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## SUPREME COURT OF VICTORIA

***SHEA v HIS HONOUR JUDGE JONES***

Beach J

6 February 1995 — (1995) 21 MVR 392

**PROCEDURE – CERTIFICATE UNDER ROAD SAFETY ACT – ERROR IN CERTIFICATE – RELEVANT SUB-SECTION WRONGLY IDENTIFIED – WHETHER CERTIFICATE INVALID: ROAD SAFETY ACT 1986, SS25, 84.**

**Where a certificate issued pursuant to S84 of the *Road Safety Act 1986* ('Act') erroneously referred to S25(3) of the Act instead of S25(3B), the certificate was not invalid.**

**BEACH J: [1]** This is the return of a summons filed on an originating motion whereby the plaintiff seeks, *inter alia*, the following relief:

- "2. An order in the nature of *certiorari* that the Ruling/Order of the first-named defendant on 8 December 1994 at the County Court of Victoria in finding that the charge against the Plaintiff under Section 30(1) of the *Road Safety Act 1986* was proven beyond reasonable doubt be removed into this Court and be quashed.
3. An order in the nature of *certiorari* that the Ruling/Order of the first-named defendant on 14 December 1994 at the County Court of Victoria in convicting the Plaintiff of a charge under Section 30(1) of the *Road Safety Act 1986* be removed into this Court and be quashed.
4. An order in the nature of *Mandamus* directing the County Court of Victoria at Melbourne to record in respect of the charge under Section 30(1) of the *Road Safety Act 1986* that the charge stand dismissed."

The background to the application may be summarised as follows: On 27 April 1993, the plaintiff was apprehended by police officers and later charged with a number of traffic offences, including driving a motor vehicle whilst more than the prescribed quantity of alcohol was present in his blood and driving a motor vehicle on a highway whilst his licence to drive was suspended. The plaintiff appeared before the Heidelberg Magistrates' Court on 21 December 1993, where he pleaded guilty to the various charges.

In respect of the drink driving charge, the plaintiff was convicted and fined the sum of \$200. It was ordered that all licences and permits held by him under the *Road Safety Act* be cancelled and he be disqualified from obtaining another licence for a period of twelve months. In respect of the charge of driving whilst his [2] licence was suspended, the plaintiff was convicted and fined the sum of \$200. Again, it was ordered that all licences and permits held by him under the *Road Safety Act* be cancelled and he be disqualified from obtaining another licence for a period of twelve months.

The plaintiff appealed to the County Court in respect of those convictions and penalties. The appeals were heard by His Honour Judge Jones. On 8 December 1994, His Honour held that the charge of drink driving had not been established and dismissed the charge. His Honour held that the charge of driving whilst his licence was suspended had been proved, convicted the plaintiff of that offence, and fined him the sum of \$500. His Honour further ordered that all licences and permits held by the plaintiff be cancelled and that he be disqualified from obtaining another licence for a period of eight months. It is that conviction which the plaintiff seeks to have reviewed by this court. In addition to evidence as to the apprehension of the plaintiff at the time he was driving a motor vehicle, the prosecution relied upon the following evidence in support of the charge:

(1) Admissions made to the police shortly after the plaintiff was apprehended. Whilst the plaintiff

was at the Eltham Police Station following his interception, he was asked, "Do you realise that your driver's licence is suspended?" to which he replied, "I know. I lost it on points." He was then asked, "What is your reason for driving during a period of suspension?" to which he replied, "No comment." [3]

(2) The plaintiff's plea of guilty before the Heidelberg Magistrates' Court.

(3) A certificate issued pursuant to the provisions of s84 of the *Road Safety Act*.

The relevant sub-section of that section reads:

"(1) A certificate in the prescribed form purporting to be issued by the Corporation certifying as to any matter which appears in or can be calculated from the records kept by the Corporation or a delegate of the Corporation is admissible in evidence in any proceedings and, in the absence of evidence to the contrary, is proof of the matters stated in the certificate."

The certificate relied upon by the prosecution reads:

"State of Victoria ROADS CORPORATION *Road Safety Act* 1986.

Certificate Under Section 84

MATTERS WHICH APPEAR IN OR CAN BE CALCULATED FROM THE RECORDS KEPT BY THE ROADS CORPORATION

I certify that on 29-04-1993 Mr Warren Shea of 86 Henry Street, Eltham 3095

Date of Birth 31-10-1971

was the holder of a Victorian motor vehicle driver's licence, which was suspended under Section 25(3) of the *Road Safety Act*.

Suspended Licence Number: 45644317

Date of Expiry of Suspended Licence: 09-01-1996

Date of Suspension: 30-12-1992

Period of Suspension: 6 months

Dated at Melbourne: 11-05-1993

T. Casamento Manager Registration and Licence Information Services."

The certificate contains an error. Although the plaintiff's licence had been suspended under s25 of the *Road Safety Act*, it had not been suspended under sub-s(3) of that section, but in fact had been suspended under [4] sub.s(3B) of the section. The plaintiff called one expert witness at the hearing before Judge Jones, but did not himself give evidence. His Honour reserved his decision in the case and in due course delivered a comprehensive judgment in the matter. On page 8 of his reasons for judgment, His Honour said:

"The certificate under s84 of the Act does state that the appellant's licence was suspended, the date of suspension and the period of suspension. Although the operative date of the certificate is 29th April 1993, two days after the alleged offence, it is within the period of six months from the date of suspension. The difficulty with the certificate is that it states that the licence was suspended under s25(3) of the Act. That sub-section provides for a notice to be given, as I have already indicated, but not the power to suspend the licence. That power is contained in later provisions depending upon which course is followed. If the certificate just referred to s25 or to an empowering provision then in the absence of evidence to the contrary, it would be sufficient evidence in my view to prove the offence. Because of the way in which the certificate is worded I do not consider that in itself it is sufficient evidence. However, there is other evidence with respect to the appellant's licence position at the time of driving. First of all, there is his statement to the police to which I have already referred. Secondly, there is his plea of guilty to this charge in the Magistrates' Court. The question arises as to what use, if any, can be made of this plea of guilty in the hearing of an appeal in this Court where the plea was made in the Magistrates' Court."

