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No. 93

24 October 1997

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S.73 Irrelevant

93.3 ₃ Performance of duty

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93.3 Performance of duty

Background

In *Bevis v Priebe* (unrep Qld CA No 2481 of 1997, 18 August 1997) there was an order to review a decision of the Magistrates Court dismissing a charge against a police officer for disobeying a red traffic control light signal (s 19A of the *Traffic Act 1949*). The police officer was driving to a police station to collect a blood kit to test a driver suspected of drink driving. During the journey the police officer drove through the red light at an intersection.

Issues

The issue was whether, in the circumstances, the police officer was exercising a power or performing a function under the *Traffic Act 1949* or another Act within the meaning of s 68 of the *Traffic Act 1949*? If the police officer was, then s 19A of the *Traffic Act 1949* would not apply.

A sub-issue was whether the police officer was performing a function under the *Police Service Administration Act 1990*, that is the detection of an offender or the bringing of an offender to justice within the meaning of s 2.3(d). Alternatively, was the police officer involved in the administration, subject to the directions of the commissioner, of the *Traffic Act 1949* within the meaning of s 2.3(f)(ii) of the *Police Service Administration Act 1990*. If so, then relevant directions in the circumstances prohibited the police officer travelling through the red light.

Statutory provisions

The relevant provisions of s 2.3 of the *Police Service Administration Act 1990* provide:

2.3 The functions of the Police Service are-

(c) the prevention of crime;

(d) the detection of offenders and bringing of offenders to justice; . . .

(f) the administration, in a responsible, fair and efficient manner and subject to due process of law and directions of the commissioner, of . . .

(ii) the powers, duties and discretions prescribed for officers by any Act; . . .'

Judgment

Davies JA at pp 4-5 of his judgment stated:

' . . . the purposes of section 68 is plainly to enable a police officer to act in breach of the **Traffic Act** other than section 16 and 16A only when the doing of that Act which constitutes a function under the **Traffic Act** or some other Act; where, for example, in order to prevent a crime (section 2.3(c)) or to catch an offender (section 2.3(d)) a police officer has to drive through a red light. In those examples the police officer is performing the function of actually preventing the crime or, actually bringing the offender to justice respectively. Here it could not be said that the respondent was bringing in an offender for justice in the sense of actually apprehending him. In collecting a blood kit for testing an alleged offender . . . (the police officer) . . . was merely performing an act incidental to bringing the offender to justice.

To adopt such a broad construction of section 68 as would include such incidental acts would in my view have consequences unintended by the legislature. Should a mobile patrol in the course of patrolling city streets for the prevention of crime (section 2.3(e)) be permitted in the course of doing so to break all traffic regulations? Should a police car taking a shoplifter to the police station for the purpose of charging him (section 2.3(d)) be permitted to go through all red lights on the way? Plainly that is not the intention of the legislature. The intention of the legislature, as I have set it out, is in my view consistent with some authorities referred to us by the . . . (counsel for the police officer) . . . in these proceedings, particularly **Hudson v. Venderheld** (1968)118 CLR 171 and **Australian National Airlines Commission v. Newman** (1987) 162 CLR 466.

The . . . (police officer) in this case was not, at the time he offended against section 19A of the **Traffic Act**, performing the actual function of the detection of an offender or the actual function of bringing an offender to justice within the meaning of section 2.3(d) of the **Police Service Administration Act**. He was merely performing a function incidental to that latter function.'

Davies JA ordered a conviction should be entered against the police officer and the matter be remitted to the Magistrates Court to fix the appropriate penalty. Shepherdson and White JJ concurred with the orders and reasons given by Davies JA.

Conclusion

Section 68 of the Traffic Act 1949 provides an exculpation to a police officer for traffic offences when the police officer is performing the actual function-

- of the detection of an offender;
- of bringing an offender to justice;

within the meaning of section 2.3(d) of the *Police Service Administration Act 1990*. It does not provide an exculpation for a police officer merely performing a function incidental to these functions.

