27/01; [2001] VSC 425

SUPREME COURT OF VICTORIA

IMPAGNATIELLO v CAMPBELL

Balmford J

17 October, 8 November 2001 — (2001) 35 MVR 181

MOTOR TRAFFIC – DRINK/DRIVING – OPERATOR OF BREATH ANALYSING INSTRUMENT CALLED TO GIVE EVIDENCE – NO DIRECT EVIDENCE GIVEN THAT THE APPARATUS USED BY THE OPERATOR WAS A BREATH ANALYSING INSTRUMENT – FINDING BY MAGISTRATE THAT SUFFICIENT EVIDENCE GIVEN WHEN REFERENCE MADE TO THE CERTIFICATE OF ANALYSIS AND OTHER MATTERS – WHETHER MAGISTRATE IN ERROR: *ROAD SAFETY ACT* 1986, SS3, 47, 49(1)(f), 55, 58.

I. was charged with an offence of drink/driving under the *Road Safety Act* 1986 ('Act') s49(1)(b) and (f). At the hearing, the operator of the breath analysing instrument was called to give evidence. The operator tendered a Certificate of Analysis but did not state the instrument he operated was a breath analysing instrument within the meaning of the definition in section 3 of the Act. In finding the charges proved, the magistrate found that when the Acts and regulations were considered together with the certificate there was sufficient proof that the instrument used on the relevant occasion was a breath analysing instrument within the meaning of the definition in section 3 of the Act. Upon appeal—

HELD: Appeal dismissed.

1. It is an element of the offence under s49(1)(f) of the Act that the instrument recording the analysis be a "breath analysing instrument" within the meaning of the definition in section 3 of the Act.

***Furze v Nixon* [2000] VSCA 149; (2000) 2 VR 503; (2000) 113 A Crim R 556; (2000) 32 MVR 547, applied.**

2. There were items of evidence before the magistrate from which it could be inferred that the instrument was one within the meaning of the Act. Such items included the Certificate from the Chief Commissioner of Police authorising the operator to operate a breath analysing instrument and the certificate of analysis which stated that the certificate was produced by a breath analysing instrument within the meaning of the Act.

3. A number of recent decisions of the Court of Appeal have indicated a change in the approach to the interpretation of the drink/driving provisions of the Act. Further, the Act has been amended to allow a Certificate of Analysis to be tendered notwithstanding that notice may have been given requiring the operator of the instrument to be called as a witness. The cases emphasise the duty of the Court to give effect to the purpose of the legislation in relation to drink/driving matters.

4. In considering these matters, there was evidence before the magistrate upon which he might have come to the conclusion that the apparatus used by the operator was a breath analysing instrument within the meaning of section 3 of the Act.

BALMFORD J:

1. This is an appeal under section 92 of the *Magistrates' Court Act* 1989 from a final order made on 7 May 2001 in the Magistrates' Court at Dandenong, constituted by Mr Clifford, Magistrate, convicting the appellant of a charge laid under section 49(1)(f) of the *Road Safety Act* 1986 ("the Act"), ordering him to pay a fine of $800.00 and $33.00 Court costs, cancelling all licences held by him under the Act and disqualifying him from obtaining any such licence for a period of 18 months commencing on 7 May 2001.

2. On 5 June 2001 Master Wheeler stayed all of those orders until the hearing and determination of this appeal, and ordered that the question of law raised by this appeal is:

> Whether there was any evidence before the learned Magistrate that the apparatus sworn to have been used by the Respondent, Ian Colin Campbell, was a breath analysing instrument within the meaning of the Act, section 3 and/or part 5 thereof.

