

30/12; [2012] VSC 333

SUPREME COURT OF VICTORIA

STRANGIO v MAGISTRATES' COURT of VICTORIA and ANOR

Coghlan J

18 April, 1, 7 August 2012

PRACTICE AND PROCEDURE – ACCUSED CHARGED WITH SEVERAL INDICTABLE OFFENCES INCLUDING PERJURY AND USING FALSE DOCUMENTS – APPLICATION BY ACCUSED FOR CHARGES TO BE DEALT WITH SUMMARILY – FINDING BY MAGISTRATE THAT OFFENCES COMMITTED OVER A PERIOD OF TIME, INVOLVING A DEGREE OF ORGANISATION AND COMPLEXITY – APPLICATION REFUSED – WHETHER MAGISTRATE IN ERROR: CRIMINAL PROCEDURE ACT 2009, S29(2).

S. was charged with a number of offences of obtaining property by deception, two charges of attempting to obtain property/financial advantage by deception, a number of charges of making and using a false document and a charge of perjury in the Supreme Court. S. applied for the charges to be dealt with summarily. In refusing the application, the Magistrate took into account the seriousness of some of the charges and the fact that some of them attracted sentences of imprisonment up to 15 years. The Magistrate also noted that the offences occurred over a period of one year and involved a degree of organisation and aggravating circumstances. Also, the charges had some complexity. Upon application to review—

HELD: Application refused.

1. **The Magistrate in dealing with the application for summary jurisdiction, was required to take into account the matters set out in s29(2) of the *Criminal Procedure Act 2009*.**

2. **It is entirely inappropriate that a matter of perjury in the Supreme Court should be dealt with anywhere other than in the Supreme Court. The make and use false document charges were also serious in that they dealt with the use of a false power of attorney and using a false document to mislead VCAT.**

3. **It was entirely open for the Magistrate to reach the conclusion that she did and no error had been shown in her decision to refuse to deal with the charges summarily.**

COGHLAN J:

1. The plaintiff Bruno Strangio by Originating Motion dated 22 November 2011 seeks the following relief:

1. An order in the nature of *Certiorari* which quashes the orders of the Magistrates' Court of Victoria constituted by Her Honour Magistrate Stewart made on 23 September 2011.
2. An order in the nature of *Mandamus* which compels the Magistrates' Court of Victoria to consider:-
 - a. the Plaintiff's application for summary jurisdiction in accordance with the law.
3. An order in the nature of prohibition to prohibit the Magistrates' Court of Victoria from proceeding to conduct a committal hearing in respect of the charges laid against the Plaintiff until the Plaintiff's application for summary jurisdiction is properly considered in accordance with the law.
4. An order that the second defendant pay the costs of this proceeding.

2. Her Honour Magistrate Stewart made an order on 23 September 2011 refusing to accede to an application for charges, brought against the plaintiff by the second defendant, to be heard summarily in the Magistrates' Court.

3. The plaintiff is charged with nine charges of obtaining property by deception (Charges 1-3, 5-9), two charges of attempting to obtain property by deception (Charges 4 and 10), six charges of making & using a false document (Charges 11-15 and 24), two charges of obtaining a financial advantage by deception (Charges 17 and 19), five charges of providing false information to VCAT (Charges 16, 18, 20-23) and one charge of perjury (Charge 25).^[1]

