



Magistrates' Court
Victoria

MAGISTRATES CASES 1996

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SUBJECT MATTER

BAIL

Application for bail - Accused charged with being knowingly concerned in importation of approx. 5kgs of heroin - must show "exceptional circumstances" before release on bail - meaning of "exceptional" - normal delay of itself cannot amount to exceptional circumstances: 11/96

CIVIL PROCEEDINGS

Discovery - order not complied with - complaint dismissed - such a course a very extreme measure - order of dismissal quashed: 5/96

Motor vehicle collision - negligence - duty of care - driver's view obscured by bend in road - negligent in approaching bend too fast: 20/96

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Against legal practitioner - court must first give practitioner an opportunity to be heard: 32/96

Defendant partially successful - acquitted on one, convicted on two charges - not "a successful defendant" - no error in court refusing application for costs: 33/96

On an adjournment - ascertain whether prosecutor and informant have incurred expense - if so, inappropriate to use civil scale: 6/96

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Application for award - Proposal by Tribunal to notify "alleged offender" - applicant for award should have opportunity to make submissions to Tribunal: 31/96

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Administering substance without lawful excuse - "without lawful excuse" - administration of a substance to help a person sleep not a "lawful excuse": 27/96

Application for physical examination - test to be applied - that the conduct of the procedure may tend to confirm or disprove a person's involvement in the offence: 25/96

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Community-based orders breached - two offences - not double jeopardy - County Court sentencing court - supervising court Magistrates' Court to refer breach to County Court: 10/96

Drugs - knowingly concerned in importation of approx. 5kgs of heroin - must show exceptional circumstances for bail - meaning of "exceptional" - normal delay cannot amount to exceptional circumstances: 11/96

Handling stolen goods - elements of charge - subsequent knowledge or belief not part of charge: 12/96

Possession of regulated weapon - extendable baton - possessed for resale in security business - lawful excuse: 1/96

Record of interview - admissions made but not taped - subsequently confirmed in tape-recorded interview - admissions not admissible - "anything said": 15/96

Suppression order - publication may deter persons from giving evidence - appropriate to make order: 21/96

Theft of motor vehicle - vehicle returned to owner - accused deprived of opportunity of inspection - not abuse of process - "motor vehicle": 28/96

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MOTOR TRAFFIC

Drink/Driving—

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Certificate - signed by legally qualified medical practitioner - should have been signed by "registered medical practitioner" - certificate admissible - presumption of continuance - "properly qualified analyst": 26/96

Certificate - wrongly admitted - evidence given by operator - defendant properly convicted: 2/96

Notice to call expert evidence - strict compliance with procedural requirement not necessary - bona fide defence should not be shut out: 9/96

Offence under s49(1)(f) of Road Safety Act 1986 - one of strict liability - defence of honest and reasonable mistake not available - finding of 0.03%BAC - conviction imposed in error: 3/96

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SUBJECT MATTER

Requirement for blood sample - must be reasonable - person consented - delay not unreasonable - requirement reasonable - "nominated by" - specific medical practitioner not necessary to be stated: 22/96

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Abuse of process - agreement to plead guilty if other charges dropped - if such agreement made, any continuation of summary charges would amount to an abuse of process: 29/96

Abuse of process - seized vehicle returned to owner - accused deprived of opportunity of inspecting vehicle - not an abuse of process: 28/96

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Application for physical examination - test to be applied - that conduct of the examination may tend to confirm or disprove person's involvement in commission of offence: 25/96

Authority to prosecute - certificate with incorrect year - "slip" - change of Department - office not abolished - dismissal of charges not justified: 19/96

Charge and summons - venue - "Place of residence" - how ascertained: 2/96

Community-based orders - both breached - two offences - not double jeopardy - where sentencing court is County Court, breach to be referred to County Court: 10/96

Discovery - in civil proceedings - order not complied with - complaint dismissed - should only be made in certain circumstances - dismissal order quashed: 5/96

Intensive correction order breached - options open to sentencing court - "vary": 17/96

Notice of intention to call expert witness - procedural requirement - strict compliance not necessary: 9/96

PERIN - application for revocation - procedure to be followed by Court similar to that of a rehearing application: 7/96

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Record of interview - admissions made but not taped - subsequently confirmed in tape-recorded interview - admissions not admissible - "anything said": 15/96

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Suppression order - publication may deter persons from giving evidence - could prejudice administration of justice - appropriate to make order: 21/96

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Intensive correction order breached - options open to sentencing court - "vary": 17/96

Two community-based orders - both breached - two offences - not double jeopardy - supervising court to refer breach to County Court for sentencing: 10/96

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[Note: Words and phrases judicially considered are in inverted commas. Ed.]

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