3. This question does not accord with the manner in which the appeal was, without objection, argued, as appears from the opening paragraph of the written submissions of counsel for the appellant and the submissions of counsel for the respondent. Further, the definition of "breath analysing instrument" in section 3 of the Act is expressed to operate "in this Act", and the reference to part 5 in the question as originally drafted is superfluous. In *Pettet v Readiskill* [1999] VSC 195 I adopted a passage from the judgment of Ashley J in *Popovski v Ericsson Australia Pty Ltd* [1998] VSC 61. His Honour, having formed the view that the parties should not be shut out from making certain specific contentions which were not available under the order of the Master, continued at [30]:

> The way in which the issue(s) could be entertained appeared to be by my giving a direction under Rule 58.13. That was the course taken in *DPP v Hinch* (Supreme Court of Victoria, unreported, judgment 5 August 1994) where Mandie J said this:
>
> > Mr Graham submitted that Rule 58.13 broadly empowered the Court to deal with questions that arise at the hearing whether by way of amendment of the order or by simply directing that the matter be dealt with in the light of the arguments that had been advanced. I doubt that this power would extend to directing the amendment of the Master's Order having regard to the rules and practice in relation to the amendment of orders (see Rule 36.01(1) and Rule 36.01(9) and Rule 36.07). I am satisfied, however, that the Rule does empower the Court to direct in an appropriate case that the appeal be decided upon the questions of law identified and canvassed in the arguments advanced, where this is necessary to achieve the effective, complete and economic determination of the appeal and is otherwise just and convenient.

See also *Buckman v Barnawatha Abattoirs* (Supreme Court of Victoria, unreported, judgment 14 July 1994), where Smith J adopted the same course.

> ... It was not suggested that the formal direction could not be given in the course of final disposition of the appeal.

4. In the light of the same considerations as moved Ashley J in *Popovski*, given the manner in which the appeal was argued, and being satisfied that no injustice would thereby be done to either party, I direct that the appeal be decided on the basis that the question be read as though expressed in the following terms:

> Whether there was any evidence upon which the learned Magistrate, properly directing himself, could have concluded that the apparatus sworn to have been used by the Respondent, Ian Colin Campbell, was a breath analysing instrument within the meaning of section 3 of the *Road Safety Act* 1986.

5. The relevant provisions of the Act are sections 3, 49, 55 and 58 which read as follows so far as relevant:

> **3. Definitions**
> (1) In this Act—
> ...
> "breath analysing instrument" means—
> (a) the apparatus known as the Alcotest 7110 to which a plate is attached on which there is written, inscribed or impressed the numbers "3530791" ...
>
> **49. Offences involving alcohol or other drugs**
> (1) A person is guilty of an offence if he or she—
> ...
> (b) drives a motor vehicle or is in charge of a motor vehicle while more than the prescribed concentration of alcohol is present in his or her blood; or
> ...
> (f) within 3 hours after driving or being in charge of a motor vehicle furnishes a sample of breath for analysis by a breath analysing instrument under section 55(1) and—
> (i) the result of the analysis as recorded or shown by the breath analysing instrument indicates that more than the prescribed concentration of alcohol is present in his or her blood; and
> (ii) the concentration of alcohol indicated by the analysis to be present in his or her blood was not due solely to the consumption of alcohol after driving or being in charge of the motor vehicle;
> ...
> **55. Breath analysis**
> (1) If a person undergoes a preliminary breath test when required by a member of the police force

… under section 53 to do so and—
(a) the test in the opinion of the member … in whose presence it is made indicates that the person's blood contains alcohol;
…
any member of the police force … may require the person to furnish a sample of breath for analysis by a breath analysing instrument and for that purpose may further require the person to accompany a member of the police force … for the purposes of section 53 to a police station or other place where the sample of breath is to be furnished and to remain there until the person has furnished the sample of breath and been given the certificate referred to in sub-section (4) or until 3 hours after the driving, being an occupant of or being in charge of the motor vehicle, whichever is sooner.
…
(3) A breath analysing instrument must be operated by a person authorised to do so by the Chief Commissioner of Police.