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No. 171

6 February 2002

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S.73 Irrelevant	
171.2	Exceeding speed limit whilst performing the functions of a police officer <i>Bett v Dugger</i> (unrep Brisbane DC No 301 of 2000, 25 September 2000) - Exceeding speed limit whilst performing the functions of a police officer - <i>Traffic Act 1949</i> , s 68 - <i>Transport Operations (Road Use Management) Act 1995</i> , s 144.
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171.2 Police Officers Breaching Traffic Laws

In *Bett v Dugger* (unrep Brisbane DC No 301 of 2000, 25 September 2000) the exculpation, under s 68 of the *Traffic Act 1949* (now s 144 of the *Transport Operations (Road Use Management) Act 1995*, for a police officer, 'officer D', was considered in relation to an offence of exceeding the speed limit. The facts taken from the case were that on the evening of 3 February 1999 there had been a double murder at Main Beach. Detective Senior Sergeant 'B' was called to the scene and took charge of the investigation. A large number of restaurant patrons, estimated by 'B' at between 30 and 60 people, were considered potential witnesses and were ferried to the Surfers Paradise CIB for questioning. There were only a few police officers on duty. 'B' began to telephone the off-duty Detective Sergeants that were able to be contacted, one of whom was officer 'D'. 'B's' account of his conversation was stated at p 2 of the judgment:

' . . . he answered the phone, it was - it would have been some time after 11 I called him - I'd say quarter past, twenty past 11 I call Sean, and I - when he answered the phone I said, "(officer D), (it's officer B)." I said, "I've got a double murder over at Main Beach." I said, "I want everyone in immediately including you." He said, "Yeah. What will I wear?" And I said, "I don't really care." I said, "As long as it's not your pyjamas." And then he said, "Ok. So I'll be 15 to 20 minutes." I said, "That's fine." I said, "Just hurry up. I need you in here." And with that I hung up from (officer D) . . . '

Judge Boulton stated at pp 2-3:

Detective ('B') left no doubt that he considered the situation as very urgent and thought that potential witnesses could be lost if they were not interviewed promptly.

Detective ('B') did not expressly order the respondent ('D') to exceed the speed limit but he was asked "Well was it implicit from what you said and the tone in which you said it, that he was to exceed the speed limit if required, to get there as soon as possible? -- Well, it was, in that I'd explained that it was a double murder and it was with urgency that I wanted him at the police station."

Judge Boulton at pp 3-4 then went onto discuss the application of *Bevis v Priebe* (supra) and in applying that case to the facts of this case he stated at p 5:

The question to be addressed by the magistrate was whether the exceeding of the speed limit was merely incidental to the performance of a function of the police service. According to *Bevis v Priebe* (supra) the exculpation only apply to actual performance of a function of the police service and not to something that is merely incidental to the performance of a function of the police service.

In *Bevis v Priebe* (supra) discussion of what was a function of the police service centred around subsections 2.3(c) and (d) of the *Police Service Administration Act 1990* which states:

The functions of the Police Service are-

. . .

(c) the prevention of crime;

(d) the detection of offenders and bringing of offenders to justice; . . .

In this case however, the discussion of what was a function of the police service centred around subsection 2.3(g) of the *Police Service Administration Act 1990* which states:

(g) the provision of the services, and the rendering of help reasonably sought, in an emergency or otherwise, as are-

(i) required of officers under any Act or law or the reasonable expectations of the community; or

(ii) reasonably sought of officers by members of the community.

In the context of the facts in this case, Judge Boulton at stated at p 6:

Senior Sergeant ('B') has made it clear that it was **inherent in his instructions to the respondent ('D') that he exceed the speed limit on his way** to the police station. **There had been a major crime and there was a real danger that relevant witnesses might be lost through unnecessary delay.** Leaving Senior Sergeant ('B's') requirements to one side for the moment, it strains belief that the reasonable expectations of the community would not require the respondent to travel as speedily as possible to the police station while paying proper regard to the safety of other road users and members of the community. If a suspect had de-camped or a crucial witness had been lost while the respondent strictly observed the speed limits one might readily conclude that he failed to satisfy the reasonable expectations of the community. (emphasis added)

In reaching a decision, Judge Boulton stated at p 6:

In my view, **the magistrate was perfectly correct in distinguishing *Bevis v. Priebe*.** This was not a case where the breaking of the speed limit was merely incidental to the respondent's ('D's') functions as a police officer. It was quite a vital part of the functions he was required to perform. (emphasis added)

S.73 Irrelevant