

16/96

SUPREME COURT OF VICTORIA

TSOLACIS v KELLY

O'Bryan J — 23, 27 May 1996

MOTOR TRAFFIC – DRIVING – DUTY OF DRIVER TO STOP AND GIVE NAME AND ADDRESS IF REQUESTED – DRIVER REQUESTED AFTER VEHICLE STATIONARY – WHETHER DRIVER IS “DRIVER” – MEANING OF: ROAD SAFETY ACT 1986 S59(1).

Section 59(1) of the *Road Safety Act* 1986 ('Act') provides (so far as relevant):

“(1) The driver of a motor vehicle on a highway has the following duties:

(a) to stop the motor vehicle, produce for inspection his or her driver's licence...and state his or her name and address if requested or signalled to do so by—

(i) a member of the police force...;”

1. For the purposes of s59(1) of the Act, a person is the driver of a motor vehicle when the vehicle is in motion and remains the driver when a request is made although the driver has finished the journey and alighted from the vehicle.

2. Accordingly, it was open to a magistrate to find a breach of s59(1) of the Act proved where a person refused to state his name and address after he had parked his vehicle and alighted from it.

O'BRYAN J: [1] This is an appeal from orders made in the Magistrates' Court at Prahran on 5 June 1992 whereby the appellant was convicted of two charges laid pursuant to s59(1) of the *Road Safety Act* 1986 and ordered to pay a fine of \$50 with \$40 statutory costs on charge No.1 and to pay a fine of \$50 on charge No.2. The first charge alleged that: “The defendant at Richmond on the 15th of June 1991 did, being the driver of a motor vehicle on a highway, to wit Bliss Street, and when requested by a member of the police force to state your name and address, you did fail to do so.” The second charge alleged that: “The defendant at Richmond on the 15th of June 1991, being the driver of a motor vehicle on a highway, to wit Bliss Street, and when requested by a member of the police force to produce your driver's licence to drive the said vehicle, did fail to do so.” These charges were laid pursuant to s59(1) of the *Road Safety Act* 1986 which relevantly provides: *[After setting out this provision, His Honour continued]...*

The facts may be briefly summarised from the appellant's affidavit. These facts are not disputed by the respondent. On 15 June 1991 around 2:50am the appellant was driving a motor vehicle along Burnley Street, Richmond. The vehicle turned into Bliss Street and became stationary at [2] the kerb. The respondent, a member of the police force, was driving a police vehicle in Burnley Street which followed the appellant's vehicle into Bliss Street. The respondent's vehicle stopped a few feet behind the appellant's vehicle and the respondent approached the appellant as soon as the appellant alighted from his vehicle. The respondent had not signalled or requested the appellant to stop while the appellant was driving or parking his vehicle. The respondent requested the appellant to produce his licence and state his name and address. The respondent refused to comply with both requests on the ground that he “was not driving at the time”. The respondent gave evidence that he was driving home from work at the time and while he was parking his car noticed another vehicle a short distance behind his vehicle. He said he was in the process of getting out of his car “been outside and about to close the driver's door”, was approached by the respondent and requested to show his licence and state his name and address. He refused to do so. The learned Magistrate found the charges proved and the appellant appealed the decision.

The questions of law raised by the appeal are:

(a) whether for the purpose of s59(1)(a) of the *Road Safety Act* the appellant was at the relevant time the driver of a motor vehicle on a highway;

(b) whether for the purpose of s59 the request by a member of the police force referred to in the section is required to be made at a time when the person to whom it is made is the driver of a motor vehicle on a highway.

[3] The second question of law is a nonsense and does not address the point of law the appellant wished to have determined by this Court. The appellant, who appeared for himself, submitted that upon the proper construction of the word “driver” in s59 “driver” means a person who has control of or is in charge of a motor vehicle on a highway. He further submitted that because he had come to the end of his journey he was neither in control nor in charge of a motor vehicle. Mr Meehan of counsel for the respondent submitted that on the proper construction of s59 the word “driver” includes one who is actually driving and one who has finished his journey and is in the course of alighting from his vehicle when the relevant request is made by a police officer.

The word “driver” is not defined in the Act but is defined in the *Transport Accident Act 1986* to include “a person who is in charge of the motor car or motor vehicle” (s3). No help is derived from this definition, however. The primary meaning of the word “driver” given in the *Oxford Dictionary* is “one who drives”. Some persons might use the word driver to describe a person sitting in the driver’s seat but the person so sitting may not be intending to drive the car on a highway. The appellant had been driving a motor vehicle on a highway shortly before he alighted from the vehicle in Bliss Street. Did he cease to be “the driver” when the vehicle became stationary or, when the engine was stopped, or when he opened the door to alight or, when he stood on the roadway? In my opinion, the proper construction of s59(1) means that the appellant was “the driver” when the vehicle was in motion and he remained the driver when the [4] request was made although he had finished his journey and had alighted from his vehicle.

It would make a nonsense of the duties imposed upon a driver by ss(1) if the section is construed narrowly to mean “one who is driving”. A request to produce a licence and state name and address could only be made to one whose vehicle is stationary. The section does not require that a request to produce a licence or state name and address be coincident with “driving” the vehicle. Such a requirement would be impractical. The second and third duties imposed by s59(1)(a) cannot be avoided by a person who is driving a vehicle stopping it and alighting to the roadway. The three duties imposed by s59(1)(a) on a driver are separate and distinct. The legislature intended, in my opinion, that the first duty “to stop the motor vehicle”, will arise when the vehicle is being driven and that the second duty, to produce a licence and the third duty, to state name and address, will arise when the vehicle is stationary. I do not accept that the second and third duties cease if the person recently driving the vehicle simply alights to the roadway at the cessation of their journey.

The decision of the Court of Appeal in *Jones v Prothero* (1952) 1 All ER 434 is of assistance, in my opinion. The appellant was charged with a breach of s22 of the *Road Traffic Act 1930* in that being the driver of a motor vehicle he failed to report an accident which occurred when he opened the driver’s door and struck a cyclist. The appellant had stopped the vehicle, switched off the engine and remained seated in the driver’s seat talking to a passenger for ten minutes or so before the accident. The appellant argued that he may have been in charge of the car but in law was not the [5] driver. The Court refused to give a narrow meaning of the word “driver” for to do so would nullify the whole of s22. “For the purposes of that section the ‘driver’ is the person who takes out the vehicle, and he remains the driver until he finishes his journey.”

In the present case the acts of the appellant in driving, parking and alighting to the roadway were so contemporaneous with the requests that the learned Magistrate was entitled to find the appellant was at the relevant time the driver of a motor vehicle on a highway. The requests were coincident with the driving of the motor vehicle by the appellant. For these reasons the appeal is dismissed and the appellant is ordered to pay the taxed costs of the respondent.

APPEARANCES: The Appellant appeared in person. For the Respondent: Mr W Meehan, counsel. Solicitors: PC Wood, Solicitor to the DPP.