(4) As soon as practicable after a sample of a person's breath is analysed by means of a breath analysing instrument the person operating the instrument must sign and give to the person whose breath has been analysed a certificate containing the prescribed particulars produced by the breath analysing instrument of the concentration of alcohol indicated by the analysis to be present in his or her blood.

58. Evidentiary provisions — breath tests

(1) If the question whether any person was or was not at any time under the influence of intoxicating liquor or if the question as to the presence or the concentration of alcohol in the blood of any person at any time or if a result of a breath analysis is relevant—
…
(c) on a hearing for an offence against section 49(1) of this Act—
then, without affecting the admissibility of any evidence which might be given apart from the provisions of this section, evidence may be given of the concentration of alcohol indicated to be present in the blood of that person by a breath analysing instrument operated by a person authorised to do so by the Chief Commissioner of Police under section 55 and the concentration of alcohol so indicated is, subject to compliance with section 55(4), evidence of the concentration of alcohol present in the blood of that person at the time his or her breath is analysed by the instrument.
(2) A document purporting to be a certificate containing the prescribed particulars produced by a breath analysing instrument of the concentration of alcohol indicated by the analysis to be present in the blood of a person and purporting to be signed by the person who operated the instrument is admissible in evidence in any proceedings referred to in sub-section (1) and … is conclusive proof of—
(a) the facts and matters contained in it; and
(b) the fact that the instrument used was a breath analysing instrument within the meaning of this Act; and
(c) the fact that the person who operated the instrument was authorised to do so by the Chief Commissioner of Police under section 55; and
(d) the fact that all relevant regulations relating to the operation of the instrument were complied with; and
(e) the fact that the instrument was in proper working order and properly operated; and
(f) the fact that the certificate is identical in its terms to another certificate produced by the instrument in respect of the sample of breath and that it was signed by the person who operated the instrument and given to the accused person as soon as practicable after the sample of breath was analysed—
unless the accused person gives notice in writing to the informant not less than 28 days before the hearing, or any shorter period ordered by the court or agreed to by the informant, that he or she requires the person giving the certificate to be called as a witness or that he or she intends to adduce evidence in rebuttal of any such fact or matter.

(2A) A notice under sub-section (2) must specify any fact or matter with which issue is taken and indicate the nature of any expert evidence which the accused person intends to have adduced at the hearing.
…
(2D) A certificate referred to in sub-section (2) remains admissible in evidence even if the accused person gives a notice under that sub-section but, in that event, the certificate ceases to be conclusive proof of the facts and matters referred to in that sub-section.
…
(4) Evidence by a person authorised to operate a breath analysing instrument under section 55—
(a) that an apparatus used by him or her on any occasion under that section was a breath analysing instrument within the meaning of this Part;
(b) that the breath analysing instrument was on that occasion in proper working order and properly operated by him or her;
(c) that, in relation to the breath analysing instrument, all regulations made under this Part with

> respect to breath analysing instruments were complied with—
> is, in the absence of evidence to the contrary, proof of those facts.
> (5) The statement on oath of a person authorised to operate a breath analysing instrument under section 55 when called as a witness that any apparatus used by him or her on any occasion under section 55 had written, inscribed or impressed on some portion of it or on a plate attached to it the expressions "Alcotest 7110" and "3530791"... is, in the absence of evidence to the contrary, proof that the apparatus is a breath analysing instrument within the meaning of this Act.

6. The evidence in this matter appears from the affidavit of the appellant and the exhibits thereto. On 7 September 2000, at Oakleigh, the appellant underwent a breath test, as a result of which he was charged with offences under sections 49(1)(b) and 49(1)(f) of the Act. The charge under paragraph (b) was found proved, but was dismissed and the appellant was convicted of the charge under paragraph (f) as set out in [1] above. The unchallenged evidence of the respondent ("the informant") was that the breath test showed a blood alcohol concentration of 0.095%.

