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THE MAGISTRATES COURT OF

WESTERN AUSTRALIA

CRIMINAL

PE 3280 of 2023
PE 55253-55256 of 2023

WESTERN AUSTRALIA POLICE

and

DAWN MICHELLE KELLY

MAGISTRATE S. OLIVER

TRANSCRIPT OF PROCEEDINGS

AT PERTH ON FRIDAY, 15 DECEMBER 2023, AT 10.44 AM

MR L. O'CONNOR appeared for the prosecution.

MS D.M. KELLY appeared in person.

ORDERLY: Calling the matter of Kelly, Dawn Michelle Kelly.

HER HONOUR: You're Dawn Michelle Kelly?

ACCUSED: We answer to that name out of necessity and under duress, reserving all our rights.

HER HONOUR: I've got a reserved decision in relation to one charge and I see there are four other charges that have been listed for mention. At the moment I will deal with the matter for which I have a reserved decision. The accused, Dawn Michelle Kelly, is charged with one offence contrary to section 10, subsection (6) of the Road Traffic (Vehicles) Act 2012 which herein after I will refer to as "the Act".

It is alleged that in July 2022, the accused purchased a white 2006 Holden Combo Panel Van and that the seller of the vehicle advised the Department of Transport of the sale. It is alleged that the accused failed to apply for the transfer of the vehicle licence to her and failed, or perhaps by failing to make payment of the amount owing for the transfer of the vehicle licence to her. Dawn, you can sit down if you like.

The accused has entered a plea of not guilty to the charge. In accordance with the fundamental principles relevant to criminal trials, the accused has a right to silence and she is presumed innocent of the charge until such time as the prosecution proves her guilt beyond reasonable doubt. The prosecution must discharge that burden by adducing admissible evidence and probative evidence to establish guilt beyond reasonable doubt. An accused person has the general fundamental proposition does not have to prove anything at a trial because their innocence is presumed and they have a right to silence.

In the present case, the matter was first set down for trial on 25 July 2023. At the commencement of the trial, I asked the accused how she wished to be addressed. She answered I refer to her as Dawn. In accordance with her wishes, I addressed her by the name Dawn during the hearing of this matter and I will address her as Dawn in these reasons. At the hearing on 25 July 2023, the prosecution informs me that they intended to rely at the trial solely on the certificate issued under section 110 of the Road Traffic (Administration) Act 2008 dated 1 March 2023. I will refer herein after to that as "the first certificate". That will also be marked MF11 at the trial.

They also sought to adduce an attachment referred to in the certificate, all without calling a witness to give evidence at the trial. The prosecution being unable to direct me to any appellate authority that supported the proposition that they could proceed with the trial in the manner they proposed. I refused to allow the prosecution to proceed in that manner. I noted that many of the matters contained within the first certificate were factual averments that needed explanation and not merely a reproduction of matters contained within the vehicle licence register maintained by the department in accordance with section 14 of the Road Traffic (Vehicles) Act.

The prosecutor could not assist me with any authorities that supported an interpretation of section 10 of the Road Traffic (Administration) Act that would allow it to adduce as admissible evidence, factual averments as to matters not contained or obviously contained in the vehicle licence register maintained by the department. In all the circumstances, I adjourned the matter and directed that the prosecution disclose all relevant evidence on Dawn, including serving her with statements of any witnesses to be called at the resumed trial. On this point, I pause to note that prior to the trial being called on 25 July 2023, the prosecution had not given Dawn a copy of any of the material they intended to rely upon, not even a copy of the first certificate they wanted to rely upon.

Whilst it is the case that disclosure is not mandatory under the Criminal Procedure Act in relation to the present offence, as the prosecuting agency the department is a model litigant. There was no reason why the prosecution could not have sent a copy of the first certificate to Dawn in the months leading up to the trial given it was prepared more than four months before the trial date, or at the very least, the prosecutor could have given a copy of the material they intended to rely upon to Dawn when the parties arrived at court on the day of the trial and were waiting a transfer to a court with capacity to hear the matter.

The trial was adjourned to 19 September 2023. On that day the prosecution informed the court that it had provided disclosure in accordance with my previous direction, although they advised that they had just served the accused with a further certificate that morning with some minor amendments to it. More significantly, despite the court's observations on the last occasion, the prosecution advised that it still intended to proceed by relying solely on a certificate issued under 110 of the Road Traffic

(Administration) Act without calling a witness to give evidence at the trial.

