
JURISDICTION : SUPREME COURT OF WESTERN AUSTRALIA
IN CRIMINAL

CITATION : KELLY -v- WA POLICE [2024] WASC 372

CORAM : WHITBY J

HEARD : 10 OCTOBER 2024

DELIVERED : 10 OCTOBER 2024

PUBLISHED : 11 OCTOBER 2024

FILE NO/S : SJA 1029 of 2024

BETWEEN : DAWN MICHELLE KELLY
Appellant

AND

WA POLICE
Respondent

ON APPEAL FROM:

For File No : SJA 1029 of 2024

Jurisdiction : MAGISTRATES COURT OF WESTERN
AUSTRALIA

Coram : MAGISTRATE E WOODS

File Number : PE 55253/2023, PE 55254/2023, PE 55255/2023 & PE
55256/2023

Catchwords:

Criminal law - Single judge appeal - Whether magistrate erred in law -

Amendment of charge by magistrate - Intervention by magistrate to prevent questions being asked in cross-examination - Apprehended bias - Whether appellant had a 'reasonable excuse' for failing to stop her vehicle when directed to do so by a police officer - No error of law - No miscarriage of justice

Legislation:

Criminal Appeals Act 2004 (WA)
Criminal Procedure Act 2004 (WA)
Road Traffic (Vehicles) Act 2012 (WA)
Road Traffic (Administration) Act 2008 (WA)
Road Traffic Act 1974 (WA)
Road Traffic Code 2000 (WA)

Result:

Extension of time to appeal granted
Leave to appeal refused
Appeal dismissed

Category: B

Representation:

Counsel:

Appellant : In Person
Respondent : C Mayne

Solicitors:

Appellant : In Person
Respondent : State Solicitor's Office

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

Attorney - General (Cth) v Breckler (1999) 197 CLR 83
B v Coan [2021] WASC 127
Briggs v Houlihan [2018] WASC 301
Brooks v Drysdale [2020] WASC 466
Ebner v Official Trustee in Bankruptcy [2000] HCA 69; (2000) 205 CLR 337

JAD v McRae [2022] WASC 220

Johnson v Johnson [2000] HCA 48; (2000) 201 CLR 488

Kelly v Fiander [2023] WASC 187

Kelly v Fiander [2024] WASC 275

Porter v Kelly [2024] WASC 282

S & M Motor Repairs Pty Ltd v Caltex Oil (Australia) Pty Ltd (1988) 12
NSWLR 358

Samuels v The State of Western Australia [2005] WASCA 193

Stack v The State of Western Australia [2004] WASCA 300; (2004) 29 WAR
526

Taikato v The Queen (1996) 186 CLR 454

Taylor v Hodgson [2013] WASC 237

Tey v Plotz [No 2] [2011] WASC 34

Tobin v Dodd [2004] WASCA 288

Y v X [2024] WASCA 104

WHITBY J:

(This judgment was delivered extemporaneously on the 10 October 2024 and has been edited from the transcript and to include references to authorities.)

1 On 23 April 2024, the appellant was convicted of four offences that occurred in Karrinyup on 8 October 2023. Those four offences and the sentence imposed for each are:

- (1) PE 55253/2023 - failed to comply with a direction to stop, contrary to s 44 of the *Road Traffic (Administration) Act 2008* (WA) (**RTAA**) - fine \$1,000;
- (2) PE 55254/2023 - drove a vehicle with a forged, replica or false plate on the road, contrary to s 36(2)(e) of the RTAA - fine \$400;
- (3) PE 55255/2023 - used an unlicensed vehicle on a road, contrary to s 4(2) of the *Road Traffic (Vehicles) Act 2012* (WA) (**RTVA**) - fine \$400 and half annual licence fee amount of \$168.75; and
- (4) PE 55256/2023 - had no authority to drive, contrary to s 49(1)(a) and s 49(3)(ca) of the *Road Traffic Act 1974* (WA) (**RTA**) - fine \$1,500 and licence disqualification of 9 months cumulative,

(collectively the Offences).

2 The appellant was also ordered to pay costs of \$272.70.

3 The appellant seeks leave to appeal the convictions for the Offences on multiple grounds.

4 For the reasons that follow, none of the grounds of appeal have any prospects of success and therefore leave to appeal on each ground is refused.

The trial

5 The appellant did not enter a plea to the charges in the Magistrates Court. The matter proceeded to trial on the basis that, pursuant to s 126 of the *Criminal Procedure Act 2004* (WA) (**CPA**), the court entered a plea of not guilty to each of the charges on behalf of the appellant.