7. A notice under section 58(2) of the Act was served on the informant, taking issue on a number of matters. At the outset of the hearing before the Magistrate an objection to that notice by the prosecution was heard and rejected. The only matter in issue on the appeal is the question set out in [4] above. As the Court of Appeal said in *Furze v Nixon* [2000] VSCA 149; (2000) 2 VR 503 at [10]; (2000) 113 A Crim R 556; (2000) 32 MVR 547 the offence created by section 49(1)(f) "depends only upon 'the result of the analysis as recorded or shown by the breath analysing instrument': nothing more and nothing less." Thus it is an element of the offence that the instrument recording the analysis be a "breath analysing instrument" within the meaning of the definition in section 3 of the Act.

8. On that issue the Magistrate said:

> The next submission made by Mr Hardy was that there was no evidence from the informant that the machine upon which the defendant was required to furnish a sample of breath at the police station was a properly authorised machine.
>
> The informant did not give verbal evidence of that fact. However, he did supply a certificate upon which the name of the machine namely Drager Alcotest 7110 is clearly imprinted. The serial number of the machine is included. That document forms part of the informant's evidence.
>
> That document was not challenged when tendered. In addition all relevant Acts and regulations were tendered by the prosecutor at the commencement of the case.
>
> It is my view that the tender of those Acts and regulations combined with the uncontested certificate is sufficient proof the machine is an authorised breath analysis machine.

9. In *Spurling v Development Underwriting (Vic) Pty Ltd* [1973] VicRp 1; [1973] VR 1 at 11; (1972) 30 LGRA 19 Stephen J said:

> In the case of decisions of magistrates the position in Victoria is well established by a line of decisions culminating in *Taylor v Armour & Co. Pty Ltd* [1962] VicRp 48; [1962] VR 346; (1961) 19 LGRA 232, in which the Full Court of this State held that in the case of any question of fact the Court should treat the matter as an appeal from the verdict of a jury and should not make up its own mind upon the evidence but rather confine itself to seeing whether there was evidence upon which the magistrate might, as a reasonable man, come to the conclusion to which he did come. In saying this the Full Court stated that it was following the view of Herring CJ, in *Young v Paddle Bros Pty Ltd* [1956] VicLawRp 6; [1956] VLR 38; [1956] ALR 301. The Chief Justice, in that case, adopted as the test whether "on any reasonable view of the evidence that decision can be supported"; a party aggrieved can thus only succeed if a decision contrary to the view of the magistrate is "the only possible decision that the evidence on any reasonable view can support" (see at VLR p41).

10. Mr Hardy, for the appellant, submitted that there was no evidence before the Magistrate that the instrument bore the numbers "3530791" as required by the definition of "breath analysing instrument" in section 3. The notice given under section 58(2) (see [7] above) had the effect that the certificate ceased to be conclusive proof under section 58(2)(b) that the instrument was "a breath analysing instrument within the meaning of this Act". Evidence was given by the informant, who was the authorised operator of the instrument. However, he did not give evidence that the instrument bore the numbers "3530791" so as to obtain the assistance of section 58(5). Nor did

he give evidence that the instrument was a breath analysing instrument within the meaning of Part 5 of the Act, in which sections 49, 55 and 58 appear, so as to obtain the assistance of section 58(4). No other evidence that the instrument bore those numbers was called.

11. Accordingly, Mr Hardy submitted, the certificate produced by the instrument was not admissible under section 58(1) as evidence of the concentration of alcohol indicated to be present in the blood of the appellant for the purposes of section 49(1)(f), there being no evidence that the instrument which produced the certificate was "a breath analysing instrument". That being so, the prosecution had not established that the reading of 0.095% was "recorded or shown by [a] breath analysing instrument", as required by that provision. He conceded that the certificate would be admissible for other purposes not here relevant and on other grounds.

12. Mr Trapnell, for the respondent, did not challenge the submissions of Mr Hardy as to the evidence set out in [10] above. He referred to the ability of a tribunal of fact to make findings on the basis of inferences. His submission was that on the totality of the evidence it was open to the Magistrate to infer that the instrument was a breath analysing instrument within the meaning of the Act.

