



Magistrates' Court
Victoria

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SUBJECT MATTER

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- Claim for damages for loss caused by seizure of engine** - repairer's services not fit for purposes sought by truck owner - magistrate not in error in making order for amount claimed: 1/04
- Contract** - agreements to purchase wine grapes for 10-yr period - inconvenience of provisions agreed to by parties - finding by magistrate that buyer bound by terms of agreement - no error: 10/06
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SUBJECT MATTER

Work and Labour done - alleged negligence in carrying out repairs to a boat engine - duty of care breached - contributory negligence - magistrate in error in allowing counterclaim as equalling amount of claim: 08/06

Work and labour done - finding by magistrate that frayed timing belt not the cause of engine failure - appeal dismissed - magistrate in error in finding that there was no contractual relationship between mechanic and his company - judge in error in awarding indemnity costs against unsuccessful party: 32/06

Work and Labour done - warranty given in relation to work done - engine broke down during warranty period - nature of contractual relationship - contract not made with company claim against company dismissed - claim against mechanic dismissed - no error: 10/05

COSTS

Claim by legal practitioner for remuneration - terms of retainer - whether legal fees to be paid by client or third party - finding by magistrate that claim statute barred - finding that practitioner not entitled to fees - magistrate in error: 8/04

Costs - criminal proceeding dismissed - application for costs by defendants - factors to consider when such an application is made - defendants took part in reprehensible conduct and chose to decline to assist police in a way that might have avoided any charges being laid - magistrate not in error in refusing application for costs: 19/04

Costs - criminal proceeding dismissed upon no case submission - defendants failed to produce business records to police - defendants refused to answer police questions - defendants did not bring prosecution upon themselves - their conduct after offence not reprehensible - magistrate in error in refusing costs: 11/04

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Professional fees - claim by solicitor for services rendered - written agreement failed to set out the circumstances that constitute a successful outcome of the matter - agreement inefficacious - finding by magistrate that solicitor entitled to fees on a *quantum meruit* basis - no error: 23/05

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Firearms - owner of firearm found guilty of offences - notice given to owner to immediately surrender firearm to police - firearm not surrendered - charged with offence - whether court in error in finding charge proved: 35/04

Obtaining a financial advantage by deception - tendering valueless cheque in pretended payment of existing debt financial advantage obtained: 05/05

Possession of proceeds of crime - items of property found by police officers in garage - reasonably suspected of being proceeds of crime - charge dismissed - magistrate not satisfied that property was in defendant's possession when suspicion formed - magistrate in error: 29/04

Possession of proceeds of crime - person apprehended at home of known drug dealer with \$44,000 in cash on his person - court to consider whether property may be suspected of being the proceeds of crime - case to answer: 01/05

Rape charge - flight - consciousness of guilt - matters to take into account when deciding such issues: 21/06

Self defence - escaping prisoner shot by prison guard - agony of the moment decision - elements of self-defence - guard not guilty of murder: 36/05

Summary offence - posting of bills on property - offence alleged to have been committed between certain dates - evidence proved otherwise - magistrate in error in finding charge proved: 04/05

Workers Compensation claim - defendant claimed payments whilst employed - signed declaration to effect that he was not engaged in any form of employment - charges dismissed by magistrate - magistrate in error: 22/04

EVIDENCE

- admissibility of record of interview - matters to be considered when objection taken to admission of record of interview: 12/06

SUBJECT MATTER

- Company employee approached by management - interviewed - no caution given before interview - magistrate not in error in excluding evidence of managers and police informant: 03/06
- Rape charge - flight - consciousness of guilt - matters to take into account when deciding such issues: 21/06
- "Without Prejudice" privilege - letter containing request for payment by instalments marked "without prejudice" - proceedings concluded - letter not privileged from production in proceedings to pay debt by instalments: 19/06