The prosecution's case was opened, a certificate under section 110 of the Road Traffic (Administration) Act dated 18 September 2023 was handed up and marked for identification at that stage together with a copy of the instrument of delegation relating to the authority of the person who signed the certificate to do so. The certificate dated 18 September 2023 which I will refer to herein after as "the certificate" purported to attach two documents.

Attachment 1 was described as a copy of a transfer form said to have been received at Joondalup Driver and Vehicle Services office on or around 5 August 2022. Attachment 2 is described as a copy of a notice issued on 11 August 2022 under section 10, subsection (3), paragraph (b) of the Act, requiring the accused to apply for the transfer of the vehicle licence.

When pressed as to how section 110 authorised the attachment of documents to a certificate, the prosecution elected not to press the tender of the attachments to the certificate and chose to rely only on the contents of the certificate to prove its case. The prosecution then closed its case.

The matter was adjourned to allow me to consider whether the prosecution ought to be permitted to tender the certificate to prove its case by production of the certificate without any further evidence and whether the accused had a case to answer.

The prosecution were invited to, and did file written submissions on these issues which I have considered. Section 10, subsection (6) of the Act provides:

A person to whom a notice is issued under subsection (3), paragraph (b) commits an offence if an application for the transfer of the licence for a vehicle is not made within 28 days after the notice is issued or any longer period that the CEO allows unless it can be shown that;

- (a) the person did not agree to becoming an owner of the vehicle and has notified the CEO in writing accordingly; or

- (b) another person has been nominated for the purposes of the Road Traffic (Administration) Act 2008, section 5, subsection (2); or
- (c) there is more than one owner of the vehicle and there is good reason for not nominating a person under the Road Traffic (Administration) Act 2008 section 5, subsection (2); or
- (d) there was some other good reason that the application for the transfer of the licence was not made.

Section 10, subsection (3) of the Act relevantly provides:

- (a) As soon as practical after receiving a notice under subsection 1, paragraph (a) of a change of ownership of a vehicle in respect of which a licence has been granted.
- (b) If the CEO is satisfied that the licence may be transferred under section 5, subsection (3) and no application has been made under section 5, subsection (1) the CEO may issue to the new owner a notice requiring that an application for the transfer of the licence be made under section 5.

Section 5, subsection (1) of the Act relevantly provides in effect, that an owner of a vehicle may apply for the transfer of a licence for the vehicle by submitting an application in a form approved by the CEO and paying the amount of any fee or charge that would be required under section 7 and any duty or taxes payable.

Section 5, subsection (2) relevantly provides that on payment of the fee or charge that would be required under section 7, an application for a transfer of a vehicle licence is taken to have been made.

Section 110, subsection (1) of the Road Traffic (Administration) Act provides:

For the purposes of a prosecution for an offence under a road law, the CEO or a person authorised by the CEO may issue a certificate stating that a fact specified in the certificate appears in or is derived from the drivers licence register or another record kept by the CEO or the Commissioner of Main Roads under a road law.

I will refer to the Road Traffic (Administration) Act 2008 herein after as "the Admin Act". Section 110, subsection (2) provides that a certificate issued under

section 110, subsection (1) is evidence of any facts stated in the certificate.

I note the term "road law" is defined in section 4 of the Admin Act and relevantly includes the act containing the present offence. Further, the term "records" is defined in section 4 of the Admin Act to mean any documents, documentation or records whether in paper, electronic or other form.

I pause to note that this definition insofar as it's relevant to section 110 is confined by the words of section 110. That is:

It must be a record kept by the CEO or the Commissioner of Main Roads under a road law for section 110, subsection (1) to apply.

The broadness of the term "records" is therefore restricted for the purposes of section 110, subsection (1) to only those records kept under a road law. For the purposes of section 110, subsection (1), it does not extend to any other business record kept by the CEO or the Commissioner in the course of conducting their business.

I have reviewed the Act and the Admin Act, being the two Acts of relevance in this particular case and have not identified any reference to a requirement on the CEO or the Commissioner to maintain any records in those Acts other than a register of vehicle licences under section 14 of the Act.

A broader review of the legislation forming part of the road law defined, reveals that the Road Traffic (Authorisation to Drive) Act 2008 creates an obligation to maintain a drivers vehicle register in section 4 and a demerit point register in section 40.

