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SUPREME COURT OF THE NORTHERN TERRITORY

WILLIAMS v HAMMERSLEY

Forster CJ

5 May, 4 July 1978 — (1978) 20 ALR 223

EVIDENCE – CERTIFICATE OF CONVICTION – PROOF OF CONVICTION – WHETHER NECESSARY TO IDENTIFY PERSON NAMED IN CERTIFICATE WITH PERSON BEFORE COURT: *EVIDENCE ORDINANCE 1939-1970 (NT)*, S32(1).

On a charge before a court of summary jurisdiction at Alice Springs of driving whilst disqualified, a certificate following s32(1) of the *Evidence Ordinance 1939-1970 (N.T.)*, was tendered by the prosecution which proved that a person by the name of Williams had been convicted and disqualified from driving for a total of four years from 31 January 1977. Pursuant to s162 of the *Justices Ordinance* of the Northern Territory the court of summary jurisdiction stated a case for the opinion of the Supreme Court as to whether upon the tendering of a certificate of conviction by the prosecution some evidence should be given identifying the person named in that certificate of conviction with the person then before the court.

HELD:

1. It was necessary to prove that the Williams whose name appeared on the certificate was the same Williams charged before the court.

Ex parte Cranney; Re Lindfield (1930) 47 WN (NSW) 57;

R v Gibson [1929] NSWStRp 36; (1929) 30 SR (NSW) 282; 47 WN (NSW) 119, distinguished.

2. Once the conviction had been properly proved by the tender of the certificate, it was necessary to prove that the Dennis Williams whose name appeared on the certificate was the same Dennis Williams as was charged before him. This may be, and frequently is, done by an admission tendered by or on behalf of the defendant and, failing this, evidence of identity may be given by someone who was present in the court on the first occasion, or identity may sometimes be proved by fingerprint evidence. These methods of proving identity are probably not exhaustive.

FORSTER CJ: This is a special case stated pursuant to s162 of the *Justices Ordinance* by a court of summary jurisdiction sitting at Alice Springs constituted by a stipendiary magistrate. The special case is in the following terms:—

'1. The abovenamed complainant laid a complaint against the abovenamed defendant for that the said defendant did on the 4th day of December, 1977 at Alice Springs in the Northern Territory being a person previously disqualified from obtaining a driver's licence did drive a motor vehicle to wit, a Toyota Landcruiser registered No. N.T. 144748 during a period of such disqualification contrary to Section 55 sub-section 8 of the *Traffic Ordinance* and four other charges.

I. The said complaint came on for hearing before me on the 22nd day of February, 1978 and the result of such hearing was as follows: The charges were adjourned to a date to be fixed.

II. At the said hearing the following facts relevant to the charge of drive during a period of disqualification were proved by the Prosecution:—

(1) That on the 4th day of December, 1977 the defendant was apprehended driving a motor vehicle in circumstances which led the arresting constable to believe that the defendant was driving the vehicle whilst under the influence of intoxicating liquor to such an extent as to be incapable of having proper control of the vehicle.

(2) The Prosecutor tendered a certificate of conviction stating that Dennis Williams was convicted on the 10th day of February, 1977 and upon conviction he was fined \$200.00 and his licence to drive a motor vehicle was suspended for a period of two years from 13th day of January, 1978.

IV. On the part of the informant it was contended that the tendering of the certificate of

conviction was sufficient evidence that the defendant before the court was a person convicted of an offence involving the loss of his licence.

V. On the part of the defendant it was contended that there was no evidence to link the person named in the certificate of conviction with the defendant then before the court.

VI. I am of the opinion in point of law, that it is necessary that evidence be given that the defendant before the court is identical with the person named in the certificate of conviction.

VI. The question of law upon which this case is stated for the opinion of the Supreme Court is, whether, upon the tendering of a certificate of Conviction by the Prosecution some evidence should be given identifying the person named in that certificate of conviction, with the person presently before the court.

