JURISDICTION	**:**	SUPREME COURT OF WESTERN AUSTRALIA IN CRIMINAL
CITATION	**:**	BRANCH -v- TOWN OF VICTORIA PARK [2023] WASC 231
CORAM	**:**	SEAWARD J
HEARD	**:**	29 MAY 2023
DELIVERED	**:**	28 JUNE 2023
FILE NO/S	**:**	SJA 1006 of 2023
BETWEEN	**:**	NEIL DOUGLAS BRANCH Appellant AND TOWN OF VICTORIA PARK Respondent

ON APPEAL FROM:

Jurisdiction	**:**	MAGISTRATES COURT OF WESTERN AUSTRALIA
Coram	**:**	MAGISTRATE A MAUGHAN
File Number	**:**	PE 5680 of 2022

Catchwords:

Criminal law - Appeal - Application for leave to appeal against conviction - Parking infringement - Parking vehicle in a parking permit only area - Whether the Magistrate erred in convicting the appellant - Appeal dismissed

Legislation:

Commonwealth Constitution, s 109, s 128
Criminal Appeals Act 2004 (WA), s 6(c), s 7(1), s 9(1), s 9(2), s 9(3), s 14(2), s 39, s 40(1)(e)
Criminal Procedure Act 2004 (WA), s 55, s 140
Town of Victoria Park Vehicle Management Local Law 2021, cl 19(2)

Result:

Leave to appeal refused
Appeal dismissed

Category: B

Representation:

Counsel:

Appellant	:	In Person
Respondent	:	Mr N Sloan

Solicitors:

Appellant	:	In Person
Respondent	:	McLeods Lawyers

Case(s) referred to in decision(s):

Glew v City of Greater Geraldton [2012] WASCA 94
Glew v Shire of Greenough [2006] WASCA 260
Hargreaves v Tiggemann [2012] WASCA 92
Kelly v Fiander [2023] WASC 187
Linville Holdings Pty Ltd v Fraser Coast Regional Council [2017] QSC 252
Pennicuik v City of Gosnells [2011] WASC 63
Samuels v The State of Western Australia [2005] WASCA 193; (2005) 30 WAR 473
Stearman v Taylor [2014] WASC 247
Van Lieshout v City of Fremantle [No 2] [2013] WASC 176; (2013) 276 FLR 199

SEAWARD J:

1 On 15 August 2021, the appellant was issued with a parking infringement notice under cl 19(2) of the *Town of Victoria Park Vehicle Management Local Law 2021* (Parking Local Law) as a result of illegally parking his vehicle in a parking permit only area within the district of the Town of Victoria Park.

2 Upon the appellant's election to challenge the infringement notice, a prosecution was commenced in the Perth Magistrates Court (being charge PE 5680 of 2022) on 22 December 2022. At the trial, the appellant entered a plea of not guilty and on the same date, he was sentenced to a fine of $500 (minimum mandatory penalty under the Parking Local Law), together with costs in the amount of $1,501.[1]

3 The appellant now seeks leave to appeal his conviction on multiple grounds.

4 For the reasons that follow, none of the grounds of appeal have any reasonable prospect of succeeding and therefore leave to appeal on each ground is refused. Accordingly, the appeal is dismissed.

Statutory framework and legal principles

5 The application for leave to appeal is made under div 2 of pt 2 of the *Criminal Appeals Act 2004* (WA) (CA Act). A decision to convict an accused of a charge, whether after a plea of guilty or after a trial is a decision which may be appealed.[2]

6 Leave to appeal is required for each ground of appeal.[3] Leave to appeal must not be granted on a ground unless the court is satisfied that the ground has a reasonable prospect of succeeding,[4] meaning that the ground is required to have a rational and logical prospect of succeeding.[5] Unless leave to appeal is granted on at least one ground, the appeal is taken to have been dismissed.[6]

[1] Transcript of primary court dated 22 December 2022, 22.
[2] *Criminal Appeals Act 2004* (WA) s 6(c) and s 7(1) (CA Act).
[3] CA Act s 9(1).
[4] CA Act s 9(2).
[5] ***Samuels v The State of Western Australia*** [2005] WASCA 193; (2005) 30 WAR 473 [56].
[6] CA Act s 9(3).

7 Even if a ground of appeal might be decided in favour of the appellant, the court may dismiss the appeal if it considers that no substantial miscarriage of justice has occurred.[7]

8 In accordance with s 39(1) of the CA Act the appeal court must decide the appeal on the evidence and material that was before the lower court. However, s 39(1) does not affect this Court's power as contained in s 40(1)(e) to 'admit any other evidence' for the purposes of dealing with an appeal.[8]

Facts of the offending and trial

9 The appellant appeared in person at the trial.

10 At the commencement of the hearing, in response to a question from the learned Magistrate as to whether his name was Neil Douglas Branch, the appellant variously advised the learned Magistrate that:[9]

> I am that man, your Honour.
>
> …
>
> I'm a secured party creditor.

