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SUPREME COURT OF VICTORIA

PALLERO v GLADMAN

Lush J

15, 18 September 1978 — [1979] VicRp 18; [1979] VR 197

MOTOR TRAFFIC – MAKE FALSE STATEMENT IN ATTEMPTING TO OBTAIN A MOTOR CAR DRIVER'S LICENCE – MEANING OF "FALSE" – CHARGE FOUND PROVED – WHETHER COURT IN ERROR: MOTOR CAR ACT 1958, S85.

The defendant (assisted by an interpreter) in his application for a driver licence incorrectly stated in answer to a question from the licence-tester that he had never been convicted of an offence in connection with the driving of a motor vehicle. He had previously been convicted in a Magistrates' Court of unlicensed driving. He was subsequently charged with the offence of attempting to obtain a driver licence by a false statement and was convicted. Upon Order nisi to review—

HELD: Order nisi discharged.

1. When a licence applicant attends accompanied by an interpreter for the purpose of making an application, and after the participation of the interpreter signs the application without asking to have it read over, then the statements in that form are adopted by the licence applicant as his statements.

2. The conclusion that emerges from the authorities is that the meaning of the word "false" must be derived from its context both in terms of words and in terms of subject matter and it appears that in the end it is the verbal context which is decisive in this case.

3. S85(a) refers to any false statement or any misrepresentation. It is not open to doubt that the word "misrepresentation" used by itself in most contexts, and certainly in this, does not imply dishonesty. It denotes inaccuracy. The alternative bases for the offence created by s85(a) are, then, the potentially ambiguous expression "false statement" and the morally neutral expression "misrepresentation". The section cannot require an act of dishonesty in respect to one of those alternatives, but not in respect of the other. It is not possible to read the adjective "false" as applying to both the statement and the misrepresentation. The expression "false misrepresentation" is never used, and is an inappropriate combination of words for a number of reasons. Moreover, the arrangement of the words in the section makes it clear that "false statement" is one of the alternatives, "misrepresentation" is the other. The conclusion, therefore, is that the word "false" is used in this particular provision simply in the sense of "inaccurate".

4. Accordingly, the grounds of the Order to review do not disclose the existence of any error of law.

LUSH J: This is the return of an order nisi to review a decision of the Magistrates' Court at Preston given on 6 February 1978. The present applicant was, under the *Motor Car Act* 1958, s85, charged before that Court on information that at Greensborough on 25 August 1977 he, by making a false statement, did obtain a motor car driver's licence. After the close of the prosecution case and as a result of a submission that there was no case to answer the Court allowed an amendment of the information so that it charged under the same section that the defendant by a false statement attempted to obtain a licence.

The prosecutor called a man named Dunn who was a licence-testing officer. He produced a form of application for a driver's licence signed by the applicant on 25 August 1977 in which the following question appeared:

"11 (a) Have you ever been convicted either in Victoria or elsewhere for offences in connection with the driving including illegal use of or stealing a motor car, motor cycle or motor tractor?" The answer given was "No".

Dunn was unable to remember attending the applicant or whether the applicant was

deficient in the English language or used the services of an interpreter. He said that if an interpreter was used he generally noted the fact on the application, but that he had not done so in this case. He was cross-examined by the solicitor who appeared for the applicant, and in the course of that cross-examination he said that while he still did not remember the interview with the applicant specifically, if the applicant had had difficulty in understanding question 11(a) he would have asked him the question: "Have you been in any trouble with the courts?" He said that that was his normal practice if applicants for licences had difficulty in understanding that question.

The next prosecution witness was the informant, a constable of police. He said that on 1 October 1977, he had interviewed the applicant in company with the applicant's wife who interpreted on that occasion for him. He put to the applicant a series of questions, in his answers to which the applicant said that he did not fill in the form produced by Dunn, but the licence tester asked the questions and filled it in. He acknowledged his signature on the form and was asked "Do you remember the licence tester asking you question 11(a)?", which was then read to him. The applicant replied that he did, and he also said that he had answered "No" to that question. He was then asked whether on 21 June 1976 he had been convicted at the Moonee Ponds Magistrates' Court on a charge of driving while unlicensed and had been fined. With a difference over the amount of the fine he answered this affirmatively. He was then asked "Why did you not inform the licence tester of this conviction?" and answered: "I misunderstood the question. I thought he meant just recently." He was asked "What is your reason for making a false statement in regard to this licence application?" and he answered: "As I said before I misunderstood the question." He elaborated this by saying in response to another question: "The way he asked it I thought he meant, 'Are we in trouble now?'" The constable then asked "Didn't he ask you the question in the form that it is on the application?", and the answer was: "He asked it that way first and when I said that I didn't understand he said: 'Do you have any trouble with the court?'" Finally, he was asked "Do you say then that you misunderstood the question because of the way it was asked?" and he replied: "Yes."