4. The committal hearing is listed for 30 August 2012.

5. Charge 15 relates to the use of a false document in a VCAT proceeding.

6. Charge 25 relates to perjury in the Supreme Court.
7. It should be noted that Charges 16, 18 and 20-23 inclusive deal with misleading VCAT. These charges may only be dealt with summarily. They carry only a Level 9 imprisonment or a Level 9 fine or both as sentencing options if found guilty of the offence.
8. The law relevant to indictable matters being dealt with in the Magistrates' Court is set out in s28 of the *Criminal Procedure Act 2009* ("the Act"). Section 28 sets out the "list" of indictable charges which may be heard summarily by reference to Schedule 2 of the Act which in turn is by reference to the maximum penalty of an offence. All the offences that the plaintiff is charged with are capable of being dealt with summarily.
9. Section 29 governs when a charge may be heard summarily. The section states:
- (1) The Magistrates' Court may hear and determine summarily a charge for an offence to which section 28(1) applies if—
 - (a) the court considers that the charge is appropriate to be determined summarily, having regard to the matters in subsection (2); and
 - (b) the accused consents to a summary hearing.
 - (2) For the purposes of subsection (1)(a), the Magistrates' Court must have regard to—
 - (a) the seriousness of the offence including—
 - (i) the nature of the offence; and
 - (ii) the manner in which the offence is alleged to have been committed, the apparent degree of organisation and the presence of aggravating circumstances; and
 - (iii) whether the offence forms part of a series of offences being alleged against the accused; and
 - (iv) the complexity of the proceeding for determining the charge; and
 - (b) the adequacy of sentences available to the court, having regard to the criminal record of the accused; and
 - (c) whether a co-accused is charged with the same offence; and
 - (d) any other matter that the court considers relevant.
10. Sub-sections (3) – (5) are not relevant for the present purposes.
11. The grounds of the Originating Motion are:
- 1. The learned Magistrate denied the Plaintiff natural justice by refusing the Plaintiff's application for summary jurisdiction of the proceeding without bringing a fair and impartial mind to the resolution of the application for summary jurisdiction
 - 2. The learned Magistrate committed a jurisdictional error of law and a non-jurisdictional error of law on the face of the record by failing to determine the Plaintiff's application for summary jurisdiction in accordance with the provisions contained within s29(2) of the *Criminal Procedure Act 2009*
- Particulars:
The learned Magistrate failed to take into account:
- (a) the lack of complexity of the proceeding for determining the charges laid against the Plaintiff; and
 - (b) the adequacy of sentences available to the court, having regard to the criminal record of the accused; and
 - (c) whether a co-accused was charged with the same offence and the desirability of the same Court dealing with co-offenders having regard to the principle of parity.
12. On 23 September 2011, counsel for the plaintiff submitted to her Honour that the matter should be dealt with summarily. It was submitted that Charges 1-3 and 5-9 related to obtaining property by deception being an amount in the sum of \$31,032.
13. It was submitted that all the charges were within the Magistrates' Court's jurisdiction and were of a kind regularly heard by that Court. It was further submitted that the false and misleading information to VCAT were matters which could be heard summarily because they involved no complicated matter of law. Moreover, it was submitted that the Supreme Court perjury could be heard in the Magistrates' Court.
14. It emerged in argument that the plaintiff was on a suspended sentence imposed in the

County Court by her Honour Judge Gaynor on 16 April 2010 and that a finding of guilt on Charges 22 and 23 would constitute a breach of that suspended sentence.

15. Counsel's final submission was that the sentencing range that the Magistrates' Court could impose was adequate for the offences charged.

16. Counsel for the informant submitted that the matters involved a high degree of organisation, would involve a very lengthy summary hearing and in general the sentencing range available in the Magistrates' Court was inadequate.

17. Her Honour ruled as follows:

This matter before me is an application for summary jurisdiction in circumstances where the accused faces some very serious charges, partly attracting ten years imprisonment, and I note the perjury charge, the maximum penalty is 15 years. I have had regard to the matters that I must have regard to, and they appear in s29 of the *Criminal Procedure Act* of 2009 and in particular the matters that are made clear that I have to consider in sub-s.(2), and they are the seriousness of the offence, including the nature of the offence.

I note that these offences occurred over approximately a year. I note also the manner in which the offences are alleged to have been committed and it seems to me there is an apparent degree of organisation and the presence of aggravating circumstances, as put by the Crown. Further it appears that the charges have some complexity. I also note that, in my view, this jurisdiction may not be able to adequately deal with these charges, bearing in mind the jurisdictional limit of five years' imprisonment, and, having regard to all the matters that are before me, the application for summary jurisdiction is refused.

18. The ruling was exactly of the kind, although brief, which a magistrate would make in the circumstances.

Ground One

19. It does not seem to me having read the relevant transcript that there is any material to support the ground that her Honour did not bring an impartial mind to the application.

Ground Two

20. Her Honour said that she had had regard to the matters in s29(2) and in her ruling adverted to most of them. In relation to the particulars of this ground, her Honour did deal with particulars (a) and (b) in turn. In relation to particular (c) no submission was made to her about the particulars of any co-accused. Although Mr Strangio did submit to me that one other co-accused may have been dealt with in the Magistrates' Court and another is to be so dealt with. They have not, apparently, been charged with the same offences as him in their entirety but with only a small portion of them. The question of parity does not arise.

21. In his submissions before me, Mr Strangio repeated what had been said to the magistrate. He did not put material before me which would demonstrate any error of the kind which would lead to the relief he seeks.

22. It is entirely inappropriate that a matter of perjury in the Supreme Court should be dealt with anywhere other than in this Court. The make and use false document charges are also serious in that they deal with the use of a false power of attorney and using a false document to mislead VCAT. In my view it was entirely open for her Honour to reach the conclusion that she did and no error has been shown.