11 The transcript reveals that the learned Magistrate proceeds on the basis that the appellant was the person named in the prosecution notice.

12 The appellant then stated that he had something to give to the learned Magistrate. The transcript records the following exchange in this regard:[10]

> **ACCUSED:** I am that man. I have this to give to you, your Honour.
>
> **HIS HONOUR:** I've received it this morning, I suspect, Mr Branch.
>
> **ACCUSED:** This has been signed by a JP.
>
> **HIS HONOUR:** All right. Thank you.
>
> **ACCUSED:** You don't want it?
>
> **HIS HONOUR:** No, no. If you've got a signed copy, I will certainly receive the signed copy off you.

[7] CA Act s 14(2).
[8] CA Act s 39(3).
[9] Transcript of primary court dated 22 December 2022, 2.
[10] Transcript of primary court dated 22 December 2022, 2 - 3.

> **ORDERLY:** Here you are.
>
> **ACCUSED:** Do I approach the bench?
>
> **ORDERLY:** No.
>
> **HIS HONOUR**: Mr Branch, one charge before the court today alleges on 15 August 2021 at the Circus in Burswood, you parked or stopped contrary to a stop – signed limitation. You understand that charge?
>
> **ACCUSED:** No, I do not understand, your Honour.
>
> **HIS HONOUR:** What part of it don't you understand, Mr Branch?
>
> **ACCUSED:** I'm a secured party creditor.
>
> **HIS HONOUR:** Mr Branch, that wasn't the question. What part of the allegation do you not understand?
>
> **ACCUSED:** Okay. I trust that you know that a secured party creditor over the debtor is not required to plea - - -
>
> **HIS HONOUR:** Mr Branch, let me stop you there.
>
> **ACCUSED:** - - - and cannot be the defendant.
>
> **HIS HONOUR:** Mr Branch, I'm going not stop you right there. I've had the benefit of reading your submissions. You don't need to reiterate them to me.
>
> **ACCUSED:** Yes.
>
> **HIS HONOUR:** I'm rejecting them. They've been rejected by superior courts. I've got jurisdiction to hear this matter. I'm going to hear this matter today. I'm going to mark your documents as an exhibit in the trial. If you want to take that issue up with a superior court, knock yourself out. I'm dealing with this matter today.

13 After determining that he had jurisdiction to hear the prosecution, the learned Magistrate proceeded to the trial. The transcript reveals that at first the appellant did not appear to accept that the learned Magistrate had jurisdiction to hear the prosecution and continued to make submissions regarding his status as a secured party creditor and beneficiary over the trust and a power of attorney.[11]

14 In response to a submission from the appellant that he was not the legal name, the learned Magistrate invited the appellant to stand down from the bar table. The learned Magistrate then asked the prosecution

[11] Transcript of primary court dated 22 December 2022, 3 - 4.

if there was an application to deal with the matter in accordance with s 55 of the *Criminal Procedure Act 2004* (WA) (CP Act), to which the prosecutor replied that there was such an application.[12]

15 When the appellant continued to make similar submissions, the learned Magistrate had the appellant removed from the court room pursuant to s 140 of the CP Act and placed in a remote court room in the court complex where he then participated in the remainder of the hearing via video link.[13]

16 Notwithstanding the invitation to proceed in accordance with s 55 of the CP Act, the remainder of the transcript reveals that the matter was not dealt with summarily, and a full trial was then conducted. The remainder of the transcript reveals that the appellant participated in that trial via video link from the remote court room.

17 Prior to the prosecution opening their case, the learned Magistrate advised the appellant of the trial process and his rights in this regard, including his right to silence in the proceedings, his right to make an opening address, the process of calling witnesses and cross examining witnesses, his right to call evidence at the trial after the prosecution case closes (including electing to give evidence himself) and the process for closing addresses.[14] The appellant indicated that he understood what he had been told by the learned Magistrate.[15]

18 The prosecution then opened its case and the appellant also opened at this point.[16] The prosecution then tendered a number of documents and called one witness.[17] At the conclusion of the evidence in chief for that witness, the learned Magistrate provided the appellant with further information and directions in relation to the cross examination process and the appellant indicated he understood what had been said to him in this regard[18] and then elected not to cross examine the witness.[19]

19 The prosecution then closed its case and the learned Magistrate provided the appellant with further information regarding whether he wanted to make an election to give evidence or not,[20] and the appellant

[12] Transcript of primary court dated 22 December 2022, 4.
[13] Transcript of primary court dated 22 December 2022, 4 - 5.
[14] Transcript of primary court dated 22 December 2022, 6 - 8.
[15] Transcript of primary court dated 22 December 2022, 8.
[16] Transcript of primary court dated 22 December 2022, 8 - 10.
[17] Transcript of primary court dated 22 December 2022, 10 - 18.
[18] Transcript of primary court dated 22 December 2022, 18.
[19] Transcript of primary court dated 22 December 2022, 19.
[20] Transcript of primary court dated 22 December 2022, 19.