The only witness called for the applicant was his wife. She said that she was a nursing aide, and was an interpreter on call for the Department of Social Security. She said of her husband simply that his English was poor. She said that at the testing station on 25 August she acted as interpreter, and translated the word "convicted" in question 11(a) into Spanish by using the word "convicto" and she said further that the significance of that word in Spanish is (I am not using her precise words, but explaining my understanding of them) that it involves a dual concept of a finding of guilty and a sentence of imprisonment. She said that if she had understood the question properly she would have translated it differently. She also gave evidence about the interview with the informant. Of that, she said that she went to the police station with the applicant, that he was asked a lot of questions, and that she acted as an interpreter. She said that the applicant was excited and sought to get away as soon as possible. *[His Honour then referred to events at the hearing which explained the circumstances in which the applicant was not called to give evidence.]*

The applicant was found guilty and fined \$50, in default imprisonment for five days. The justices did not give reasons.

The Master granted the applicant an order nisi to review on 13 April 1978, on three grounds:

- "1. The statement made by the applicant, which was false in fact, was made in the honest belief of its truth.
- "2. That the said Justices of the Peace were wrong in law in holding that the applicant had made a false statement.
- "3. That the said Justices of the Peace were wrong in law in their interpretation of s85 of the *Motor Car Act*."

It must be understood that in these proceedings, and I am referring to the means provided by statute for bringing appeals from a magistrate to the Supreme Courts this Court does not and cannot deal with questions of fact. It is not the province of this Court to decide whether the magistrates came to the correct decision or the wrong decision upon the evidence. With that

in mind, it must be immediately seen that the first ground in the order to review deals with a question of fact only. Mr Lopes, who appeared for the applicant before me, did not place before me any arguments under that ground.

Under ground two he contended in substance that there was no evidence that the applicant had made the false statement complained of and, for the purposes of this argument, he contended that since the licence tester's conversation had been conducted through the medium of an interpreter, the statement in the application could not be attributed to the applicant unless it was proved that he had adopted it as his after having the document translated to him by the interpreter. If the statement was regarded as an oral statement made to the licence tester, so far as there was evidence of it other than the document, it could not be probative until the interpreter had given evidence that the conversation had been correctly interpreted. He referred me to the cases of *Gaio v R* [1960] HCA 70; (1960) 104 CLR 419; [1961] ALR 67; 34 ALJR 266, and to *R v Zema* [1970] VicRp 73; [1970] VR 566, at p569.

Mr Uren, who appeared for the respondent, apart from contending that this argument was not within the compass of the grounds in the order nisi, contended that the situation at the tester's office was a far cry from an interrogation by a police officer of a suspect of the kind dealt with within the authorities cited.

In my opinion, this aspect of the case should be dealt with briefly. The conversation relating to the filling in of the form at the tester's office was not a police interrogation. It was the making out of an application form by the testing officer, and by that form the applicant was applying for a driving licence. He had, on the present suppositions as to fact, taken with him an interpreter to assist him in making that application. It is not necessary for me to go more closely into the position of an interpreter as agent of one or both of the parties which is discussed in *Gaio's Case*. It is sufficient for me to say that I have no doubt that when a licence applicant attends accompanied by an interpreter for the purpose of making an application, and after the participation of the interpreter signs the application without asking to have it read over, then the statements in that form are adopted by the licence applicant as his statements.

There is, of course, no dispute in the present case that the official wrote down accurately what he was told. The conclusion that the applicant must accept responsibility for the answer in the application form to question 11(a) was, in my opinion, inescapable.

I referred to an assumption as to the evidence a moment ago and I used that expression because this aspect of the case was debated before me as if it was truly a case in which two parties to a conversation, the tester and the applicant, had no common language but the gap was bridged by an interpreter. It may be considered very doubtful whether the evidence reveals any such situation. All that the applicant's wife said was that his English was poor. She did not make any statement about his ability to read. The cross-examination of the tester and his answers suggest that some part of the conversation between the applicant and the tester was conducted in English and the applicant appears to have said so in his answers to the constable on 1 October. In these circumstances, it would be, I think, impossible for this Court to say that the justices were bound to regard the situation as one in which a document was signed by a man who could not understand its language and had been wholly reliant on an interpreter.