23. The plaintiff seemed to have assumed in argument before me that this Court had the power to order a magistrate to hear the charges summarily. This Court does not have that power.

24. If by any chance I am wrong about any of the earlier matters, it is open for the plaintiff to make application to the Magistrates' Court at the commencement of the committal for summary jurisdiction and that application could, if necessary, be renewed at any time up until the plaintiff is committed for trial (if the evidence is sufficient to do so)^[2].

25. There must, however, become a point where the making of a further application may lead

to a stay being granted to prevent abuse of the court process. That point has not yet been reached and counsel for the defendants acceded before me that no submission would be made to oppose either of the above applications being made.

26. In those circumstances it would be inappropriate to grant the relief sought which is a rehearing of the summary jurisdiction application.

27. Mr Strangio seeks a stay of his committal while he appeals this decision. It is refused in particular because I regard the application as misconceived.

28. The history of this matter became protracted because the plaintiff also complained that the Magistrates' Court failed to deal appropriately with his application for variation of bail. That matter was resolved before me and I did vary the plaintiff's bail largely in the manner he sought.

Schedule A – Summary of offences charged

Charge No.	Offence (Indictable/Summary)	Date	Particulars
1	Obtaining property by deception (Indictable)	20/03/2009	The accused by deception at Dandenong presented a fraudulent cheque to the value of \$4,520 purporting that there were sufficient funds in the account to fund this cheque and dishonestly obtain property namely \$2,500 in cash belonging to JP Creditline Pty Ltd with the intention of permanently depriving JP Creditline Pty Ltd of the said \$2,500.
2	Obtaining property by deception (Indictable)	20/03/2009	The accused by deception at Dandenong presented a fraudulent cheque to the value of \$5,720 purporting that there were sufficient funds in the account to fund this cheque and dishonestly obtain property namely \$5,434 belonging to JP Creditline Pty Ltd with the intention of permanently depriving JP Creditline Pty Ltd of the said \$5,434.
3	Obtaining property by deception (Indictable)	19/03/2009	The accused by deception at Reservoir presented a fraudulent cheque to the value of \$5,596.50 purporting that there were sufficient funds in the account to fund this cheque and dishonestly obtain property namely \$5,148 belonging to Money3 with the intention of permanently depriving Money 3 of the said \$5,148.
5	Obtaining property by deception (Indictable)	19/03/2009	The accused by deception at Coburg presented a fraudulent cheque to the value of \$5,100 purporting that there were sufficient funds in the account to fund this cheque and dishonestly obtain property namely \$4,690 belonging to Money3 with the intention of permanently depriving Money 3 of the said \$4,690.
6	Obtaining property by deception (Indictable)	18/03/2009	The accused by deception at Footscray presented a fraudulent cheque to the value of \$5,000 purporting that there were sufficient funds in the account to fund this cheque and dishonestly obtain property namely \$4,600 belonging to Money3 with the intention of permanently depriving Money3 of the said \$4,600.
7	Obtaining property by deception (Indictable)	02/03/2009	The accused by deception at Craigieburn presented a fraudulent cheque to the value of \$3875 purporting that there were sufficient funds in the account to fund this cheque and dishonestly obtain property namely \$3,500 belonging to Needy Money with the intention of permanently depriving Needy Money of the said \$3,500.
8	Obtaining property by deception (Indictable)	26/02/2009	The accused did by deception at Bundoora presented a fraudulent cheque to the value of \$3,500 purporting that there were sufficient funds in the account to fund this cheque and dishonestly obtain property namely \$3,160 belonging to Needy money with the intention of permanently depriving Needy Money of the said \$3,160.

