SUPREME COURT OF VICTORIA

KEARON v. GRANT

APPEAL DIVISION

KAYE, MURPHY and BROOKING JJ.

20–21 June 1990

Criminal law — Exceeding speed limit — Defence of honest and reasonable mistake not available — Road Safety Act 1986 (No. 127) — Road Safety (Traffic) Regulations 1988, cl. 1001(1)(c).

The defence of honest and reasonable belief is not open on a charge of exceeding 60 kilometres per hour under reg. 1001(*c*) of the Road Safety (Traffic) Regulations 1988. If the defence of honest and reasonable mistake were applicable, then mistakes could be of two kinds. There could be a mistake of fact, the fact bearing on whether one was in a speed zone, and there could be a mistake of fact as to the speed at which the vehicle was travelling. The intention here is that motorists shall at their peril be aware of the applicable speed limit, and shall then at their peril so govern their speed as to keep within it.

Order nisi

This was the return of an order *nisi* to review the decision of the Magistrates' Court which was made returnable before the Full Court. The facts are stated in the judgment of Brooking J.

S. G. O'Bryan for the applicant.

A. R. Monteith for the respondent.

Kaye J.: Brooking J. will deliver the first judgment.

Brooking J.: On 26 April 1988 the respondent, John Richard Thurbold Grant, was driving west along Princes Highway, Tynong. After passing the intersection of Fogarty Road he entered a stretch of the highway where road-work was in progress and men and machinery reduced the width of the available roadway by about one half.

Sixty kilometres per hour speed restriction signs were erected at the intersection of Fogarty Road and the Princes Highway, and another such sign was erected about halfway between Fogarty Road and Snell Road on the highway. At the intersection of Snell Road and the highway another 60 kilometres per hour sign was erected, but from Snell Road onwards, travelling west, there were no road-works in progress and so the full width of the roadway was available for use.

After passing the Fogarty Road intersection and so entering a 60 kilometres per hour zone, the respondent's car was travelling behind an unmarked police car driven by Senior Constable Kearon. After passing the intersection of Snell Road, the respondent accelerated and overtook the

police car and two trucks. According to Kearon, his speed was about 110 kilometres per hour over a substantial distance travelled on the stretch between Snell Road and Bessie Creek Road. At Bessie Creek Road, a 110 kilometres per hour sign was erected.

Kearon charged the respondent with exceeding 60 kilometres per hour in a 60 kilometre zone, contrary to cl. 1001(1)(*c*) of the Road Safety (Traffic) Regulations 1988. The information alleged the offence to have been committed on the Princes Highway between Fogarty Road and Snell Road, that is, the part of the highway where the road-works had been in progress, but the informant's affidavit, a copy of which accompanied the information, showed and so notified the defendant that the informant's case was simply that the respondent had exceeded the 60 kilometre limit between Snell Road and Bessie Creek Road.

The respondent appeared in person in the Magistrates' Court at Pakenham on 19 April 1989 to answer the charge. The informant gave evidence as did the respondent. The respondent had taken a number of photographs of the Princes Highway in preparation for the hearing, and it is clear that although he was unrepresented, and despite the terms of the information, he came to court prepared to repel the suggestion that he had broken the law by speeding between Snell Road and Bessie Creek Road. The information was never amended to make it refer to that stretch of the highway.

The respondent's evidence was that he had noticed the 60 kilometre signs at Fogarty Road and in the area of the road-works, and noticed a 60 kilometre sign at Snell Road, but that the last-mentioned sign was placed in such a position that it was not clear whether it applied to highway traffic or Snell Road traffic. He added that it seemed to be more applicable to Snell Road traffic. He said in evidence that once he passed the intersection of Snell Road, he accelerated as the other traffic did. He said that because the other traffic accelerated and because of the absence of road-works, he assumed that he had passed without seeing what he described as the derestriction sign, and that he then accelerated and overtook the other vehicles. He also said that he did not begin to overtake until he had covered some part of the distance between Snell Road and Bessie Creek Road because of the uncertain speed zone.

The learned magistrate found that the respondent had not exceeded the speed limit between Fogarty Road and Snell Road. There was of course no evidence that the respondent had exceeded 60 kilometres on that stretch. The magistrate found that the respondent had exceeded 60 kilometres per hour on the stretch between Snell Road and Bessie Creek Road, but that he had not travelled at the speed alleged by the informant, 110 kilometres. He went on to hold that the commission of the offence had, however, not been proved beyond reasonable doubt because of the possibility that the defendant had honestly and reasonably believed that the stretch of highway beginning at Snell Road was no longer a 60 kilometre zone. He dismissed the information.

The informant obtained an order *nisi* on 13 May 1989, the ground being that the magistrate had erred in ruling that a defence of honest and reasonable belief in a state of facts was a defence available to the defendant on the charge with which he was charged.