Section 110, subsection (1) was part of the original bill which introduced the Admin Act. The explanatory memorandum to the bill explains that the section replicates the substance of section 98 of the then Road Traffic Act 1974 and was intended to enable evidence to be tendered to a court by way of a certificate under certain circumstances.

It is clear that the purpose of the subsections in section 110 of the Admin Act are to facilitate the tendering of evidence at a criminal trial as to matters contained within registers and other records maintained by the CEO under the road law. It is against that purpose

that the confinement of the words "records" to "records kept under a road law" is to be understood.

And viewed in that context, it is perhaps unsurprising that section 110 is confined only to registers and records kept under a road law given the section facilitates the admission into evidence of facts derived from a record maintained under a road law without the need to call a witness.

Interestingly, section 110, subsection (1) is limited in its operation to a prosecution for an offence under a road law, whereas sections 110, subsections (3), (4) and (5) refer to a prosecution road offence under any written law. The term "written law" is not defined in the Admin Act or the Road Traffic Act. It is defined in the Interpretation Act 1984 in section 5 to mean all Acts for the time being in force and all subsidiary legislations for the time being in force.

In the present case, the prosecution seek in their written submissions to rely on section 110, subsection (1) of the Admin Act as the basis for the tender of the certificate. This is somewhat different from their oral submissions at the hearing, where they also seem to seek to rely on subsection (5).

Given the written submissions were filed to deal specifically with the admissibility of the certificate, and were provided after an opportunity for consideration or reflection, I will rely on the submissions made in writing as reflecting the prosecution's position on how the certificate is said to be admissible in evidence at the trial.

There appears to be limited judicial consideration to the extent to which a prosecuting agency can rely on an evidentiary certificate to prove its case. The prosecution brought the decision of Vandongen J in *Barrett v City of Cockburn* [2023] WASC 384 to my attention in its written submissions. The prosecution, prior to filing their written submissions had been unable to identify any relevant authority to assist me in considering their submissions.

In *Barrett*, which was a prosecution for a parking offence, the prosecution tendered in evidence in their opening address, two evidentiary certificates, one under section 9.41 of the Local Government Act which merely specified that a particular street was within the district of the city of Cockburn.

The fact that a particular street was within a particular council district is a fact that is not subject to any sensible challenge and therefore not something that is usually in dispute at any trial. It's clearly a matter that section 9.41 is intended to facilitate proof of without the necessity to call a witness to give evidence.

The second was a certificates under section 110 of the Admin Act which stated that a particular vehicle was licensed to Mr Barrett on the relevant date. The certificate under section 110 of the Admin Act in that case was clearly one made under section 110, subsection (3) and it recorded as a matter of fact, as contained in the vehicle licence register, who the vehicle was licensed to on a specific date.

That particular clearly fell within the intention, scope and purpose of section 110, which is to facilitate the proof of what is contained in the vehicle licence register, without requiring a witness to give evidence of that fact.

The fact that the vehicle licence register records the vehicle as being registered to Mr Barrett on a specific date, is not really a matter that could be the subject of any contest. If Mr Barrett had said he had sold the vehicle, for example, but not yet registered the transfer of the vehicle licence, then that would be a matter he could give evidence of. But it is not a matter that changes what is recorded in the vehicle licence register on the relevant day.

His Honour, unsurprisingly concluded at paragraph 155 that there was no miscarriage of justice in relation to the magistrate receiving the two certificates in that case into evidence and relying upon them without a witness being called. That is the extent of his Honour's consideration of the certificate under section 110 of the Admin Act as it does not seem that any specific further complaint was made by the appellant in relation to that certificate.

In relation to the section 9.41, subsection (3) certificate, his Honour noted that it was necessary for the prosecution to prove that the act constituting each of the offences charged occurred within the district of the city of Cockburn and noted that they sought to prove that by tendering the certificate. The court found the certificate complied with the requirement for section 9.41, subsection (3) and was valid. See paragraphs 160 to 163.

In my view, his Honour's reasoning is consistent with the view I've already expressed, that the certificates in Barrett - were clearly admissible as they were limited to simple matters of fact that were derived from records maintained by the relevant government bodies. They were not factual matters that were capable of any real dispute or challenge.

That is where the case of Barrett can be distinguished from the present case. Here the prosecution has sought to go further than just merely stating what was recorded in the vehicle licence register on a specific day. The prosecution are seeking to use the certificate as a vehicle to put factual averments before the court which are not immediately apparent to be matters appearing in or derived from the vehicle licence register, and seek to do that without calling a witness.