9	Obtaining property by deception (Indictable)	25/02/2009	The accused by deception at Dandenong presented a fraudulent cheque to the value of \$5,500 purporting that there were sufficient funds in the account to fund this cheque and dishonestly obtain property namely \$2,000 belonging to Money3 with the intention of permanently depriving Money3 of the said \$2,000.
4	Attempt obtain property by deception (Indictable)	19/03/2009	The accused at Heidelberg did attempt to commit a deception namely the presenting of a fraudulent cheque to the value of \$5,596.5 purporting that there were sufficient funds in the account to the fund the cheque and dishonestly obtain property namely \$5,148 belonging to Needy Money with the intention of permanently depriving Needy Money of the said \$5,148.
10	Attempt obtain property by deception (Indictable)	16/03/2009	The accused Balwyn did attempt to commit a deception namely presenting a fraudulent cheque to the value of \$5,000 purporting there were sufficient funds in the account to fund this cheque as a deposit and dishonestly obtain property namely the premises known as "Exchange Gourmet" valued at \$55,000 and permanently deprive John Goumas of the said \$55,000.
11	Make a false document (Indictable)	25/07/2009 – 13/08/2009	The accused at Chadstone between 25/07/2009 and 13/08/2009 did make a false document being a fraudulent Enduring Power of Attorney (Financial) (Irrevocable) in the name of Hatice HILMI and Levent HILMI with the intention that he use that document to induce another person namely Colonial First State Property Management Pty Ltd to accept that document as being genuine and then relying on the document to another person's prejudice in that he used such document to legitimise his authority to occupy the shop known as 'Appetitos Chadstone' in breach of a property lease term.
12	Use a false document (Indictable)	13/08/2009	See Charge 11.
24	Make a false document (Indictable)	24/08/09	The accused at Chadstone made a false document with the intention that he use that document to induce another person namely St George Bank to accept that document as being genuine and relying on that document did act to another's prejudice in that he made himself the sole signatory to the St George Bank business account of Appetitos Chadstone trading as Monash Kebabs.
13	Make a false document (Indictable)	23/09/09	The accused at Chadstone made a false document being a fraudulently altered bill for Appetitos Chadstone with the intention that he use that document to induce another person namely Colonial First State Property management Pty Ltd to accept that document as being genuine and relying on that document did act to another's prejudice in that he used such document to legitimise his authority to occupy the shop known as "Appetitos Chadstone" in breach of property lease terms.
14	Use a false document (Indictable)	23/09/09	See Charge 14
15	Use a false document (Indictable)	10/11/09	The accused at Chadstone used a false document being the document in Charges 11 & 13 to induce another person namely the registrar of Victorian Civil & Administrative Tribunal to accept that document as being genuine and relying on that document did act to another's prejudice in that he relied on these documents to legitimise his authority to occupy the shop known as "Appetitos Chadstone" in breach of property lease terms.

17	Obtain a financial advantage by deception (Indictable)	16/02/2010	The accused at Chadstone dishonestly obtained for himself a financial advantage namely the deferral of a debt in the form of rental arrears and a stay of eviction by VCAT from the premises known as Appetitos Chadstone by deception namely by presenting a St George Bank cheque for \$34,000 from an account that he was the sole signatory that was closed and subsequently dishonoured.
19	Obtain a financial advantage by deception (Indictable)	12/05/2010	The accused at Melbourne dishonestly obtained for himself a financial advantage namely the deferral of a debt in the form of rental arrears and a stay of eviction by VCAT from the premises known as Monash Kebabs by deception namely by presenting a cheque for \$3,300 from an account that had insufficient funds.
16	Provide false information to VCAT (Summary)	10/11/2009	The accused at Melbourne did knowingly give false information to the registrar consisting of an affidavit with false information, a fraudulent Power of Attorney for Hatice Hilmi and Levent Hilmi and a fraudulently altered Appetitos Chadstone bill.
18	Provide false information to VCAT (Summary)	17/02/2010	The accused did knowingly give false information to the Tribunal by stating that he had no knowledge in relation to a St George Bank Appetitos Chadstone T/A Monash Kebabs cheque for \$34,000 tendered to Colonial First State Property Management Pty Ltd on 16/02/2010 for rental arrears.
20	Provide false information to VCAT (Summary)	19/02/2012	The accused did knowingly give false information to the Tribunal by stating that he was not an undischarged bankrupt.
21	Provide false information to VCAT (Summary)	29/03/2012	The accused did knowingly give false information to the Tribunal by stating that he was not an undischarged bankrupt.
22	Provide false information to VCAT (Summary)	14/07/2012	The accused did knowingly give false information to the Tribunal by stating that he was not an undischarged bankrupt.
23	Provide false information to VCAT (Summary)	15/07/2012	The accused did knowingly give false information to the Tribunal by stating that he was not an undischarged bankrupt.
25	Perjury (Indictable)	05/03/2011	The accused whilst being a witness upon an application in the Supreme Court in which he was the applicant knowingly falsely gave sworn evidence that he was not an undischarged bankrupt and that Kimani Boden of Starnet Lawyers was not his legal representative in relation to the proceedings.

^[1] See Schedule A

^[2] See s30(3) of the *Criminal Procedure Act 2009*.

APPEARANCES: For the plaintiff Strangio: Self-represented. For the defendants Magistrates' Court of Victoria and Mokos: Ms T Bolton, counsel. Office of Public Prosecutions.