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SUPREME COURT OF WESTERN AUSTRALIA

COLLIDGE v RUSSO

Brinsden J

20 September, 7 October 1983 — [1984] WAR 1

MOTOR TRAFFIC – INTERFERING WITH A MOTOR VEHICLE – ELEMENTS OF OFFENCE: ROAD TRAFFIC ACT 1974 (WA), S90.

Without permission of the owner, R. opened the door of the motor vehicle, leant inside the vehicle over the seat, and rummaged through the console or the glove box. R. was subsequently charged with unlawfully interfering with the mechanism or parts of the vehicle; however, the court dismissed the information. Upon order to review—

HELD: Order nisi discharged.

The phrase "interferes with the mechanism or parts of any motor vehicle" should be interpreted so as to require that the object interfered with is changed in some way.

Harris v Sumner [1979] VicRp 36; [1979] VR 343, considered.

BRINSDEN J: *[After setting out the facts, His Honour continued]:* Section 90 of the *Road Traffic Act* 1974 (WA) provides:-

"Any person who unlawfully interferes with the mechanism or parts of any motor vehicle shall be guilty of an offence under this Act."

It falls within Pt VI of the Act under the heading "Miscellaneous". There are no decided cases on the meaning of the word "interferes" in the section and the only authority relevant is the case of *Harris v Sumner* [1979] VicRp 36; [1979] VR 343 on analogous legislation. In that case it appears that s82A of the *Motor Car Act* 1958 (Vic) provided:-

"Any person who without just cause or excuse (the proof whereof shall lie upon him) tampers or interferes with a motor car owned by any other person shall be guilty of an offence."

The evidence in that case established that the defendant had touched a car parked on the apron of a service station, had opened and shut one door, and had rocked the car. Menhennitt J held that these facts did not establish an offence. The issue before the Magistrates' Court in that case was whether the evidence established that the defendant tampered with the motor car. His Honour held as a matter of ordinary language the word "tampers" involves the concept that a person interferes in some way with an object so as to change it. He went on to say at p344:-

"The word 'interferes', in my view, does not involve necessarily the same concepts, and it is unnecessary and undesirable for me to attempt to define the word 'interferes' in the context."

It will be noted that there are two differences between s90 of the Act and s82A of the Act under consideration in the Victorian court. Firstly, the words used in the latter are "tampers or interferes" whereas only "interferes" appears in s90 and also the offence in Victoria is constituted by either tampering or interfering with a motor car whereas in Western Australia the offence is committed by interfering with the mechanism or parts of a motor car. Apparently in the Victorian case it was not suggested that the actions of the defendant there amounted to interference with a motor car and His Honour did not attempt to decide the case on that basis. Dictionary definitions of the meaning of the word "interfere" are not of a great deal of help nor are judicial decisions except perhaps to emphasise what Kennedy J said in *Sykes v Barraclough* [1904] 2 KB 675 that each case must depend on its own particular facts and that "interference" is not a word of art and is not capable of precise definition. Section 90 seems to be directed to the mechanism or parts of a motor car. Policy reasons for such a section can be easily seen; a vehicle could be made unroadworthy by the unlawful intervention (to use a neutral word) of some third party concerning the mechanism or parts of a vehicle. It is my belief that the section is aimed at that sort of activity

and I should interpret the word "interferes" so as to require that the object interfered with is changed in some way. So interpreted, opening a car door or even the door of a glove box and rummaging in the glove box would not amount to interfering with the mechanism or parts of a motor vehicle. I would dismiss this appeal and discharge the order nisi.