13. Items of unchallenged evidence before the Magistrate which are relevant to that submission include:

> (i) The questions put by the informant to the appellant in the context of the breath test, and the answers received. Questions 43a and 43b read, "I now require you to undergo a breath test pursuant to section 55 of [the Act]. Will you provide a sample of your breath for analysis?" The answer to those questions was "Yes". Evidence was given before the Magistrate of the taking of the sample which followed that interchange. Thus, Mr Trapnell submitted, the Magistrate was entitled to infer from the tenor of the evidence to that stage that what was being conducted was the furnishing of "a sample of breath for analysis by a breath analysing instrument" in terms of section 55; in other words, a breath test by a breath analysing instrument as defined in section 3.
>
> (ii) The certificate from the Chief Commissioner of Police pursuant to section 55(3) of the Act authorising the informant to operate a breath analysing instrument. As to that, Mr Trapnell submitted, the Magistrate was entitled to infer that an authorised operator would not be using an instrument which did not comply with the requirements of the Act.
>
> (iii) The informant's evidence that "the serial number on our machine is 0032". The adjective "our" must have been intended to convey that the instrument having a serial number of 0032 is operated by the unit of the Victoria Police to which the informant belongs. The Magistrate might be entitled to infer that, given the requirements of the legislation, the Victoria Police would not be operating an instrument which was not a "breath analysing instrument" within the meaning of the Act.
>
> (iv) The certificate produced by the instrument which, as a result of the notice having been given under section 58(2), was admissible by virtue of section 58(2D). Mr Trapnell submitted that what was admissible under that provision was "a certificate referred to in sub-section (2)"; that is "a document purporting to be a certificate containing the prescribed particulars produced by a breath analysing instrument". It was only admissible if it was such a document. Again, he submitted, the Magistrate was entitled to infer from that tender that the certificate was produced by a breath analysing instrument within the meaning of the Act.

In that context, Mr Trapnell referred to the judgment of the Court of Appeal in *Furze v Nixon* at [19] where their Honours said:

> Once notice has been given under s 58(2) the document purporting to be the certificate described in the subsection ceases to be conclusive proof of anything; so much is provided expressly by subs (2D). It remains, however, "admissible in evidence" which means, in our opinion, that it is to constitute evidence of the matters stated in it. … The word "remains" was intended only to refer to the fact that the certificate was to have residual evidentiary value, a value depending then upon the contents of the document rather than upon the provision dealing with its conclusive effect in the absence of notice.

He submitted that the certificate was thus evidence of the fact that, as it stated, it was produced by a Drager Alcotest 7110, with a serial number MRFK-0032 (as to which see sub-paragraph (iii) above).

> (v) The evidence of the informant that the instrument was in proper working order, was operated in

> accordance with the procedures laid down in the breath test operations manual, that he operated it correctly and that he operated it in accordance with the regulations; all of which matters, Mr Trapnell submitted, would assist the Magistrate in drawing the inference that the instrument complied with the definition in the Act.

14. Mr Hardy cited a number of passages from the judgment of Ormiston J in *Bogdanovski v Buckingham* [1989] VicRp 80; [1989] VR 897; (1988) 9 MVR 257, relating to the provisions of the legislation as they then stood. His Honour said at 904:

> In my opinion, in order for the prosecution to rely on a provision such as subs(4)(a) of s58, the witness must use language substantially corresponding with the language of the relevant paragraph. Sections of this kind, bearing as they do on the onus of proof in a criminal prosecution, should be construed with some strictness. … what was said by Constable Cornwell in his affidavit … in no way suggested that the provision contained in this paragraph was thereby relied upon. It is sufficient to say that the evidence departed so much from the language of the paragraph that it cannot be treated as satisfying its requirements. …