elected not to give evidence.[21] The appellant did not call any other evidence or seek to tender any documents and referred instead to the documents he had already provided to the learned Magistrate.[22]

20 The prosecutor then made his closing submissions followed by the appellant who made very short closing submissions.[23]

21 The learned Magistrate proceeded to find the charge proven and sentenced the appellant.[24]

22 For completeness, I note that the prosecution notice refers to a guilty plea being entered on 22 December 2022. It is not clear why this has been specified on the prosecution notice as a review of the transcript indicates that a trial was held in relation to the charge and the learned Magistrate found the charge to be proven. The reference may have been an error and should instead have intended to read 'not guilty'. Alternatively, I note that in his very short closing submissions, the appellant states, 'the debtor was guilty from the moment he got his driver's licence'.[25] It may have been a reference to this. Either way, I am of the view that the learned Magistrate did not accept a guilty plea from the appellant, and proceeded on the basis that the appellant pleaded not guilty and conducted a trial in relation to the charge.

Grounds of appeal and submissions

23 By orders dated 1 February 2023, the appellant was given leave to amend his appeal notice. The following grounds of appeal are included in the appeal notice dated 20 March 2023:

> 1. I applied the ruling of ***Linville Holdings P/L v Fraser Coast Regional Council*** [2017] QSC 252, an authority to this matter. Magistrate Maughan made an error in law by not applying it.
>
> 2. Error of law by Magistrate Maughan not recognising the referendums of 1974 and 1988 by the Australian people as the highest authority in law in the Commonwealth of Australia.
>
> 3. Under s 14 of the *Magistrates Court Act 2004* (WA) Magistrate Maughan made the error of fact and law by not applying the rules of evidence of the Supreme Court.

[21] Transcript of primary court dated 22 December 2022, 20.
[22] Transcript of primary court dated 22 December 2022, 20.
[23] Transcript of primary court dated 22 December 2022, 20 - 21.
[24] Transcript of primary court dated 22 December 2022, 21 - 22.
[25] Transcript of primary court dated 22 December 2022, 21.

> 4. Point 17 in the submitted Affidavit of the Accused was given no time nor mind. Error of fact and law by Magistrate Maughan for not recognising the Town of Victoria Parks bill is no coextensive with their capacity contract.

24 By orders dated 21 March 2023, the time for the appellant to file and serve written submissions in support of his appeal was extended to 5 May 2023. The appellant filed three sets of his written submissions with the court (on 9, 11 and 18 May 2023). There are some differences in each of these sets and so I have had regard to all three sets.

25 Accompanying the various sets of submissions was a document headed 'Grounds'. This document refers to 10 grounds. Of those 10 grounds:

(a) grounds 7 - 10 concern matters associated with ground 2 of the appeal notice filed 20 March 2023 (the 1974 and 1988 referenda);

(b) grounds 1 and 2 concern matters associated with ground 3 of the appeal notice filed 20 March 2023 (failure to have regard to the rules of evidence);

(c) ground 6 and ground 3 (in part) are related to ground 4 of the appeal notice filed 20 March 2023 (failure to have regard to point 17 of the affidavit); and

(d) grounds 3 - 5 appear to be new grounds of appeal. These grounds are:

> 3. Under section 12BA (2) of the Australian Securities and Investments Commission Act 2001(Cth) Magistrate Maughan is defined as engaging in conduct. By rejecting my Affidavit (Exhibit 1) in, PCT page 3 par 3 Magistrate Maughan also erred in law by not recognizing his misleading representations in ASIC ACT 2001(Cth) s 12BB.
>
> Question, Does the phrase in s 12BB(a) "a person" refer to a magistrate and Judge also.
>
> 4. Under the Crimes Act 1914 s 32, if the holder of a judicial office, corruptly asks, receives, or obtains, or agrees or attempts to receive or obtain, any benefit of any kind for himself, or any other person, on account of anything already done or omitted to be done or to be afterwards done or omitted to be done by him in his judicial capacity is, guilty of an offence.

> Question: Does the phrase "holder of a judicial office" have some other technical meaning to not include a Magistrate
>
> 5. In the Crimes Act 1914 s 33. Any person who—(a) being a judge or magistrate not acting judicially, or being a Commonwealth officer attempts to obtain a benefit of any kind for himself or any other person, on account of anything already done or omitted to be done, or to be afterwards done or omitted to be done, by him, with a view to corrupt or improper interference with the due administration of justice. Not accepting (Exhibit 1) is unsatisfactory.
>
> Question: does the phrase "any other person" have an ordinary or technical meaning.

26 The respondent's written submissions addressed all grounds advanced by the appellant (including those additional grounds included in the written submissions). I have also considered all the grounds advanced by the appellant, including the additional grounds advanced in the appellant's submissions.

