also considered the other ground for appeal, that the offence was one involving strict liability and that the offence was complete regardless of the honesty or reasonableness of belief. He believed that much is dependent upon the nature of the offence and the scope of the statute generally. His Honour believed that this legislative prohibition was intended to protect the public roads and the safety aspect so that one may conclude that it was the intention of the legislative to create an offence of strict liability. However, no final conclusion was made, as it was unnecessary because of the success of the other ground. Order of dismissal set aside, and conviction with nominal fine imposed.]