43/84

SUPREME COURT OF VICTORIA

KAN CHI HING v DAVEY

Southwell J

7 August 1984

MOTOR VEHICLE – APPLICATION FOR LEARNER DRIVER'S PERMIT – FALSE ANSWER IN APPLICATION – APPLICANT OF FOREIGN EXTRACTION – AMBIGUOUS QUESTION ASKED OF APPLICANT – WHETHER COURT COULD BE SATISFIED THAT ANSWER GIVEN WAS FALSE: *MOTOR CAR REGULATIONS* 1966, R206; *MOTOR CAR ACT* 1958, S25.

K. who is of Asian extraction, his use of English, if not his knowledge of it, is to some extent limited. When he made application for a motor car learner driver's permit, he was asked the following question:

"(a) Have you ever been convicted either in Victoria or elsewhere for offences in connection with the driving of a motor car, motor cycle or motor tractor? If so, give particulars."

K. answered "No" notwithstanding that he had previously been convicted on a charge of riding a motor cycle whilst unlicensed. K. was subsequently charged with wilfully making a false statement and convicted. Upon order nisi to review—

HELD: Order absolute. Conviction and sentence set aside.
The meaning which can be given to the question asked is not easily discernible and is sufficiently clouded in doubt as to make it impossible for the Magistrate in the circumstances to be satisfied beyond reasonable doubt that the answer given was false.

SOUTHWELL J: **[1]** This is the return of an Order Nisi to review a conviction of the Magistrates' Court at Fitzroy on the 20 June 1983 when the applicant was convicted of an offence against Regulation 206(d) of the *Motor Car Regulations*. That regulation reads:

> Any person who (d) wilfully makes any false or misleading statement or wilfully furnishes any false or misleading information in or with respect to any notice, declaration, statement, application or other matter required or authorized by the Act or these regulations, shall be guilty of an offence ..."

[2] It was admitted by counsel, who appeared for the applicant in the court below and in this court, that the applicant had, on the 5 May 1978, been convicted at the Flemington Magistrates' Court on a charge of riding a motor cycle whilst not being licensed under the *Motor Car Act*. That was, without doubt, a conviction relating to the driving of a motor car which, of course, includes a motor cycle. On the 5 October 1982, the applicant made application for a motor car learner driver's permit on a form numbered by the Government Printer, 426. That form asks a number of personal details relating to the history of the applicant and it includes questions relating to previous permits or licences held by the applicant. Question 11 reads:

> "(a) Have you ever been convicted either in Victoria or elsewhere for offences in connection with the driving of a motor car, motor cycle or motor tractor? If so, give particulars.
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> (b) Have you ever been convicted either in Victoria or elsewhere for any criminal offence? If so give particulars."

It is common ground that those questions were answered by the applicant No. As would appear from the applicant's name, he is of Asian extraction, and a reading of the affidavit shows that his use of English, if not his knowledge of it, is to some extent limited. In due course, on the 19 November 1982, the applicant was interviewed by the respondent, Constable Davey. He, according to the evidence of Constable Davey, admitted that he had previously been convicted of riding a motor cycle **[3]** whilst unlicensed, and agreed that he had answered question 11(a) in the negative, giving as his explanation that he understood that it was a question concerning only motor cars. Mr Little submitted, at the end of the Crown case before the Magistrate, that there was no case to answer on the basis that question 11(a) refers to offences in the plural and not the

singular, and since the applicant had been convicted on only one occasion, it was said that the statement by the applicant was in fact true, or at any rate that no court could be satisfied beyond reasonable doubt that it was false, let alone wilfully false. That submission was unsuccessful and the applicant gave evidence. In that evidence he denied some of the evidence given by Constable Davey and made statements which the Magistrate was entitled to reject as untrue, and having regard to the finding of the Magistrate, which was as follows, "In view of the police evidence I find the offence proven", it would seem obvious that the Magistrate disbelieved the applicant and he proceeded to convict him and he fined him $61 with $10 costs.

The Order Nisi to review that decision was granted on the 1 September 1983 on the following grounds:

> "(1) that the alleged false statement was, on that evidence, a true statement, and
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> (2) that on all the evidence the Magistrate was not entitled to be satisfied beyond doubt that the statement was wilfully false."

Mr Little by no means abandoned ground two, but based his argument principally upon ground one, repeating, as I understand it, the submission he had made to the Magistrates' Court. He referred me to s25 of the *Motor Car Act*, but for **[4]** reasons given during discussion I cannot see that reference to that section can help in the interpretation which ought to be given to question 11(a). For the respondent, Mr Rozenes submits that the word 'offences' must be taken to include the singular, and upon ordinary principles of interpretation it was open to the Magistrate to be satisfied that it was a false statement, but for reasons developed by Mr Rozenes, he submitted there was ample basis for the Magistrate being satisfied that the statement was not only false, but was wilfully false in that the applicant had given false evidence and thereby demonstrated a consciousness of his guilt. However, as I pointed out during discussion, the fact that the applicant may, by untrue evidence, have demonstrated a consciousness of guilt, does not determine the matter. As Mr Little rightly points out, the Court must first be satisfied beyond reasonable doubt that the statement made was false. It is to be observed that in such penal legislation a strict interpretation must be placed upon it.

In my opinion, the meaning which could be given to question 11(a) is not easily discernible. Whilst it may be true that the use of the word 'ever' might seem to suggest that information about an offence is sought, I would think it only reasonable to look at the different terminology in question 11(b) which I have already set out. There the applicant is not asked whether he has been convicted for criminal offences; he is asked whether he has been convicted for any criminal offence. Why then, one might ask, is the word 'offences' used in the plural in **[5]** question 11(a)? It is, in my view, to speculate to establish an answer to that question. It may be that Mr Little is right and that the different considerations in s25(1)(a), where it first appears in the *Motor Car Act*, is of significance. Be that as it may, it seems to me that the proper interpretation of that question is sufficiently clouded in doubt as to make it impossible for a Court in these circumstances to be satisfied beyond reasonable doubt that the answer given by the applicant was false. For those reasons, the order must be made absolute and the conviction and sentence set aside.