27 For completeness, I note that the written submissions include multiple affidavits both sworn and unsworn by the appellant. These affidavits, by and large, do not consist of evidence in the usual manner but rather consist of a combination of legal submissions, assertions and some facts (for example in the form of providing various ABNs). Notwithstanding the nature of the submissions, I have had regard to the full contents of the submissions for the purposes of this appeal.

28 On 12 June 2023, following the hearing held on 29 May 2023, and prior to the delivery of my decision in the appeal, the appellant filed a further affidavit affirmed 9 June 2023. That affidavit contains no substantive paragraphs and attaches annexure A. In that annexure, the appellant effectively makes further submissions regarding his appeal. There was no order made permitting the appellant to file additional submissions and leave was not sought by the appellant before doing so. The affidavit/submissions do not raise any additional material going to the specific grounds of appeal that has not already been raised in the documents filed by the appellant to date, except in one respect. The appellant refers to the decision of Vandongen J in ***Kelly v Fiander***.[26] This decision was delivered by his Honour on 1 June 2023 (after the appellant's appeal hearing). The appellant appears to assert that this decision is relevant to his appeal.

[26] ***Kelly v Fiander*** [2023] WASC 187.

29 Through my associate, a copy of this further affidavit/submissions was provided to the solicitors for the respondent, who was invited to provide any written submissions in response to this affidavit/submissions. The respondent provided short written submissions addressing the relevance of the decision of ***Kelly v Fiander***. In these reasons I have also considered the relevance of the decision of ***Kelly v Fiander***.

Hearing on 29 May 2023

30 The application for leave to appeal and the appeal was listed for hearing before me on 29 May 2023.

31 At that hearing, the appellant appeared in person and made oral submissions. Those oral submissions did not correspond with the specific grounds of appeal contained in his written documents filed with the court, and instead consisted of a series of submissions which were difficult to follow and generally concerned the appellant's legal status and his rights in that regard under the Australian legal system. The oral submissions also appeared to address the 'strawman duality theory' referred to by Vandongen J in ***Kelly v Fiander*** (which I have discussed further below). The appellant also relied on a variety of constitutional arguments pursuant to which the authority of the respondent (being a local government body) was challenged.

32 Counsel for the respondent relied on his written submissions.

Additional evidence

33 On the weekend prior to the hearing, the appellant sent to my associate two additional affidavits sworn 27 May 2023, described as the 'Remedy and Recourse' affidavit and the 'Lawful Challenge Originals' affidavit. The appellant did not file an application seeking leave to rely on the additional affidavit evidence. I confirmed with the appellant during the hearing on 29 May 2023 that he did wish to seek leave to rely on the affidavits.

34 Counsel for the respondent did not seek to be heard on the application or make any submissions regarding these affidavits.

35 The 'Remedy and Recourse' affidavit contains no substantive paragraphs and attaches annexure A which appears to address largely what was addressed in the sets of submissions filed by the appellant and appears to concern the appellant's identity and what he describes as the mischaracterization of his identity (and various capacities in which he

exists). The document refers to s 14 of the *Magistrates Court Act 2004* (WA) and specifically refers to this appeal. It is in the form of a mixture of statements of fact and submissions. Given the contents and the lack of any objection by the respondent, I grant the appellant leave to file and rely on the 'Remedy and Recourse' affidavit in the appeal.

36 The 'Lawful Challenge Originals' affidavit also contains no substantive paragraphs and attaches annexure A. It is not clear how the documents contained in annexure A relate to the appeal at all. The documents all appear to be various so called 'Formal Challenge to Jurisdiction of all courts in the Commonwealth of Australia' signed by a Wayne Kenneth Glew. There are references to a District Court matter, his Honour Judge Lemonis, the Geraldton Magistrates Court and a purported appeal to the Privy Council. As this affidavit does not relate to this appeal at all, I do not grant the appellant leave to file and rely on the 'Lawful Challenge Originals' affidavit in the appeal.

Disposition

Ground 1: The learned Magistrate erred by not applying the decision in *Linville Holdings Pty Ltd v Fraser Coast Regional Council*

37 The appellant submitted that the decision of ***Linville Holdings Pty Ltd v Fraser Coast Regional Council***[27] was binding on the learned Magistrate and that the learned Magistrate erred in law in not applying the decision.

38 ***Linville Holdings Pty Ltd v Fraser Coast Regional Council*** is a decision of the Queensland Supreme Court in which declarations were sought that the general differential rates, special rates and charges levied by the respondent (a local government authority) for the 2014/15, 2015/16 and 2016/17 financial years were made invalidly, so that no valid rates or charges were levied on land owned by the applicant in the respondent's local government area. Jackson J found that rates and service charges levied on the appellant by the respondent for the three financial years were invalid because of the respondent's non-compliance with statutory requirements of the *Local Government Act 2009* (Qld) and the *Local Government Regulation 2012* (Qld).[28]

39 The relevance of this decision to the trial proceedings was not explained by the appellant and is not otherwise clear. The matter before the learned Magistrate did not concern the levying of rates and

[27] ***Linville Holdings Pty Ltd v Fraser Coast Regional Council*** [2017] QSC 252.
[28] ***Linville Holdings Pty Ltd v Fraser Coast Regional Council*** [49].

services charges or the same legislation. Further, being a decision of the Supreme Court of Queensland, the decision was not binding on the learned Magistrate. To the extent the decision is authority for the proposition that a local government must comply with the relevant statutory requirements governing the exercise of any of its powers, the appellant has not identified any alleged failures by the respondent in this regard (separate to the other grounds of appeal).