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MOTOR TRAFFIC

- **Careless driving** - driver passed by another vehicle closely - driver lost control of motor vehicle - collided with parked vehicle on other side of road driver charged with drink/driving and careless driving - drink/driving charge dismissed - court can take evidence of drinking into account in finding careless driving charge proved: 25/05
- **Drink/driving—**
 - **accident occurred** - refusal to undergo PBT - belief by police officer that driver involved in an accident - prosecution not required to prove belief beyond reasonable doubt - magistrate correct in finding charge proved: 17/06
 - **application to be again licensed** - applicant had relevant prior convictions - applicant convicted of second offence before convicted of first - applicant had two relevant priors at the time of application - magistrate not required to impose 3-yr alcohol interlock condition: 27/04
 - **blood sample taken by doctor at hospital** - when driver released did not have sample in his possession - doctor required by regulations to give sample to driver - magistrate found "evidence to the contrary" and dismissed charge - magistrate in error: 35/06
 - **blood sample taken by doctor** - container of blood not given to police officer - placed by doctor in blood safe at hospital - sample later collected and taken for analysis - magistrate not satisfied with integrity of sample - charge dismissed - no error - strict compliance with statutory provisions required: 37/06
 - **breath test** - reference in certificate to "0.010 grams of alcohol in 210 litres of breath" - reference in Act to "grams per 210 litres of exhaled air" - difference immaterial: 04/06
 - **breath test** - evidence given by operator not familiar with regulations - magistrate to properly consider the defence under s49(4) of *Road Safety Act* 1986 - magistrate in error in dismissing charge: 15/06
 - **breath test** - taken at road block - no lights or signs indicating that a preliminary breath testing station had been set up - magistrate not in error in finding charges proved: 40/06
 - **breath test taken** - driver notified of result - given caution - "No comment" to questions - driver later convicted - court took into account fact that driver had not raised defence at time - court in error - accused's silence after caution not to be used against accused: 30/06
 - **brief of evidence procedure adopted** - matter proceeded *ex parte* - brief not tendered in evidence - no proof that operator authorised or that PBT had been conducted using a prescribed device - magistrate in error in finding charge proved: 16/06
 - **expert evidence** - not admissible to show that at time of breath test BAC was lower than the result recorded by the breath analysing instrument: 38/04
 - **driver passed by another vehicle closely** - driver lost control of motor vehicle - collided with parked vehicle on other side of road driver charged with drink/driving and careless driving - drink/driving charge dismissed - court can take evidence of drinking into account in finding careless driving charge proved: 25/05
 - **driver made two attempts at providing a sample of breath** - instrument indicated "insufficient sample" on first occasion - where PBT indicated the presence of alcohol in the driver's blood there was evidence to conclude the police officer held the relevant opinion - court entitled to conclude that printout from instrument provided a sufficient basis for police officer to request a second sample: 27/05
 - **driver underwent PBT which was positive** - requested to accompany police officer to police station for a breath test - driver left scene - later charged and found guilty - charge had surplus verbiage in it - magistrate not in error in finding charge proved - no evidence that prescribed device used for PBT - prosecution may reopen case to prove same: 18/05; affirmed: 37/05
 - **driver intercepted outside his vehicle** - requested by police officer to accompany officer to police station for a breath test - driver refused - charge dismissed - magistrate in error: 16/04
 - **driver made three attempts to provide sample of breath** to breath analysing instrument - driver requested to undergo a blood test - refusal by driver - charged with refusal - charge dismissed - evidence adduced insufficient to establish beyond reasonable doubt that police officer believed that the instrument was incapable of measuring driver's blood alcohol concentration: 04/04
 - **driver refused breath test** - driver taken to police station - breath analysing instrument present when driver asked to take test but instrument not immediately available to operate - driver convicted - no error: 23/04
 - **driver refused to undergo PBT** - finding by magistrate that driver not aware of consequences of refusal - charge dismissed - magistrate in error: 28/04
 - **driver requested to accompany police officer for breath test** - subsequent requirement made by different police officer - whether same police officer must make each requirement: 3/04
 - **driver taken to booze bus** - driver told he would be required to go into the booze bus after certain checks had been carried out - driver left scene - whether driver given reasonably sufficient information to know what was required of him - charge proved - magistrate not in error: 9/04
 - **Notice given to police informant** - request for person to attend court - facts and matters in issue not specified in notice - notice declared invalid - magistrate not in error: 30/04
 - **PBT conducted** - no evidence that PBT conducted on a prescribed device - court in error in finding charge proved - certificate tendered in evidence - reference to "grams in 210 litres of breath" - Act states "grams per 210 litres of exhaled air" - difference not material: 33/05
 - **refusal to undergo PBT** - no evidence called that device used was a prescribed device - magistrate in error in dismissing charge: 31/06

SUBJECT MATTER

- **sentencing of offender** - court cannot sentence offender to a term of imprisonment and impose a fine: 12/04

- **sentencing** - person with relevant prior conviction - reading of .061%BAC - magistrate in error in declining to cancel offender's driver licence: 33/04

- **Parking Infringement** - owner onus - notice not complied with - statutory declaration by company to effect that it was not the actual driver - charge and summons issued - corporation cannot be in charge of vehicle - magistrate in error in dismissing charge: 07/06