As I've already said in my view, section 110, subsection (1) is limited in its operation, relevantly to the present case to facts derived from the vehicle licence register. It does not extend to any other business records of the CEO or the Department of Transport. Such an interpretation of section 110, subsection (1) if fortified in my view, when regard is had to the other evidentiary provisions in the Admin Act.

For example, section 109 of the Admin Act provides for averments as to factual matters that can be made in a prosecution notice for an offence under a road law, when an averment as to any of the matters listed in section 109, subsection (1) is taken to be proved in the absence of proof to the contrary.

There are a number of matters specified in the section, all of which are matters that would be derived from various records maintained by government agencies including the present department. Whilst each is a matter of fact that would generally be uncontroversial, or not subject to any significant challenge, these broader matters are subject to a rebuttable presumption, unlike the evidentiary certificates in section 110 which are taken as proven.

In my view, this supports a narrower interpretation of section 110, and the confinement as to the matters to which the certificates can validly cover. In interpreting what may validly be the subject of an evidentiary certificate under section 110, subsection (1), it is important to consider the obligation of the CEO to maintain a vehicle

licence register as that is the relevant register to this case.

That obligation arises under section 14 of the Act which provides:

The CEO is to keep a register of vehicle licences and enter in it, particulars of each vehicle licence that is granted.

The term "vehicle licence" is not defined in the Act. It is defined in the Admin Act in section 4 to mean a vehicle licence granted under the Road Traffic (Vehicles) Act 2012.

Having regard to section 14 of the Act, and section 4 of the Admin Act, I am satisfied that the CEO's obligation is one to maintain a register for each vehicle where a vehicle licence is granted containing the particulars of each vehicle licence that is granted. It is probably self-evident that in meeting the obligation to maintain the vehicle licence register, the CEO and the department would maintain other records relating to vehicle licences.

This could include records of correspondence relating to vehicles and notices issued in relation to vehicle licences. It would also include forms such as the present form that was sent to notify of the change in ownership.

However, those other records are not part of the vehicle licence register for the purposes of section 14 of the Act, as they are not the register of vehicle licences, nor would they be particulars of each vehicle licence that is granted. But other records may well be, business records for the purposes of the Evidence Act 1906, but they are not records to which section 110, subsection (1) of the Admin Act apply.

At this point, it's appropriate to consider the contents of the certificate tendered by the prosecution in this case. In order for me to rely on the evidence in the certificate, I need to be satisfied that the information contained in the certificate is a matter that can validly be adduced by way of a section 110, subsection (1) certificate. If it is not, then there would be no admissible evidence of that particular matter before the court, the prosecution having elected to proceed in the manner it has.

The opening preamble to the certificates specifies that the delegate certifies the register maintained in accordance with section 14 of the Act has recorded the

matter specified in the seven paragraphs that follow. I accept on the material before me that the author of the certificate is delegated to issue the certificate. However, insofar as she certified the matters in the following seven paragraphs, are matters recorded in the vehicle licence register, I note that there is no evidence before me of what the vehicle licence register actually records.

As I've already outlined, the requirement in section 14 is to maintain the vehicle licence register, is just an obligation to maintain a record of vehicle licences issued and the particulars of those licences. This is relevant to an assessment of whether an inference can be drawn that the matters in the seven paragraphs of the certificate are actually matters that appear in or are derived from the vehicle licence register, given that it is only from the vehicle licence register or a record maintained under a road law that a fact in section 110, subsection (1) certificate can appear or be derived.

Paragraph 1 of the certificate states:

It is recorded that on 5 August 2022, a notification of change of ownership for vehicle licence transfer form MR9, transfer form, was received by Joondalup Driver and Vehicle Services (DVS) office, attachment 1.

The transfer form is not a prescribed form, rather it is a form of proof by the CEO pursuant to section 5, subsection (1) of the Act. There is no evidence before me as to how this document was submitted to the department or who submitted it. Further, there is no explanation in the evidence before me of what is required for a vehicle licence to be transferred.

This form appears by its name to be a form submitted for the purpose of section 5, subsection (1) of the Act, being a form required to be submitted in order to transfer a vehicle licence. Why that form would not be sufficient to constitute an application for transfer of a vehicle licence in the present case has not been explained on the evidence. Nor has there been any explanation of the process as followed by the CEO upon receipt of such a notice. The processes followed by the CEO or a delegate following receipt of such a notice would not constitute a record of vehicle licences granted or particulars of those licences.