40 Accordingly, ground 1 has no merit and leave to appeal on this ground is refused.

Ground 2: The learned Magistrate erred by failing to recognise the effect of the outcome of the 1974 and 1988 referenda on the validity of local governments (and associated grounds 7 - 10 of the additional grounds)

41 In summary, the appellant submits that the learned Magistrate erred by accepting that the respondent has authority to charge, or impose fines upon, the appellant by reason of the failure of the 1974 and 1988 referenda. The appellant's submission is based on the proposition that the lack of provision for local government in the Commonwealth Constitution, and the failure of the 1974 and 1988 referenda to recognise local government within it, has the effect that local governments (such as the respondent) have no authority in Australian law and therefore all steps taken by local governments have no lawful effect.

42 The 1974 referendum concerned whether the Commonwealth Parliament should be given powers to borrow money for, and to make financial assistance grants directly to, any local government body. It was not carried. The 1988 referendum concerned whether the Commonwealth Constitution should be altered to recognise local government. It too was not carried.

43 The appellant's argument has been rejected by this Court and the Court of Appeal previously in so far as it concerns the 1988 referendum in ***Glew v Shire of Greenough***.[29] Wheeler JA (Pullin and Buss JJA agreeing) explained the vice inherent in the submission as follows:[30]

> 24 So far as the 1988 referendum is concerned, the proposition appears to be that, because the referendum was defeated, there arises some prohibition upon the State which would preclude it from passing legislation setting up local government authorities.

[29] ***Glew v Shire of Greenough*** [2006] WASCA 260.
[30] ***Glew v Shire of Greenough*** [24] - [25].

> That proposition misunderstands the referendum process. The 1988 referendum contained a proposal to amend the Commonwealth Constitution by inserting a proposed s 199A, which proposed section would have required each State to provide for the establishment and continuance of a system of local government. Because it was defeated, there is no Commonwealth constitutional requirement that a State provide a system of local government. However, the absence of a *requirement* to establish a system of local government does not imply any absence of power to do so. Each State has always had, pursuant to the power to legislate for the peace, order and good government of that State, a power to set up a system of local government as the State sees fit.
>
> 25 In Western Australia, s 52 of the State Constitution imposes a positive duty on the State government to maintain a system of local government bodies. The appellants, as I understand it, assert that s 52 is invalid, because it was not passed by referendum. There seems to me to have been no constitutional requirement that it be passed by referendum. However, even if it were invalid, there would still remain power pursuant to s 2 of the State Constitution to set up a system of local government, such as that contained in the *Local Government Act 1995* (WA). (original emphasis)

44 See also ***Van Lieshout v City of Fremantle [No 2]***,[31] ***Pennicuik v City of Gosnells***,[32] ***Hargreaves v Tiggemann***,[33] and ***Glew v City of Greater Geraldton***.[34]

45 Consistent with her Honour's reasons, it is therefore a fallacy to contend that local governments have no legal authority at all because the 1988 referendum was defeated. The effect of the outcome of the 1988 referendum was simply that there is no express requirement, enshrined in the Commonwealth Constitution, for the State to create a system of local government. The State may nevertheless legislate to set up a system of local government pursuant to its plenary power to legislate for the peace, order and good government of the State under the State Constitution.

46 Although the 1974 referendum was not addressed by Wheeler JA in ***Glew v Shire of Greenough***, I am of the opinion that her Honour's reasoning is equally applicable to the 1974 referendum. The result of the 1974 referendum, which was that there is no constitutional

[31] ***Van Lieshout v City of Fremantle [No 2]*** [2013] WASC 176; (2013) 276 FLR 199.
[32] ***Pennicuik v City of Gosnells*** [2011] WASC 63.
[33] ***Hargreaves v Tiggemann*** [2012] WASCA 92.
[34] ***Glew v City of Greater Geraldton*** [2012] WASCA 94.

requirement for the Commonwealth to grant financial assistance to local government bodies, does not imply an absence of power of the State to establish a system of local government under the State Constitution. Accordingly, the failure of the 1974 referendum also did not have the effect of rendering local governments invalid, and therefore the power to issue the parking infringement, invalid.

47 The appellant's submissions in relation to this ground of appeal also address the operation of s 109 and s 128 of the Commonwealth Constitution in the context of the failed referenda. The appellant's submission is that the *Local Government Act 1995* (WA) and the associated Parking Local Law is invalid as it is inconsistent with s 128 of the Commonwealth Constitution and therefore, in accordance with s 109 of the Commonwealth Constitution, is invalid.