Under ground three, Mr Lopes' argument was that properly understood, s85 required that the statement charged must be false to the knowledge of the maker and secondly, that it must have been intentionally directed to the obtaining of a licence. Mr Lopes agreed that his second argument could be expressed by saying that if the applicant is not aware that his statement will influence the grant of the licence, or may influence it in the case of an attempt, he does not commit the offence provided for in the section. Again, Mr Uren argued that this argument was not open under ground three and had some justification for doing so. However, I wish to say something about the first part of it.

The terms of s85 of the *Motor Car Act* are:

"Any person who—

(a) by any false statement or any misrepresentation obtains or attempts to obtain any licence or

registration or the renewal of any licence or registration or any certificate under this Act;...shall be guilty of an offence against this Act and liable to a penalty of not more than \$600 or to imprisonment for a term of not more than three months, and any licence or any certificate so obtained shall be void and of no effect."

Mr Lopes drew my attention to reg206 of the *Motor Car Regulations*. I read the relevant part of it, which is reg206(d):

"Any person who—

(d) wilfully makes any false or misleading statement or wilfully furnishes any false or misleading information in or with respect to any notice, declaration, statement, application or other matter required or authorized by the Act or these Regulations—

shall be guilty of an offence and, except where a penalty is elsewhere provided in these Regulations for such an offence, shall be liable to the penalty prescribed by section eighty-nine of the Act."

That penalty is a fine of not more than \$60 for a first offence.

Mr Lopes, if I may say so, very rightly abstained from any attempt to draw an inference concerning the construction of s85 from comparison with the regulation. The regulation can, as a matter of construction, exercise no influence, either for the purpose of widening or narrowing its effect, on a section in the statute itself. He did draw attention, however, to the fact that there was some overlap in the offences created by the two provisions and that it might have been possible for the present applicant to be charged with making a false statement in an application. He also drew attention to the fact that as a matter of contrast, the section but not the regulation refers to the result or purpose of that statement in the obtaining of a licence or attempting to obtain a licence and pointed out uncontradictably that the inclusion of those factors in s85 obviously imposes a task of proof upon the prosecution.

So far as the first of the two points is concerned, Mr Uren argued that it was not necessary that the false statement should be wilful. He referred me purely by way of analogy to a decision of Newton J in *McDonald v Cidoni* (unreported, 2 February 1968) relating to the offence of driving whilst disqualified. The advantage I derive from looking at that judgment is that it affords a convenient illustration of the proposition that in deciding what the requirements of a statutory offence are, it is permissible to look at the context in which the provision is to be applied in the ordinary course of human affairs. He also referred me to *Stephens v Robert Reid and Co Ltd* [1903] VicLawRp 14; (1902) 28 VLR 82; 23 ALT 242. There the phrase used was "untrue statement" and the decision was that, in its context, proof of knowledge of untruth was not required. Mr Uren also drew my attention to the use in s84 of the adverbs "fraudulently" and "knowingly" in the creation of certain offences. So far as *Stephens v Robert Reid and Co Ltd* is concerned, it illustrates the fact that unambiguous words might have been used to achieve the result Mr Uren contends for. It does not appear to me that any inference is open from contrasting the words of s84 with s85; if inferences were to be contended for then arguments both ways would be available.

I was, when Mr Lopes opened this subject, of the opinion that Mr Lopes' argument was correct and that the word "false" implied deliberate untruth or consciousness of error. The dictionary meanings of the word (I refer to the *Shorter Oxford Dictionary*) include "erroneous", "incorrect" and "unfair" as words within the first group of synonyms; the second group includes "purposely untrue", "mendacious", "deceitful", "treacherous".

It is possible to find references to a number of cases dealing in one context or another with the word "false". I cannot claim to have examined them exhaustively, but I wish to refer to two. The first of these is *R v Harrison* [1957] VicRp 15; [1957] VR 117; [1957] ALR 92. The part of that decision which is relevant to the present case deals with the *Crimes Act* 1928, s181 as amended in 1954, which referred to a wilfully false promise. In the judgment of Barry J, this part of which was concurred in by the other two Judges constituting a Full Court, his Honour said at p120: "In the section, the word 'wilfully' has the meaning of 'consciously and intentionally'...and the word 'false' has the meaning of 'lying, deceitful, dishonest'."