There is no evidence before me that the fact a notification of a change of ownership form was received by

the department is a matter that is contained within the vehicle licence register. As a matter of logical inference, it is only upon the actual transfer of the vehicle licence that a register would be updated to reflect the change in holder of the vehicle licence. Until such time as an application to transfer has been submitted, accepted and processed, as a matter of logical inference, there would be no change made to the vehicle licence register or the particulars of such a licence.

On that basis, the form received by the department would form part of the records of the department although is not a document created by the department, it may not be a business record of that department, but it would be a record as that term is broadly defined in the Admin Act. It would be a form submitted to the department in the course of its business of licensing vehicles, but it does not mean that the form itself forms part of the vehicle licence register given it is prepared by a person outside of the department, it logically cannot be part of the vehicle licence register.

Section 110, subsection (1) as I've already said, is confined to matters that appear in or are derived from the vehicle licence register, not other business records maintained by the department or the CEO. In my view, the matters contained in this paragraph are not matters that can be validly the subject of evidence by way of a section 110 certificate. There needs to be an explanation of the processes followed. That can only be given by a witness who could then produce the relevant forms from the records of the department.

Further, the matters in this paragraph are not facts that are necessarily controversial and that would not necessarily be open to a challenge. But more significantly, the fact the notification of change of ownership is lodged, is not a matter that I'm satisfied is derived from the vehicle licence register maintained under section 14 of the Act given the obligation is to maintain a register and particulars of licences that have been granted.

I therefore find that this paragraph of the certificate is invalid and inadmissible and cannot be relied upon by the prosecution to prove its case.

Paragraph 2 of the certificate states:

The vehicle bearing plate number 1CTM 238 is recorded as a white 2006 Holden Combo Panel Van identified by

the vehicle identification number VIN W0L0XCF2563030000
engine number Z14XEP19GG341.

I accept that these facts are particulars relevant to the grant of a vehicle licence which it can readily be inferred would be contained in the vehicle licence register.

I have no difficulty accepting paragraph 2 is a matter than can validly be adduced as evidence in the section 110, subsection (1) certificate and I find that the prosecution can rely on this paragraph of the certificate in proving its case.

Paragraph 3 of the certificate states:

It is recorded that the transfer form contains advice of the sale of the abovementioned vehicle by Calam Dolfer Jennings to Kelly, Dawn Michelle on 30 July 2022.

The wording of this paragraph clearly indicates the information is derived from the transfer form, not from an entry in the vehicle licence register. In the circumstances I'm not satisfied that this is information which is contained in the vehicle licence register.

It therefore cannot be a matter validly the subject of a section 110, subsection (1) certificate and I find that this evidence is not admissible in its present form and that the prosecution cannot rely on this entry in the certificate to prove its case.

Paragraph 4 of the certificate states:

It is recorded that the vehicle register was updated to record the transfer of the vehicle licence to Kelly on 5 August 2022 at Joondalup DVS office.

As I've already said, no evidence has been led by the prosecution to explain the process followed by the department upon receipt of a notification of change of ownership of a vehicle form. As I've already said, as a matter of logical inference, until an application to transfer a vehicle has been lodged, accepted and processed, the only rational inference is there would be no change to the vehicle licence register.

In any event, I am satisfied that the fact that the vehicle licence was transferred to the accused on a particular date, is a matter that would be contained in the vehicle licence register. I therefore find that the

prosecution can rely on this paragraph that it contains evidence validly adduced by section 110, subsection (1) certificate and can be relied upon to prove the case.

Paragraph 5 of the certificate states:

It is recorded that a notice under section 10, subsection (3), paragraph (b) of the Road Traffic (Vehicles) Act titled Application to Transfer Vehicle Licence requiring an application to be made for transfer of the vehicle licence was posted to Kelly, Dawn Michelle at GPO Box 188, Greenwood, WA 6024 on 11 August 2022, attachment 2.

The legislation as I've already set out provides that where a notice of a change of ownership is received, and no application for transfer of a vehicle licence to the buyer is received, the CEO may issue the new owner with a notice requiring that an application for transfer of the licence be made under section 5.