48 In respect to s 128, Wheeler JA in ***Glew v Shire of Greenough*** explained the operation of s 128 and what occurs in the event that the referendum fails as follows:[35]

> 14 However, the failure of a referendum does not prevent the Commonwealth from proposing amendments on the same subject matter in the future. Nor does the failure of a referendum question either expressly or impliedly prohibit either the Commonwealth Parliament or the Parliament of any State from passing legislation which is otherwise within its power and which touches on the same subject matter as the proposed referendum.

49 Accordingly, there is no legal merit to the appellant's submission that the *Local Government Act 1995* (WA) (and the Parking Local Law made pursuant to it) is invalid to the extent it is inconsistent with s 128 of the Commonwealth Constitution.

50 Ground 2 therefore has no merit and leave to appeal on this ground is refused.

Ground 3: The learned Magistrate erred at law by refusing to accept the appellant's affidavit and rejecting the contents of those documents in contravention of s 14 of the *Magistrates Court Act 2004* (WA) (and associated grounds 1 - 2 of the additional grounds)

51 The appellant submits, in summary, that the learned Magistrate made errors of law by deciding not to accept the appellant's affidavit (which was posted to the court prior to the trial and an original handed

[35] ***Glew v Shire of Greenough*** [14].

up at the commencement of the hearing) and rejecting the contents of the affidavit.

52 A copy of the affidavit was included in the appellant's submissions and in the bundle of documents provided by the Magistrates Court and I have had regard to its content. The affidavit is a 13-page document consisting of 49 paragraphs and is described as a 'Living Testimony in the form of an Affidavit of Truth' and includes annexure 1 entitled 'Definitions for the Affidavit' which consists of 29 paragraphs.

53 Earlier in these reasons I have set out the exchange between the appellant and the learned Magistrate in relation to the appellant's affidavit. The transcript reveals that, contrary to the assertion by the appellant, the learned Magistrate did not refuse to accept the appellant's affidavit. It is apparent from the transcript that the learned Magistrate accepted, read and considered the contents of the appellant's affidavit. To the extent the affidavit made submissions as to the jurisdiction of the learned Magistrate and the Magistrates Court to hear the prosecution, the learned Magistrate rejected those submissions.

54 Further, the learned Magistrate indicated that he would mark the affidavit as an exhibit in the trial.[36] The transcript reveals that the reason the affidavit was never formally tendered in the trial is because the appellant elected not to give evidence at the trial and did not (at any point) seek to tender any other evidence.[37]

55 Therefore, leaving aside the question of the admissibility of the contents of the affidavit, it is not correct to say that the learned Magistrate did not have regard to the affidavit. The learned Magistrate did have regard to the extent it concerned the jurisdiction of the Magistrates Court.

56 The appellant also appears to raise on appeal the extent to which the learned Magistrate refused to accept certain submissions made in that affidavit. The general thrust of the submissions is that the learned Magistrate failed to have regard to a number of pieces of legislation, including: the *Australian Securities and Investments Commission Act 2001* (Cth), the *Personal Property Securities Act 2009* (Cth), the *Proceeds of Crime Act 2002* (Cth), the *Bills of Exchange Act 1909* (Cth), the *Trustees Act 1962* (WA), the *Corporations Act 2001* (Cth) and the *Competition and Consumer Act 2010* (Cth).

[36] Transcript of primary court dated 22 December 2022, 3.
[37] Transcript of primary court dated 22 December 2022, 19 - 20.

57 However, it is not clear from the appellant's submissions how any of these pieces of legislation have any relevance to the prosecution before the learned Magistrate or demonstrate any error by the learned Magistrate. The references to these pieces of legislation in the appellant's affidavit are non-sensical.

58 The appellant also raises further matters from the affidavit in ground 4 of the appeal notice, which I address separately below.

59 Accordingly, ground 3 (as expanded by the additional grounds of appeal) has no merit and leave to appeal on this ground is refused.

Ground 4: The learned Magistrate erred by failing to consider points 17, 28 and 37 of the affidavit (and the associated ground 6 and ground 3 (in part) of the additional grounds)

60 The appellant submits that the learned Magistrate erred by failing to consider the appellant's 'point 17' in the affidavit which provides:

> The Bills of Exchange Act s 27 Capacity of Parties: States the capacity to incur a liability to a bill is coextensive with capacity to contract: If it is not competent to do so under a Law in force relating to Corporations: Both Neil Douglas Branch© and Perth Magistrates Court have authority and competence to contract; and;

61 In the appellant's submissions, the appellant also refers to point 37 in his affidavit which provides:

> To settle this claim, I would ask you to Action and administer my Estate for my Benefit Lawfully as I am the equity Interest Entitlement holder. I fully comprehend what is required. I am able and willing to sign as Live Credit on behalf of the Legal Debtor with the ability to assign all equity interest in my Foundational Security, through this Trust that I am in Control of for Remedy and Recourse; and;

62 The additional ground 6 is associated with point 37, in so far as it concerns the alleged failure of the learned Magistrate to have regard to the appellant's so called settlement proposal.[38]

63 Further, in the submissions, the appellant also refers to point 28 in his affidavit which provides:[39]

> UCC1 of Neil Douglas Branch© Securities Agreement:

[38] See the explanation of additional ground 6 provided in the appellant's submissions filed 9, 11 and 18 May 2023 [16].
[39] Appellant's submissions filed 9, 11 and 18 May 2023 [10].