For the latter proposition he cited *English and Scottish Co-operative Properties Mortgage and Investments Society Ltd v Odhams Press Ltd* [1940] 1 KB 440 at p452; [1940] 1 All ER 1 at

p6, per Slessor LJ If I may say so with the greatest respect, the citation is curious. The *Odhams Press Case* was a libel case, a newspaper having published, concerning the co-operative society whose name appears in the title of the case, a headline reading "False Profit Return Charge Against Society". The society was the subject of a summons charging it under a statutory section creating an offence of "making a return in any respect false or insufficient". At the page cited by Barry J, Slessor LJ says of the word "false": "In the dictionary sense the word 'false' may mean deceitful, untrue, dishonest or it may have the meaning, and I think the more ordinary meaning, of mistaken or inaccurate or untrue without any moral obliquity." He goes on to say that in the libel case the question was how the expression "false" would be understood in the context. Goddard LJ referred to the matter at p459 KB p11 All ER. He quoted the section of the statute and said: "It may be that some day it will have to be decided,...whether those words 'makes a return... false or insufficient' mean makes a return which is merely incorrect; or whether the word 'false' there implies some conscious falsity. It is immaterial for us to consider that question in this case, because, in fact, it has been assumed throughout in this case that the word 'false' in that section, for the purpose of giving a magistrate jurisdiction to convict, means no more than incorrect. I reserve my opinion on that question: but it may very well be that the view which has here been assumed is right."

The conclusion that emerges from all the authorities which I have seen is that the meaning of the word "false" must be derived from its context both in terms of words and in terms of subject matter and it appears to me that in the end it is the verbal context which is decisive in this case. S85(a) refers to any false statement or any misrepresentation. In my opinion it is not open to doubt that the word "misrepresentation" used by itself in most contexts, and certainly in this, does not imply dishonesty. It denotes inaccuracy. The alternative bases for the offence created by s85(a) are, then, the potentially ambiguous expression "false statement" and the morally neutral expression "misrepresentation". In my opinion the section cannot require an act of dishonesty in respect to one of those alternatives, but not in respect of the other. It is not, I think, possible to read the adjective "false" as applying to both the statement and the misrepresentation. The expression "false misrepresentation" is never used, and is an inappropriate combination of words for a number of reasons. Moreover, the arrangement of the words in the section makes it, I think, clear that "false statement" is one of the alternatives, "misrepresentation" is the other. My conclusion, therefore, is that the word "false" is used in this particular provision simply in the sense of "inaccurate". I am encouraged in that conclusion, as I have said indirectly, by the treatment in the judgment of Newton J of the area of application of the provision as relevant to its construction.

The second argument put under ground three by Mr Lopes is, in my view, untenable on the facts. The whole situation existing in the tester's office at the time when the form was filled in and signed made it clear that the answers that were being given and signed were being given for the purposes of obtaining a licence. Mr Lopes, however, wants to add to that the requirement that it should appear that the applicant was aware of the significance of the answers in the obtaining or potential obtaining of a licence. If that means that in every case a defendant to this charge must be shown to have a subjective appreciation of the potential influence of the answers on the grant of a licence, it must, I think, be seen to be insupportable. It is not necessary in this case to deal with possible variations of the argument. It is possible that some special belief of a licence applicant as to materiality or immateriality might be shown and the relevance of that can be determined upon an occasion which demands its determination. Accordingly, in my opinion, the arguments under ground three must also be rejected.

I think that in general I should say that I have dealt with the first of the arguments under ground three in this case with some reluctance. I was told that the case was a test case, but that was not the reason for dealing with that particular ground in the way that I have. There are a number of unsatisfactory aspects about the case, the first of which that I shall mention is the justices' failure to give any reasons. It was this that led me to deal with the first argument presented under ground three, because if fraud was an essential part of the charge laid against the applicant it was unfortunate, to choose a mild word, that the justices should have made a finding involving fraud without expressly advert to the fact that they were doing so. The conclusion as a matter of construction which I have reached makes it unnecessary to consider that matter further. The order nisi will be discharged.

Solicitors for the defendant: Triado, Marshall and Co. Solicitor for the informant: EL Lane, Crown Solicitor.