There is no evidence before me or even asserted in the certificate to the effect that Dawn did not submit an application for transfer of a vehicle licence. It is not explained in the evidence why the notice of change of ownership did not constitute an application to transfer the vehicle licence to her. But in any event, the power to issue a notice under section 10 is contingent upon the CEO being satisfied, relevantly it would seem to the present case, that the licence may be transferred pursuant to section 10, subsection (3), paragraph (b) of the Act.

There is no evidence before me that any delegate or the CEO formed the necessary stated satisfaction of the matters in section 10, subsection (3), paragraph (b) and formed the view that a notice should be issued. The reaching of that level of satisfaction is clearly a matter that can only properly be given by the calling of a witness to give that evidence. It cannot, in my view, be a fact the subject of an evidentiary certificate.

Further, there is no evidence before me that the fact a notice was posted is a fact that would be contained within the vehicle licence register given that the vehicle licence register maintains records of current licences that have been granted. Nor is there any evidence as to how a notice is posted, such that the court could reach a level of satisfaction that the notice was in fact posted and can be deemed to have been received by the accused.

Again, the manner in which notices are posted is a matter that is required to be explained by a witness. As I said, there is no evidence before me, and in my view no inference readily arises that the fact that a notice under section 10, subsection (3), paragraph (b) of the Act was issued, is a matter that is recorded in the vehicle licence register.

I have no difficulty accepting that would be recorded in other records maintained by the CEO or the department, but it does not follow that it is a matter that is recorded within the vehicle licence register given that a change in licence holder in the vehicle licence register would only logically be made upon the processing of a valid application for transfer of a vehicle licence.

I do not accept at face value the assertion that the fact a notice was issued is a fact derived from the vehicle licence register, rather than another business record maintained by the department. In the circumstances, I'm not satisfied that this is evidence that can validly be adduced by way of a certificate under section 110, subsection (1) and I find that the evidence is not in an admissible form and cannot be relied upon by the prosecution.

Paragraph 6 of the certificate states:

It is recorded that an application for the transfer of the vehicle licence will be taken to have been made on payment of the amount set out in the notice. The due date for payment of the amount set out in the notice was recorded as 8 September 2022.

The first sentence of this paragraph is a statement of law, not fact. It is a reflection of section 5, subsection (2) of the Act. In those circumstances, it is not a matter of evidence that can be validly adduced through a section 110, subsection (1) certificate and I find the first sentence to be inadmissible in the prosecution's case.

In relation to the remainder of the paragraph, as with other paragraphs of the certificate, there is no evidence before me of the process followed by the department in relation to processing applications for transfer of vehicle licences, but more importantly, as I've already found, no inference arises that the fact a notice under section 10, subsection (3), paragraph (b) has been issued, is a matter that is recorded in the vehicle licence register rather than other records maintained by the CEO or the department.

The fact a notice was issued is not particulars of a vehicle licence that has been granted in my view. As I do not accept at face value the assertion that the fact a notice was issued is a factor derived from the vehicle licence register rather than another business record, I also do not accept that the contents of that notice, in particular the due date for payment of the amount set out in the notice is a fact that is derived from the vehicle licence register.

In the circumstances I'm not satisfied that this is evidence that can validly be adduced by way of a certificate under section 110, subsection (1) and I find that the evidence is not in an admissible form and cannot be relied upon by the prosecution in this form.

Paragraph 7 of the certificate states:

There is no record that payment of the amount set out in the notice was made in full by the due date.

Again, there is no evidence before me of the processes followed by the CEO or the department in relation to the processing of applications to transfer vehicle licences, nor is there any evidence of what systems are kept to record that a payment is payable, by whom it's payable, or record when a payment is made.

Evidence that something has not occurred is not evidence that is readily given by way of an evidentiary certificate, but rather given by a witness who can explain the procedures adopted, explain what searches have been undertaken in order to satisfy the court that the thing has not occurred.

In this case, I'm not satisfied that whether payment of fees relating to an application to transfer a vehicle licence has or has not been made is a matter that is contained in the vehicle licence register maintained under section 14 of the Act given that a transfer of a vehicle licence is not taken to have been made until payment is received pursuant to section 5, subsection (2) of the Act.

The vehicle licence register records licences that have been granted and records particulars of those licences. As I've already said, the inference that is logically drawn is that the transfer of a licence is not updated in the register until all of the requirements for a transfer have been complied with.

As the application for transfer is only deemed to have been made when payment of the fees is made pursuant to section 5, subsection (2) of the Act, it does not follow as a matter of logical inference that whether a fee has been paid for the transfer of a licence is a matter that is recorded in the vehicle licence register, rather the inference is that such a record is likely kept in other records maintained by the department.