> All of debtors assets, land and personal property, and all of Debtors interests in said assets, land and personal property, now owned and hereafter acquired, now existing and hereafter arising, and wherever located, described fully in security agreement *No. NB30042021_SA dated Thirtieth day of the Fourth month* in the year of our Lord *Two Thousand and Twenty One*.
>
> Inquiring parties may consult directly with the debtor ascertaining, in detail, the financial relationship and contractual obligations associated with this commercial transaction.
>
> The Secured Party Creditor Honours All Debt:
>
> Identified in security agreement reference above. Adjustments of this filing is in accord with House Joint Resolution of June 5th 1933 and UCC1-103 and 1-104. Secured party accepts Debtors signature in accord with UCC1-201(39), 3-401.
>
> Bond / Certificate Number BXCF419539
>
> Application Number 4041012/1
>
> Debtor is a Transmitting Utility.

64 This ground (as expanded) appears to be directed to the 'strawman duality theory' described by Vandongen J in ***Kelly v Fiander*** as follows:[40]

> 11 The strawman duality theory is based on the fundamentally misguided notion that there exists a physical human being and, at the same time, a separate non-physical person (a 'doppelganger'). Under this theory, it is said that while governments can exercise power over both the physical and the non-physical person, the capacity to exercise power over the physical person only exists because there is a 'contract' that links the physical person with the non-physical person. This 'contract' is evidenced by documents such a birth and marriage certificates.
>
> 12 The non-physical person is often identified by pseudolaw exponents using an upper-case letter name because, it is said, government and legal documentation such as birth and marriage certificates use capital letters when recording names.
>
> 13 A critical component of this strawman theory is the idea that government authority over the physical person can be negated by removing the doppelganger. In very simple terms, this is said to be achieved by revoking or denying the legitimacy of the

[40] ***Kelly v Fiander*** [11] - [13].

> contract. This then has the effect of removing any government authority over the physical person.

65 Each of the components of this ground of appeal appear to concern this separate non-physical person theory and/or the appellant's proposal to settle the prosecution in a manner which is consistent with this theory. To the extent the appellant's submissions purport to refer to legal principles in support, those submissions are non-sensical. As noted by Vandongen J, the 'strawman duality theory' is misguided.[41]

66 Accordingly, ground 4 (as expanded by the additional grounds referred to in the appellant's submissions) has no merit and leave to appeal on this ground is refused.

Additional grounds 3 - 5 of the appellant's submissions: The learned Magistrate contravened the *Australian Securities and Investments Commission Act 2001* (Cth) and *Crimes Act 1914* (Cth)

67 Additional grounds 4 and 5, taken at their highest, appear to assert that the learned Magistrate engaged in some kind of unlawful conduct during the course of the trial, either in his capacity as a judicial officer or in his capacity other than as a judicial officer and thereby acted contrary to s 32 and s 33 of the *Crimes Act 1914* (Cth). The appellant has not provided any evidence to support these very serious allegations.

68 Additional ground 3, to the extent it is not already dealt with above, makes reference to the *Australian Securities and Investments Commission Act 2001* (Cth) and appears to allege some sort of misleading representations by the learned Magistrate. Again, the appellant has not provided any evidence to support such a serious allegation, and the *Australian Securities and Investments Commission Act 2001* (Cth) has no relevance to the prosecution or this appeal.

69 Accordingly, these additional grounds have no merit and leave to appeal on these grounds is refused.

Relevance of the decision of *Kelly v Fiander*

70 The decision of ***Kelly v Fiander*** concerned an appeal against both conviction and sentence (although the latter was not decided on appeal). The appellant was charged with four offences: driving a motor vehicle with an imitation number plate; using an unlicensed vehicle on a road; driving a vehicle on a road while being disqualified from holding a

[41] ***Kelly v Fiander*** [11].

motor vehicle licence; and failing to comply with a direction by a police officer to stop a motor vehicle.[42]

71 On the date the charges were listed, the presiding Magistrate convicted the appellant under s 55(4) of the CP Act after she decided to hear and determine each of the charges in the absence of the appellant. Section 55 of the CP Act allows a court of summary jurisdiction to hear and determine a charge in the absence of an accused.[43] The section only applies if an accused is charged in a court of summary jurisdiction with a simple offence, and then, by operation of s 55(1), only if on a 'court date' for a charge 'the prosecutor appears and the accused does not appear, and the accused has not pleaded guilty to the charge, whether orally or by means of a written plea'.