VII. For the information of the Supreme Court a copy of the evidence taken upon the hearing of the said information and a certificate of conviction tendered are attached hereto.'

Section 22(1) of the *Evidence Ordinance* 1939-70 is as follows:

'32. (1) Where it is necessary to prove any of the following facts:—

(a) The conviction or acquittal before or by any Court, Judge or Justice of any person charged with any offence; or

(b) That any person was sentenced to any punishment or pecuniary fine by any Court, Judge or Justice; or

(c) That any person was ordered by any Court, Judge or Justice to pay any sum of money; or

(d) The pendency or existence at any time before any Court, Judge, Justice or other official person of any criminal trial, proceedings, inquiry, charge or matter,

Evidence of such fact may be given by the production of a certificate under the hand of—

(i) any such Judge, Justice or official person; or

(ii) the Clerk of the Court; or

(iii) the officer ordinarily having the custody of the records, documents, proceedings or minutes of the Court, Judge, Justice or other official person; or

(iv) the deputy of the Clerk or officer,

showing the fact, or purporting to contain the substance, omitting the formal parts, of the record, indictment, conviction, acquittal, sentence, or order, or of the trial, proceeding, inquiry, charge or matter in question and stating the time and place of the conviction, acquittal, sentence or order, or of the trial, proceeding, inquiry, charge or matter in question and stating the time and place of the conviction, acquittal, sentence or order, or of the trial, proceeding, inquiry, charge or matter, with the title of the Court or the name of Judge or Justice or official person before or by whom it was had, or passed, or made or pending or existing.'

A certificate made by the clerk of the court of summary jurisdiction in Alice Springs proved that a person by the name of Dennis Williams was convicted on 10 February 1977 for that on 9 December 1976 he refused to submit to a breath analysis and that on the same day he was also convicted of a similar offence committed on 20 December 1976. The certificate goes on to recite, that, with respect to each offence, a fine was imposed and on the first, that his licence to drive a motor vehicle was suspended for two years from 13 January 1979. The special case is inaccurate in par III(2) but the inaccuracy is not important to the resolution of the question raised.

Once the conviction had been properly proved by the tender of the certificate, I agree with the learned magistrate that it was necessary to prove that the Dennis Williams whose name appeared on the certificate was the same Dennis Williams as was charged before him. This may be, and frequently is, done by an admission tendered by or on behalf of the defendant and, failing this, evidence of identity may be given by someone who was present in the court on the first occasion, or identity may sometimes be proved by fingerprint evidence. These methods of proving identity are probably not exhaustive.

I have been referred by Mr Malinaric to two New South Wales cases. The New South Wales *Evidence Act* in s23 has provisions similar to the provisions of s32 of the *Evidence Ordinance*. The first case is *Ex parte Cranney; Re Lindfield* (1930) 47 WN (NSW) 57, in which it was decided that when a conviction has to be proved as part of the Crown case it is necessary to tender a certificate pursuant to s23 of the *Evidence Act* and that oral evidence alone given by someone

who is present in court when the previous conviction occurred is not enough. With respect I do not disagree with this judgment, but it really does not touch the question of identity.

In *R v Gibson* [1929] NSWStRp 36; (1929) 30 SR (NSW) 282; 47 WN (NSW) 119, the question arose as to the proof of previous convictions in a case where the accused had put his character in issue. The convictions were proved by a police officer who was present on the occasion of each of the previous convictions. It was decided that since this method of proof had not been objected to in the court below, no miscarriage of justice had occurred. James J was of opinion that the method adopted in the court below was adequate, but Halse Rogers J doubted this and Stephen AJ disagreed with it. I do not find this case helpful as it does not deal with the question of identity, but deals simply with the method of proof that a conviction occurred and of course the question of identity could hardly have arisen in view of the evidence of the police officer. I have found no authority directly on the point in issue in the special case. The answer to the question posed is 'yes'.

APPEARANCES: P Dean, for the appellant. V Malinaric for the respondent.