In the circumstances, I'm not satisfied that this is evidence that can validly be adduced by way of a certificate under section 110, subsection (1) and I find that the evidence is not in an admissible form and cannot be relied upon by the prosecution.

For the reasons I have already given, I consider the certificate does contain some admissible evidence validly adduced through a section 110, subsection (1) certificate, being paragraphs 2 and 4. I therefore find that those paragraphs can be adduced by the prosecution and I will accept the evidence insofar as it contains the preamble paragraphs; paragraph 2, paragraph 4 and the concluding paragraph in evidence as exhibit 1. The instrument of delegation documents will be accepted in evidence and marked exhibit 2.

On the prosecution's case, based on admissible evidence adduced by the prosecution at trial, I am satisfied beyond reasonable doubt of the following matters:

That vehicle bearing plate number 1CTM 283 is recorded as a white 2006 Holden Combo Panel Van identified by Vehicle Identification Number W0L0ZCF2563030000, engine number Z14XEP19GG341.

That the vehicle register, which I take to be a reference to the vehicle licence register maintained under section 14 of the Act, was updated to record the transfer of the vehicle licence to Kelly on 5 August 2022 at Joondalup DVS office.

The accused is charged with an offence against section 10, subsection (6) of the Act. The elements of that offence are: the accused was issued with a notice under section 10, subsection (3), paragraph (b) of the Act requiring that an application for transfer of the licence be made and the accused did not make an application for transfer which is payment of the amount in the notice within 28 days after the notice was issued. I need to consider whether the accused has a case to answer on the admissible evidence adduced by the prosecution.

Determining whether there is a case for an accused to answer is not a question of fact, but an issue of law. As Gleeson CJ observed in *Antoun v The Queen* [2006] HCA 2 at paragraph 16, the question of whether there is evidence capable of supporting a verdict at a civil or criminal trial by a jury is a question of law.

As was explained in *Doney*, this is a different question from whether a jury ought to be warned about the probative value of evidence. It is different from the question whether a trial judge might properly inform a jury at any time after the close of the prosecution's case of its power to acquit. And it is different from the question which confronts an appellate court where it has decided whether a conviction is unreasonable. There is no advantage to be gained by blurring these differences, keeping them in mind, helps to avoid confusion.

In determining whether an accused has a case to answer, the court needs to consider whether the evidence of the prosecution taken at its highest is capable of establishing beyond a reasonable doubt, the guilt of the accused. In undertaking that assessment, the evidence adduced by the prosecution is taken to be correct. There is no weighing or evaluation of the evidence required.

Having said that though, I do not consider that on a no case basis, the court can consider inadmissible evidence. It can only consider evidence that is properly admitted and does not need to weigh and evaluate that evidence for the purposes of assessing whether an accused has a case to answer.

Where the prosecution's case depends on drawing of inferences, the question is whether on the assumption all of the evidence of primary fact taken at its highest and drawing all inferences favourable to the prosecution, there is evidence capable of producing in the mind of a reasonable person, satisfaction beyond reasonable doubt the guilt of the accused.

In this case, the only admissible evidence adduced by the prosecution is that contained in paragraphs 2 and 4 of the certificate. That evidence does not establish the primary facts required to prove the elements of the offence. In fact, paragraph 4 gives rise to an inference that Dawn did in fact apply for the transfer of the vehicle licence and payment was made, given the evidence in paragraph 4 is that the vehicle licence was transferred into her name on 5 August 2022.

As section 5, subsection 2 provides, an application to transfer a vehicle licence is only deemed to have been made upon payment of the fees relating to that transfer. The fact the vehicle licence was transferred to her is evidence that supports an inference that she did in fact make payment of the fees owing in order for the transfer of the vehicle licence to have been processed by the department and the vehicle licence register updated to reflect the transfer.

But in any event, and more importantly, on the evidence before me there is no admissible evidence adduced by the prosecution that establishes that the accused was issued with a notice under section 10, subsection (3), paragraph (b) of the Act, and that she did not make payment of the amount specified in the notice, and therefore, did not make an application for transfer of the vehicle within 28 days after the notice was issued.

There is simply no evidence to establish either of the elements of the offence on the admissible evidence adduced by the prosecution, even viewing the evidence properly adduced by the prosecution at its most favourable, and drawing all inferences favourable to the prosecution from the admissible evidence led.