72 If s 55 of the CP Act applies, then the court can either adjourn the charge or, alternatively, it may hear and determine the charge in the accused's absence. If the court decides to hear and determine the charge, then s 55(4) and s 55(5) operate to facilitate proof as follows:

> (4) If under subsection (2) or section 51(8)(a) the court decides to hear and determine the charge in the accused's absence and the prosecution notice is signed by a person who in the notice purports to be a person acting under section 20(3), the court –
>
> (a) must presume, in the absence of evidence to the contrary –
>
> (i) that the prosecution notice was signed by a person who was acting under section 20(3); and
>
> (ii) that the person had the authority to sign the prosecution notice; and
>
> (b) may take as proved any allegation in the prosecution notice containing the charge that was served on the accused.
>
> (5) If under subsection (4) the court convicts the accused –
>
> (a) the prosecutor must state aloud to the court the material facts of the charge; and
>
> (b) section 129(4) applies; and

[42] ***Kelly v Fiander*** [1].
[43] ***Stearman v Taylor*** [2014] WASC 247 [21].

> (c) in the absence of evidence to the contrary, the court must take as proved any facts so stated.

73 The decision of ***Kelly v Fiander*** is potentially relevant in two respects to the present appeal.

74 *First*, the decision is relevant in so far as the learned Magistrate referred at one point to proceeding in accordance with s 55 of the CP Act. In ***Kelly v Fiander*** the accused in that case was present in court at the time she was convicted. However, in a manner similar to the present appellant, it appears that the accused, in purported furtherance of the 'strawman duality theory', refused to confirm her name and would not clearly acknowledge that she was the person named in the prosecution notice.[44] In those circumstances, the learned Magistrate proceeded to find that the accused did not 'appear' and proceed to hear the charges in the accused's absence as provided for in s 55 of the CP Act and in reliance on s 55(4) and s 55(5) of the CP Act. Vandongen J held that whilst understandably frustrated by the actions of the accused, it was not open to the learned Magistrate to proceed in accordance with s 55 of the CP Act in circumstances where the accused is physically in court but refusing to confirm their name (provided the court is sufficiently satisfied that the person who is before them is the accused who is named in the prosecution notice; that they are the person who is alleged to have committed the specified charge or charges).[45] For the purposes of the present appeal, it is not necessary to detail the reasons his Honour reached this conclusion.

75 In the present case, as outlined earlier in these reasons, whilst the transcript does refer to the learned Magistrate inviting the prosecution to proceed pursuant to s 55 of the CP Act, the transcript makes it clear that the learned Magistrate proceeded to conduct a full trial in relation to the charge and the appellant participated in that trial (albeit from a remote court room). The transcript reveals that the learned Magistrate did not proceed in accordance with s 55(4) and s 55(5) in convicting the appellant.

76 *Secondly*, in the appellant's affidavit affirmed 9 June 2023, the appellant says the following about ***Kelly v Fiander***:

> The question of unchallenged evidence standing as, fact to the Supreme Court of WA was once again ratified into Australia law just last week in KELLY V FIANDER {2023} WASC 187 where his Honor in his

[44] ***Kelly v Fiander*** [17].
[45] ***Kelly v Fiander*** [59] - [60].

> reasons for accepting the set aside stated, "given that the Applicants evidence in this regard not challenged". Like all my points, evidence legal authorities remain unchallenged. His Honor also listed for our benefit other matters which ratify his decision which, also provide multiple authorities for an Appeal in this matter if required. Federal Prosecutorial Writ Warning for any Injustice on the Eternal horizons.

77 The reference to Vandongen J finding that the appellant's evidence was not challenged, is a reference to the oral evidence given by the appellant in that appeal as to the manner in which she was escorted from the court room and her reasons for leaving. His Honour found that this oral evidence was not subject to any serious cross examination by the prosecution and there was nothing in the way in which that appellant gave evidence that gave his Honour any reason to doubt the veracity of the evidence and therefore his Honour accepted that evidence.[46] Importantly, his Honour did not endorse the appellant's arguments in that appeal relating to the 'strawman duality theory'. Vandongen J's findings in this respect are therefore relevant only to that appeal.

78 In the present case, the appellant did not give oral evidence at either the trial or the appeal. Further, the respondent has filed responsive submissions and supplementary responsive submissions addressing the issues raised in the appellant's submissions/affidavits submitting that there is no substance to any of the contentions advanced therein.

79 Therefore, the decision of ***Kelly v Fiander*** is not relevant to this appeal nor does its application reveal any error of law by the learned Magistrate in convicting the appellant.

Orders

80 In light of the above reasons, I will make the following orders:

1. Leave to appeal is refused on all grounds.

2. The appeal is dismissed.

81 I will hear further from the parties in relation to costs.

[46] ***Kelly v Fiander*** [18] - [24].

I certify that the preceding paragraph(s) comprise the reasons for decision of the Supreme Court of Western Australia.

OK
Associate

28 JUNE 2023