And at 916:

> Likewise I cannot accept that, because the operator said he had complied with all regulations relating to the operation of breathalyzers, it followed that it was "an approved instrument" even if that be a relevant assertion.
>
> … it does not follow that, because a witness asserts that he properly operated a breathalyzer, at the same time he is giving evidence that it was a breath analysing instrument as defined in s3(1). Because he failed to use the language of subs(4) or (5) of s58 and because he failed to describe the instrument in any way which would enable the court to ascertain whether that instrument complied with either paragraph of the definition, there was no evidence as to that critical fact. On this aspect of the case, therefore, the magistrate was wrong, whether or not he drew an inference that the instrument was an approved instrument, or whether he had gone further, as he did not, in inferring that it was a "breath analysing instrument" as defined.

15. Mr Hardy went on to refer to other authorities. Marks J in *Lisiecki v Grigg* (1990) 10 MVR 336 at 340 said:

> If the plaintiff had complied with the requirement and the instrument was not proved to have been a "breath analysing instrument" within the meaning of the Act he could not have been convicted, as Ormiston J decided, I think correctly, in *Bogdanovski v Buckingham* [1989] VicRp 80; [1989] VR 897; 9 MVR 257 of any offence based on the result of such a test.

Crockett J said in *Cummins v Dalton* (unreported, decided on 10 February 1982) at p3 where the issue was similar:

> The point taken is a narrow and, indeed, technical one. Nevertheless, the point relates to an alleged deficiency of proof of an offence which is a serious one and which can attract, and in this case has attracted, a substantial penalty. The applicant is accordingly, quite entitled to rely upon the point taken no matter how devoid of merit it might be. So, correspondingly, is the prosecution under an obligation to ensure that all proper proofs, no matter how technical, are made out in a prosecution of this nature.

That passage was adopted by Nicholson J in *Robertson v Smith* (unreported, decided on 27 July 1983). Similar passages were cited by Mr Hardy from the judgments of Hedigan J in *Entwistle v Parkes* (unreported, decided on 25 September 1992) and Hansen J in *Jones v Purcell* (unreported, decided on 19 July 1995).

16. All of the cases on which Mr Hardy relied were decided by single judges. Mr Trapnell submitted that a number of recent decisions of the Court of Appeal indicated a change in the approach to the interpretation of the Act. Further, the legislation had been significantly amended in 1994, notably by the inclusion of section 58(2D), permitting the tender of the certificate after a notice had been given under section 58(2).

17. In *DPP v Foster* [1999] VSCA 73; [1999] 2 VR 643; (1999) 104 A Crim R 426; (1999) 29 MVR 365 Winneke P, with whom Ormiston and Batt JJ A agreed, said at [52] and [53], after referring to earlier decisions:

> The process of reasoning which seems to underlie those decisions stems not so much from an interpretation of the words "furnish a sample of breath for analysis ... under s 55(1)" but rather from an assumption that the legislative intent which lies behind s55(1) is to protect the interests of the motorist. This assumption has led the courts to construe more strictly the discretionary powers of "requirement" and to convert them into obligations, as distinct from powers. Thus it is said that the legislative purpose behind s55(1) is not to invest the police with a power to facilitate the objects of the statute, but rather to impose a "duty to inform" the motorist of the reason why his or her liberty is being curtailed: see, for example, *Dalzotto v Lowell* [unreported, decided on 18 December 1992 by Ashley J] at p8-p9; *McCardy v McCormack* [[1994] VicRp 73; [1994] 2 VR 517; (1994) 20 MVR 275] at p522-p523).
>
> [53] Of course the investiture of increased police power has, as its necessary corollary, an increased incursion into civil liberties. However, whilst any invasion of personal liberty is bound to provoke disquiet, the courts cannot afford to lose sight of the fact that the undisputed aim of Pt 5 of the Act is to combat and reduce a recognized social evil in a manner which can only be achieved by empowering the police, in the overriding community interest, to intrude upon personal liberties, albeit not in a necessarily hostile or coercive way. If, as I think, the underlying purpose of s 55(1) is to invest the police with facilitative powers in order that these objects can be achieved, it cannot be correct to judicially convert that purpose from "a power to require" into a "duty to inform". Yet, as it seems to me, that is what his Honour has done in these cases by accepting the process of reasoning adopted in *Dalzotto* and *McCardy.*