- **Parking Infringement** - notice not complied with - charge and summons issued - standing - jurisdiction of court whether Road Rules Victoria is a proper law - magistrate not in error in finding charge proved: 07/05

NATURAL JUSTICE

Application for an adjournment - applicant/defendant not in good health - sought adjournment until health improved - application refused on ground that there was no confidence that the matter would ever be heard - magistrate in error: 15/04

Application for an adjournment - young applicant with no priors not legally represented - wished to contest charges - fresh charge given to applicant on day of hearing - applicant decided to plead guilty - charges dealt with - whether magistrate in error in hearing charges - whether charges should have been adjourned for defendant to seek further legal advice: 32/04

Apprehended bias by magistrate - refusal of adjournment and that party guilty of a crime on the basis of unidentified extraneous material - no opportunity given to party to read or answer adverse material referred to by magistrate - magistrate's approach gave rise to a reasonable apprehension of bias - magistrate's conduct did not accord with the requirements of natural justice - party's right to object not waived: 20/04

Bias - alleged perceived bias - test to be applied in determining whether judicial officer is disqualified by reason of the appearance of bias - objective test: 20/06

Bias - apprehended or ostensible - coroner conducting inquest - approached witness to enquire whether witness would participate in a forthcoming seminar for coroners - during inquest coroner indicated his feelings about the evidence - having regard to all of the material, coroner's conduct did not involve an acknowledgement of apprehended or ostensible bias: 31/05

Court-made transcript - not preserved - copy not provided to party - no denial of natural justice: 11/05

Suppression Order made - publication of witnesses' names suppressed - party's legal practitioner not given opportunity to peruse relevant document - party not accorded natural justice - order quashed: 6/04

OCCUPATIONAL HEALTH AND SAFETY

Death of employee - risk known to employer - no action taken to guard machine - fines of \$60,000 imposed on each of two charges - sentences manifestly inadequate - matters to be taken into account on sentencing - fines increased to \$180,000 on each: 28/05

Employees affected by carbon monoxide fumes - power of authority to authorise inspector to bring charges - authorisation instrument valid - employer failed to provide first aid or medical treatment - guilty of offence: 08/05

Employee injured in fall - employer subsequently convicted of offences - application by employee for compensation for pain and suffering - court to take into account in determining quantum the contributory negligence (if any) of the employee - magistrate in error in finding otherwise: 25/04

Instrument of authorisation - executed by person at WorkCover Authority - inspector authorised to bring proceedings - instrument validly executed: 35/05

PRACTICE AND PROCEDURE

Amendment of pleadings - general rule that pleadings can be amended in order to determine the real question in dispute between parties: 23/06

Application for an adjournment - applicant/defendant not in good health - sought adjournment until health improved - application refused on ground that there was no confidence that the matter would ever be heard - magistrate in error: 15/04

Application to be again licensed - applicant had relevant prior convictions - applicant convicted of second offence before convicted of first - applicant had two relevant priors at the time of application - magistrate not required to impose 3-yr alcohol interlock condition: 27/04

Application under Confiscation Act 1997 - as a general rule notice must be given to any person who may have an interest in the property: 26, 34/06

Burglary - classification of burglary - one involves breaking and entering with intent to steal - the other involves breaking and entering with intent to assault or cause property damage - magistrate purported to deal with charge of aggravated burglary with intent to assault - magistrate in error: 21/04

Charge and summons - charges filed with Registrar - defendant attended at Melbourne Magistrates' Court - case not listed - adjourned same day by Registrar at Broadmeadows - summons did not lapse - capable of reactivation by administrative intervention: 41/06

Charge and summons - issued but not filed with Registrar within 7 days - proceeding commenced - later struck out - magistrate in error in refusing an application for reinstatement: 24/06

Charge and summons - not issued within 7 days of signing charge-sheet - no proceeding commenced - charge struck out - magistrate in error in refusing application for reinstatement: 24/06

Committal Proceedings - suppression order made - publication of witnesses' names suppressed - order made so as to not prejudice the administration of justice - no error made: 6/04

Defect in charge - charge referred to repealed Regulations - whether charge void ab initio - charge amended by magistrate - hearing ex parte - defendant not notified of amendment - magistrate in error in finding charge proved: 31/04

Demerit points - traffic infringement notices - demerit points accumulated - appeal to Magistrates' Court against proposal to suspend driver licence - appeals allowed by court - whether court in error: 34/04

Diversion Program - No formal admissions made by offender - prerequisites for order not considered by magistrate - matter adjourned - finding that matter not adjourned for offender to undertake diversion program: 5/04

Drink/driving - Notice given to police informant - request for person to attend court - facts and matters in issue not