Later on on the page His Honour continued:

"In this case I consider that the Appellant's plea of guilty, particularly having regard to his statement to the police and bearing in mind that no evidence has been given touching on the plea, carries weight as to whether his licence was suspended at the time that he was driving and he was aware that his licence was suspended. When his statement to the police is taken together with his plea of guilty and the certificate I am satisfied beyond reasonable doubt that at the time he was driving his licence had been suspended pursuant to the points demerit power contained in s25 of the Act and that the Appellant was aware that his licence [5] had been suspended. The position as to his licence status is a matter that the appellant would have personal knowledge of being a licence that is personal to him. I am satisfied beyond reasonable doubt that the Appellant was in breach of

s30(1) of the Act in that he drove a motor vehicle on a highway while the authorisation granted to him under the relevant part of the Act was suspended. The driving suspension charge (Charge 3) has been proved beyond reasonable doubt."

It was said on behalf of the plaintiff that it was not open to His Honour to make those findings and that they constitute errors of law on the face of the record justifying the intervention of this court. In my opinion, the learned trial Judge made no error of law in the matter. Indeed, if His Honour did err, it was an error which favoured the plaintiff. I refer in that regard to His Honour's decision to the effect that in itself the certificate was not sufficient evidence of the fact that at the relevant time the plaintiff's licence was suspended. The certificate was in the prescribed form and established the following matters:

- (1) the fact that the plaintiff's licence was suspended;
- (2) the date of suspension;
- (3) the period of suspension.

In my opinion, the fact that the certificate wrongly identified the relevant sub-section of s25 is not sufficient to invalidate the certificate. In the absence of evidence to the contrary it established those matters to which I have referred. It was contended that whilst it was open to His Honour to have regard to the admissions made by the plaintiff shortly after he was apprehended, those admissions are ambiguous and should not have been acted [6] upon by His Honour. I reject that contention. Who better than the plaintiff to know whether he was driving whilst his licence was suspended? His Honour was entitled to attach great weight to the admissions, particularly in the absence of any evidence from the plaintiff to the contrary.

Finally, it is said that His Honour was in error in admitting into evidence the plea of guilty before the Magistrates' Court. It is always within the discretion of a trial judge as to whether he will admit into evidence a defendant's previous plea of guilty. The matter was considered by Sachs LJ in *R v Rimmer* [1972] 1 All ER 604. At p607 His Lordship said:

"In the view of this court that argument overlooks the fact that a plea of guilty has two effects: first of all it is a confession of fact; secondly, it is such a confession that without further evidence the court is entitled to and indeed in all proper circumstances will so act on it that it results in a conviction. The court is not prepared to accept the submission that a plea of guilty in court, if withdrawn, has simply no effect whatsoever. In truth the request for a withdrawal affects the second constituent of the plea, in other words, the court may decide that the accused ought not to be bound by his confession in a way which results in an immediate conviction, and if the court allows the withdrawal, it is that second constituent that is affected. That leaves for consideration in each case the question whether the confession made by the plea has any probative value, and whether that probative value is one that exceeds the prejudice that might be imported by referring to it. Whether it has a probative value at all, and whether that probative value exceeds the prejudice which may be thus imported, must depend on the facts of the case. The circumstances in which a withdrawal of a plea is permitted may vary infinitely. One may have a case where a plea, for instance, to a charge of handling is most properly withdrawn because the appellant did not realise that it was necessary for him to have the relevant knowledge that the goods were stolen. On the other hand, the withdrawal of a plea may result from some completely false statement of fact made by the accused himself as to what has happened between the date of the plea and the date that withdrawal is (7) requested, something which the justices cannot and would not check on the spot. Whether in any individual case the evidence as to the previous plea and its withdrawal should be admitted into evidence is plainly a matter for the discretion of the trial judge, who must most carefully examine whether indeed the probative value does exceed the prejudice which would be induced by the admission of such evidence. In the vast majority of cases in practice the result of such an examination would be that the evidence would not be admitted. Indeed, the occasions on which it is likely to be regarded as admissible will, of their nature, be rare. In each case that question must be decided, as it was in the present case, by an examination of the relevant facts on what is often referred to as 'a trial within a trial'."

In my opinion, there was nothing before His Honour justifying rejection of the evidence as to the plaintiff's previous plea of guilty. In my opinion, His Honour's decision was more than justified in the circumstances of this case. The originating motion will be dismissed, with costs to be taxed and paid by the plaintiff.

**APPEARANCES:** For the plaintiff Shea: I Freckleton, counsel. MK Steele & Grammario, solicitors. For the defendants His Honour Judge Jones & Ors: J Ellwood, counsel. Victorian Government Solicitor.