6 In order to prove each of the charges, the prosecution was required to prove the following elements of the Offences:

- (1) in relation to PE 55253/2023:
 - (a) the appellant was driving a vehicle on a road;
 - (b) she was given a direction to stop; and
 - (c) she failed to stop,
- (2) in relation to PE 55254/2023:
 - (a) the appellant was driving a vehicle on a road; and
 - (b) the vehicle license plate was not as issued,
- (3) in relation to PE 55255/2023:
 - (a) the appellant used a vehicle on a road; and
 - (b) no vehicle licence had been paid for that vehicle,
- (4) in relation to PE 55256/2023:
 - (a) the appellant drove a vehicle on the road; and
 - (b) she was not authorised to drive as she did not hold a valid driver's licence,

7 At the outset of the trial, the magistrate explained the trial process to the appellant.¹

8 At the trial, the prosecution called two police witnesses, Sergeant Stuart Neeter and First Class Constable Trent Banner (**Police Officers**). The Police Officers gave the following evidence at trial:

- (1) at 12:30 pm on 8 October 2023, they were traveling southbound on Reid Highway in a marked police car when they noticed a white Suzuki Grand Vitara with black registration plates labelled 'Private' and displaying what appeared to be a family crest;
- (2) Sergeant Neeter used the 'OneForce Core' application on his phone to check the Suzuki's license plate registration, but there

¹ Transcript of Magistrates' Court hearing on 4 April 2024, page 3 - 4 (ts).

was no match. As a result, they suspected that the driver might be committing an offence or using a false registration plate;

- (3) Sergeant Neeter instructed Constable Banner, who was driving the police car, to activate the emergency lights and signal for the Suzuki to pull over. The pursuit continued onto Marmion Avenue, where the Suzuki was briefly held by another car waiting for traffic. Sergeant Neeter got out of the police car, approached the driver's side of the Suzuki, gestured with his hand and verbally directed the driver to pull over. However, the driver ignored the command and drove away onto Marmion Avenue;
- (4) they followed the Suzuki in their police car with emergency lights still on. The pursuit continued until the Suzuki was stopped in traffic at the junction of Marmion Avenue and Karrinyup Road;
- (5) Sergeant Neeter got out of the police car again, approached the driver's side of the Suzuki, drew a baton and directed the driver to open the door. The driver lowered the window on the driver's side, allowing access to the car. Sergeant Neeter then opened the driver's side door, switched off the engine and took the keys. The appellant identified herself as the driver. The appellant remained at the scene and recorded the Police Officers on her mobile telephone while the Suzuki was seized and towed; and
- (6) searches of licensing systems confirmed that the Suzuki was unregistered and that the appellant's driver's licence had been cancelled.

9 The entire incident was captured on Sergeant Neeter's body worn camera.²

10 Two evidentiary certificates, issued pursuant to s 110 of the RTAA, were tendered through Constable Banner. The Department of Transport certified the numerous licence disqualifications that the appellant has received and confirmed that, as at the date of the Offences, the appellant did not hold a valid driver's licence.³ The

² Magistrate's Court proceeding Exhibit A.

³ Magistrate's Court proceeding Exhibit G.

Department of Transport also certified that the Suzuki, as at the date of the Offences, was not a licensed vehicle.⁴

11 The appellant did not give evidence at the trial and did not call any witnesses to give evidence. At the conclusion of the prosecution's case, the appellant summarised her case. The appellant relied upon the following matters in defence of the charges:

- (1) the Police Officers had no delegation under the RTAA to give the direction to stop;
- (2) there is no driver's licence contract that exists between the decedent legal name, Dawn Michelle Kelly, and the legal woman who is executor for the contracts of the same; and
- (3) the driver's licence and the prosecution notice were not in proper King's English pursuant to the Oxford Styles Manual.

12 During the course of the trial, the appellant also argued that her failure to stop was a result of a fear of harm, or flight response.⁵

13 On 23 April 2024, the magistrate delivered her decision following trial. Prior to delivering her reasons, the magistrate amended PE 55253/2023 to refer to s 44 of the RTAA rather than reg '273(1)(a)(i)' of the *Road Traffic Code 2000 (Code)*. The magistrate indicated that she was amending the section reference pursuant to s 132 of the CPA.

14 The magistrate then delivered her reasons in which her Honour:

- (1) made findings of fact consistent with the evidence given by the Police Officers;
- (2) determined that the appellant's cross-examination of the prosecution witnesses was 'ineffectual, largely irrelevant and did not raise a defence to the charges';⁶
- (3) found that there were no defects in the prosecution notice;
- (4) found that the Police Officers were entitled to act as they did and did not require written delegation pursuant to the RTAA to direct the appellant to stop;

⁴ Magistrate's Court proceeding Exhibit H.