18. Similarly, in *Thompson v Judge Byrne* [1999] HCA 16; (1999) 196 CLR 141; (1999) 161 ALR 632; (1999) 73 ALJR 642; (1999) 29 MVR 1; (1999) 7 Leg Rep 27, where the High Court was concerned with a charge under section 49(1)(f) of the Act, Gleeson CJ, Gummow, Kirby and Callinan JJ said at 149-50:

> The language of the Act is clear and unambiguous. The duty of a court is to give effect to the purpose of Parliament as expressed in that language. That obligation is not altered because the Act is penal in character. ... even accepting that the offence provided by paragraph (f) is a far-reaching one, it is clearly enacted, as the stated purposes of the Part of the Act in which it appears make plain, to deal with a major social problem. The provision of the offence in such terms is the means by which Parliament has sought to achieve those generally stated purposes, viz to reduce the number of motor vehicle collisions to which alcohol or other drugs are causally related, to reduce the number of drivers whose driving is impaired by such causes and to provide a simple and effective means of establishing the presence in the blood of a driver of more than the legal limit of alcohol.

19. Most recently, in *Sher v DPP* ([2001] VSCA 110; (2001) 34 MVR 153; (2001) 120 A Crim R 585, decided on 2 August 2001) the Court of Appeal, constituted by Brooking, Batt and Buchanan JJ A, said at [2]:

> Parliament does its best to keep drunk drivers off the streets. But the hydra of technicality is a many-headed beast, and as one unattractive point is cut off another rears up in its place. The Courts must do their best too.

See also *Venezia v Marshall* [2001] VSCA 160; (2001) 120 A Crim R 596; (2001) 34 MVR dismissing an appeal from the judgment of Gillard J in *Venezia v Marshall* [2001] VSC 87; (2001) 33 MVR 269.

20. The cases emphasise the duty of the Court to give effect to the purpose of legislation. For completeness, I would refer to the direction in section 35 of the *Interpretation of Legislation Act* 1984 that:

> In the interpretation of a provision of an Act or subordinate instrument—
> (a) a construction that would promote the purpose or object underlying the Act or subordinate instrument (whether or not that purpose or object is expressly stated in the Act or subordinate instrument) shall be preferred to a construction that would not promote that purpose or object; ...

21. Section 47 of the Act provides that the purposes of Part 5, which includes sections 47 to 58A, are (as also appears from the judgment cited in [18] above from *Thompson v Judge Byrne*) to:

> (a) reduce the number of motor vehicle collisions of which alcohol or other drugs are a cause; and
> (b) reduce the number of drivers whose driving is impaired by alcohol or other drugs; and
> (c) provide a simple and effective means of establishing that there is present in the blood of a driver more than the legal limit of alcohol.

22. Considering the matters to which I have referred in the light of the passage cited in [9] above from *Spurling v Development Underwriting (Vic) Pty Ltd*, I am satisfied that there was evidence before the Magistrate upon which, as a reasonable person, he might have come to the conclusion to which he did come. I could not find that a decision contrary to the view of the Magistrate is the only possible decision that the evidence on any reasonable view can support. The answer to the question before the Court is accordingly Yes.

23. For the reasons given, the appeal will be dismissed with costs.

APPEARANCES: For the appellant Impagnatiello: Mr GA Hardy, counsel. Michael Rickards, solicitors. For the respondent Campbell: Mr D Trapnell, counsel. Solicitor for Public Prosecutions.