SUBJECT MATTER

- specified in notice - notice declared invalid - magistrate not in error: 30/04
- Forfeiture of bail** - order that surety pay amount undertaken - surety to be given notice before matter of forfeiture considered - surety may contest or make submissions at hearing - court to determine period in default of payment of undertaking: 13/06
- Legal practitioners** - immunity from liability - damages sought by accused from lawyers who represented him at trial - practitioners immune from suit in relation to in-court work and out-of-court work intimately connected with conduct of trial - abuse of process to allow claim: 29/05
- No case submission** - principles governing a 'no case' submission: 36/05, 05/06
- Open court principle** - making of suppression order in committal proceedings - right of public to know not as significant in such proceedings - magistrate not in error in making order: 6/04
- Proceeding struck out with right of reinstatement** - first application to reinstate dismissed - second application not an abuse of process - matters to take into consideration when hearing second or subsequent application: 09/06
- Publication of reasons for judgment** - to be announced in open court - not to be emailed to parties: p167/05
- Summary offence** - posting of bills on property - offence alleged to have been committed between certain dates - evidence proved otherwise - magistrate in error in finding charge proved: 04/05
- Suppression order** - accused charged with certain sexual offences - victims less than 3 years old - "necessary" - no ground for making order: 09/05
- Suppression Order made** - application made to lift suppression order - application to be determined whether it is necessary for order to continue - magistrate refused application on ground that not in the interests of justice to lift order - magistrate applied wrong test: 24/04
- Traffic Infringement notice** - form of notice not clear on its face as to certain things - relevant address not included on one page - finding by magistrate that notice was invalid - charge dismissed - magistrate in error: 17/04
- Traffic Infringements** - Demerit Points recorded - offender given option - further demerit points incurred - licence suspended by VicRoads - appeal to Magistrates' Court - scope of appeal to Court - finding by magistrate that infringement notice invalid - magistrate in error: 12/05
- Validity of summons** - summons signed but no designation of officer issuing summons - no statutory or regulatory requirement that designation be set out in the summons - magistrate in error in dismissing charge: 14/04

SENTENCING

- Fraudulent Commonwealth** - Offences committed by Centrelink Officer - More than \$90,000 improperly given to Centrelink clients over period of two years - sentenced to 9 months' imprisonment to be released forthwith on recognisance - sentence not manifestly inadequate: 03/05
- Diversion Program** - No formal admissions made by offender - prerequisites for order not considered by magistrate - matter adjourned - finding that matter not adjourned for offender to undertake diversion program: 5/04
- Drink/driving offence** - court cannot sentence offender to a term of imprisonment and impose a fine: 12/04
- Drink/driving offence** - sentencing - person with relevant prior conviction - reading of .061%BAC - magistrate in error in declining to cancel offender's driver licence: 33/04
- Drug offenders** - harmfulness of the drug trafficked is irrelevant to the sentencing exercise - sentencer not to evaluate the relative harmfulness of any particular drug: 33/06
- Intensive correction order breached** - options open to sentencer - pre-sentence report sought - offender suitable for further ICO - recommendation not adopted by court - offender committed to prison for unexpired portion of sentence - court not in error: 14/05
- Non-parole period** - when fixing court should not take into account the possible effect of executive action or policy: p27/05
- Occupational Health & Safety** - death of employee - risk known to employer - no action taken to guard machine - fines of \$60,000 imposed on each of two charges - sentences manifestly inadequate - matters to be taken into account on sentencing - fines increased to \$180,000 on each: 28/05
- Offences committed whilst on parole** - sentence to be served cumulatively unless exceptional circumstances exist - consideration of factors said to amount to "exceptional circumstances" - totality principle: 22/06
- Period spent in custody** - period wasted - may be generally taken into account as part of wide sentencing discretion: p27/06
- Plea of guilty discount** - nothing else to show accused's state of mind - accused's remorse "slight" - appropriate to frame a sentence on that basis: p195-6/05
- Suspended sentence** - breached - "exceptional circumstances" required if sentence is not restored - no exceptional circumstances - magistrate in error: 34/05, 02/06

STATUTORY INTERPRETATION

- Commercial quantity of cannabis** - "25.0kg or 100 plants" - a commercial quantity is either 25 kilograms or 100 plants: 11/06
- Publication of book** - authored by police officer - containing confidential information - published by book publisher - court not in error in finding that author published confidential information: 36/06
- Sex Offenders Registration** - Act does not apply to all persons who commit sexual offences - where person was undergoing a wholly suspended sentence for a registrable offence before 1 October 2004 that person was not an existing controlled registrable offender: 18/06

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