

59/76

SUPREME COURT OF VICTORIA

HARRIS v KOROL

Gillard J

16 March 1976

MOTOR TRAFFIC – DRINK/DRIVING – EXCEED .05 – BREATH ANALYSIS CERTIFICATE INCOMPLETE BY ABSENCE OF SURNAME OF DEFENDANT FROM PARA 5 – CHARGE DISMISSED BY MAGISTRATES' COURT – WHETHER COURT IN ERROR: MOTOR CAR ACT 1958, S81A.

In a drink/driving case, the defendant's surname on the breath analysis certificate was omitted. The defendant's name and address was set out in the body of the Certificate but the defendant's surname was not mentioned in para 5 of the Certificate. The Magistrate dismissed the information. Upon Order Nisi to Review—

HELD: Order absolute. Remitted for determination in accordance with the law.

This certificate was admissible in evidence since it was to the effect of the form specified in Schedule 7 to the *Motor Car Act* 1958.

***Wesson v Jennings* [1971] VicRp 9; (1971) VR 83;**

***Clemens v Pretlove* (VSC, Pape J, 22nd February 1972); and**

***Houston v Harwood* [1975] VicRp 69; (1975) VR 698 at pp701-702, followed.**

GILLARD J: It did appear that the defendant did receive a copy of the certificate but the Magistrate dismissed the Information because the certificate did not contain the surname of the defendant in that last paragraph.

I am satisfied, having seen the document, that on its face it is to the effect of Schedule 7 to the *Motor Car Act* 1958, even though in the fifth paragraph the surname was omitted.

The decision of Menhennitt J in *Wesson v Jennings* [1971] VicRp 9; (1971) VR 83, I believe, is in itself authority for the view that I am taking. However, his reasoning in that case is supported by the reasoning of Pape J in the unreported case of *Clemens v Pretlove* (22nd February 1972) and by the decision of Gowans J in *Houston v Harwood* [1975] VicRp 69; (1975) VR 698 at pp701-702.

In my view it is quite unnecessary to dilate upon the reasoning expressed by those learned Judges and I respectfully adopt the opinions expressed by them and so hold that this certificate was admissible in evidence since it was to the effect of the form specified in Schedule 7 to the *Motor Car Act* 1958. Accordingly, the order nisi will be made absolute.