It is now clear that the application for an order *nisi* was made within the statutory month. This was at one time in doubt because of an error as to the date of the dismissal in the certified extract of the order.

I may say that, with all respect to the master who granted the order *nisi*, I do not think that there was good reason for making it returnable before the Full Court.

This court granted leave to amend the information so as to make it refer to the right stretch of highway.

The argument has proceeded on the basis that the mistaken belief under which the learned magistrate found it was possible the respondent was labouring was a belief that a 110 kilometres per hour sign was erected at or near the intersection of the highway and Snell Road.

Whether it was open to his Worship to treat the evidence as raising an issue so as to make it incumbent on the informant to negative the existence of an honest and reasonable mistaken belief on this question of fact has been debated before us as covered by the ground of the order *nisi*. I am prepared to accept for the purposes of argument that it was open to his Worship to treat the evidence as raising this issue, for I think it clear that the defence, as I shall call it, of honest and reasonable belief is not open on a charge under this regulation of exceeding the speed limit. In my view, the subject matter and character of this regulation are such as to make it likely that the exclusion of this defence was intended.

These speed limits are imposed by the regulations in the interests of road safety. This must be apparent to all without having regard to the title of the regulations, the Road Safety (Traffic) Regulations 1988, or the title of the Act under which they are made, the *Road Safety Act* 1986, or to the objects of the Act and regulations as stated in s. 1 of the Act and cl. 102 of the regulations. If ever one might expect an intention to impose strict responsibility, it would be in relation to this offence of driving a motor vehicle at an excessive speed. (Compare what was said by the Chief Justice in *Welsh v. Donnelly* [1983] 2 V.R. 173, at p. 177, and what was said in the same case by Southwell J., at pp. 199–200, where his Honour cited a passage from *Franklin v. Stacey* (1981) 27 S.A.S.R. 490 concerning the subordination of interests of individuals to the interest of the public in view of the purpose and policy of the statute, the *Motor Vehicles Act*, as securing the public welfare and promoting safety of the public.)

Speeding motor cars have become dreadful engines of destruction. The cost to the community in terms of death and injury and economic loss has been enormous. I would expect a provision of this kind to require drivers to keep within the applicable speed limit at their peril. If the defence of honest and reasonable belief were applicable, then mistakes could be of two kinds. There could be a mistake of fact, the fact bearing on whether one was in a speed zone, and there could be a mistake of fact as to the speed at which the vehicle was travelling. I think that the intention here is that motorists shall at their peril be aware of the applicable speed limit, and shall then at their peril so govern their speed as to keep within it. I do not think that they can be heard to say, except in mitigation, that a badly parked pantechnicon obscured a speed restriction sign from their view, or that a power failure at night led them to believe that there was no provision for street lighting along the road, or that they believed their faulty speedometer to be working properly, as in *Hearn v. McCann* (1982) 29 S.A.S.R. 448, or that for any

other reason they believed they were not breaking the speed limit. Human ingenuity and human nature being what they are, I should not expect the law to recognise mistake as a defence to a charge of this kind. That defence was rejected by Zelling J. in the speeding case to which Mr. Monteith very properly referred us, *Hearn v. McCann*.

A conviction for speeding carries no stigma; perhaps it should, but it does not. This summary offence carries a maximum penalty of only $500. Licence cancellation and suspension are dealt with by s. 28 of the *Road Safety Act* 1986. A licence cancellation or suspension may bear heavily on the defendant, but in the overall scheme of things, a licence cancellation or suspension, irksome though it may be, may be regarded as towards the bottom end of the scale of criminal punishment.

In my view, the ground of the order *nisi* has been made out and the order *nisi* should be made absolute with costs, including costs reserved, and the order below should be set aside.

This case is a special one in that it is conceded by the applicant in this court that a licence suspension is inappropriate, and that in the special circumstances of the case, including the antecedents of the respondent, it is appropriate not to record a conviction. The only finding on speed is that the respondent exceeded 60 kilometres per hour.

I would propose that the order below be set aside and that this court, exercising the lower court's power under s. 83 of the *Penalties and Sentences Act* 1985, should adjourn the matter to the first sitting day of the Dandenong Magistrates' Court after the expiration of three calendar months from this day on the respondent's entering into a bond, without sureties, on a special condition requiring him forthwith, after entering into the bond, to pay $100 into the Court Fund at the Magistrates' Court at Dandenong. I would contemplate that that bond be entered into without further reference to this court.

Kaye J.: I agree, and I agree with the order proposed by my brother Brooking.

Murphy J.: I also agree.

Order absolute.

Solicitor for the applicant: Victorian Government Solicitor.

Solicitor for the respondent: *J. X. Smith.*

C. R. WILLIAMS
BARRISTER-AT-LAW