In all the circumstances, I find the accused has no case to answer and I enter a judgment of acquittal. If I was wrong about there being no case to answer, then I would have found the accused not guilty in any event, as the admissible evidence led by the prosecution is incapable of proving her guilt beyond reasonable doubt as there are no facts to establish the elements of the offence in an admissible form.

The Magistrates Court is a busy court and it's not in the interests of the efficiency of the court or in the interests of justice to spend any more time on this matter and that is why I am dismissing - finding there is no case to answer, rather than proceeding further with a trial.

So Dawn, in relation to charge 3280 you will be acquitted of that charge and that's the end of that matter. Now, there are four other charges before me today that are for mention.

ACCUSED: Sorry, excuse me.

HER HONOUR: Yes.

ACCUSED: Can I please - I'm just going to give them - - -

HER HONOUR: If you give them something, I don't care. So in relation to these matters, the format is you've entered pleas of not guilty.

ACCUSED: Sorry?

HER HONOUR: You've entered pleas - endorsed pleas of not guilty to four charges.

ACCUSED: I withdraw that.

HER HONOUR: You withdraw your pleas of not guilty?

ACCUSED: Withdraw that. It was conditional.

HER HONOUR: Okay. Well, do you want me to read the four charges and take pleas again?

ACCUSED: So just - can we start again, please. So we are definitely - we've just dealt with the Department of Transport - yes, that's finalised now. Okay. So we aren't - yes - okay.

HER HONOUR: There are four other charges that have been listed in this list today. I will read them to you.

There's a charge that on 8 October 2023, at Karrinyup, you drove a vehicle namely a Suzuki Grand Vitara station sedan registration number PRIVATE on a road, namely Marmion Avenue, Karrinyup, and when given a direction by police officer in accordance with section 39 of the Road Traffic (Administration) Act 2008 to stop the vehicle, you failed to comply with that direction. So you returned an endorsed plea of not guilty to that charge on 6 November. Are you maintaining your plea of not guilty?

ACCUSED: That was conditional.

HER HONOUR: So do you want to enter a plea of guilty or do you want to make maintain a plea of not guilty?

ACCUSED: We are the - we are. We are the living woman. We are the beneficiary of the estate named trust, Dawn Michelle Kelly Estate Trust. We do not consent to contract or joinder and we waive all benefit from offer, your Honour.

HER HONOUR: Okay. And is it the same answer for the other three?

ACCUSED: Correct.

HER HONOUR: Okay. Then we will set them down for trial. Sergeant, what's your estimate for trial for those matters?

ACCUSED: Are you - are you administering my estate - my trust without my consent?

HER HONOUR: I'm exercising my powers under the Magistrates Court Act and I'm setting them down for trial.

ACCUSED: You are - so you are administering my trust without my consent.

HER HONOUR: What's your estimate for trial, Sergeant?

ACCUSED: We do not consent to contract or joinder.

O'CONNOR, MR: Half a day, your Honour. Two police witnesses.

HER HONOUR: Okay. What have we got in the way of a half-day trial?

ACCUSED: Your Honour, you are administering my trust without my consent.

HER HONOUR: I'm administering my powers under the Magistrates Court Act. I will set this matter down for trial. Whether you want to engage in the proceedings is a matter for you. If you choose not to attend court on the trial date, you can be convicted in your absence and a penalty imposed. But I'm not exercising your will, I am setting the matter down in accordance with my powers. Okay.

ACCUSED: I'm the beneficiary of the Dawn Michelle Kelly Estate in Trust.

JSO: 4 April.

HER HONOUR: 4 April.

JSO: Yes.

HER HONOUR: 4 April, Sergeant?

O'CONNOR, MR: Suits us, thank your Honour.

ACCUSED: Do not consent to contract or joinder.

HER HONOUR: That's fine. You don't have to. 4 April suitable?

O'CONNOR, MR: Suits us, your Honour. Thank you.

HER HONOUR: Okay. So these four matters will be set down for trial on 4 April. You will receive a notice of adjournment confirming that date. As I said to you, it's a matter for you whether you want to engage with the trial or not. If you don't attend court on 4 April, you can be convicted in your absence and a penalty imposed. That completes your matters today, Dawn, and you are free to go.

AT 11.32 AM THE MATTER WAS ADJOURNED UNTIL
THURSDAY, 4 APRIL 2024

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