⁵ ts 53 - 54.

⁶ Transcript of Magistrate's Court hearing on 23 April 2024, page 6 (**second transcript**).

- (5) found that the theories put forward by the appellant were without merit;
- (6) found that the evidence of the prosecution was uncontested and the charges were proven; and
- (7) entered judgments of conviction in relation to each of the Offences.

Appellant's Grounds of Appeal

15 The appellant's written submissions contain 23 grounds of appeal. Each ground of appeal falls within one or more of the following 11 'themes' of appeal:

- (1) Grounds 2 and 3 allege that the magistrate erred in law in amending charge PE 55253/2023 at the conclusion of the trial.
- (2) Grounds 4, 15, 16 (including 16.1, 16.2, 16.3 and 16.4) and 17 allege that Sergeant Neeter did not have power to direct the appellant to stop the Suzuki.
- (3) Ground 5 alleges an error by the magistrate in entering not guilty pleas for the charges.
- (4) Grounds 6 and 23 allege that the prosecution was 'estopped' by legal notices and allege an error in identifying the appellant by reference to the appellant's driver's licence.
- (5) Ground 7 alleges that full discovery was not provided to the appellant.
- (6) Grounds 8, 9, 11 and 20 allege that the magistrate was biased.
- (7) Grounds 10 and 12 allege that the magistrate erred in prohibiting the prosecution's witnesses from answering some of the appellant's questions during cross-examination.
- (8) Ground 13 alleges that the magistrate erred in law by allowing Exhibits G and H (Department of Transport evidentiary certificates) to be admitted into evidence.
- (9) Ground 14 alleges an error in relation to the court refusing to issue the summons sought by the appellant for the Commissioner of Police to attend the trial as evidenced by Exhibit E.

(10) Grounds 18 and 19 allege that the magistrate erred in finding that the appellant had not established an excuse for disobeying Sergeant Neeter's direction to stop.

(11) Grounds 21, 22 and 24 allege improper conduct of the magistrate after sentencing on 23 April 2024.

16 Ground 1 is an introduction to the grounds of appeal and not a ground of appeal itself. This is the same as ground 27, which is a list of authorities. Grounds 25 and 26 are not properly grounds of appeal as the appellant seeks costs, damages and compensation from the respondent.

17 The appellant also relies upon her affidavit sworn on 20 September 2024 and the attachments thereto in support of her grounds of appeal.

Legal principles relating to an appeal

18 Section s 7(1) of the *Criminal Appeals Act 2004* (WA) (CA Act) provides that a person who is aggrieved by a decision of a court of summary jurisdiction may appeal to the Supreme Court against that decision. A 'decision' of a court of summary jurisdiction includes a decision to convict an accused of a charge: CA Act s6(c).

19 The grounds of an appeal pursuant to s 7(1) of the CA Act may be that the court of summary jurisdiction made an error of law or fact, or of both law and fact, or that there has been a miscarriage of justice.

20 The appellant must obtain leave to appeal on each ground of appeal: CA Act s 9(1). If leave to appeal is not granted on at least one ground, the appeal is taken to have been dismissed: CA Act s 9(3). The court must not grant leave to appeal on a ground of appeal unless the court is satisfied that the ground has a reasonable prospect of succeeding.⁷

21 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: CA Act s14(2).

22 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

⁷ *Samuels v The State of Western Australia* [2005] WASCA 193.

contained in s 40(1)(e) of the CA Act to 'admit any other evidence' for the purposes of dealing with an appeal: CA Act s 39 (3).

23 An appeal cannot be commenced later than 28 days after the date of the decision unless the Supreme Court orders otherwise: CA Act s 10(3). As the appellant's notice of appeal was filed 30 days after the decision, the appellant requires an extension of time to commence the appeal. The court will grant an extension of time for appeal if it is in the interests of justice to do so.⁸

24 In considering whether it is in the interests of justice to grant an extension of time the factors which may generally be considered are: the nature and extent of the delay, the reasons for the delay, the proposed grounds of appeal and their merits, the prejudice to the appellant if an extension of time is not granted and the prejudice (if any) to the respondent if an extension of time is granted.⁹

25 The appellant relies upon her affidavit sworn on 28 May 2024 in support of her application for an extension of time to appeal. The appellant deposes that she misjudged the timeframe within which she was required to appeal due to immense stress she was experiencing because of several proceedings in which she was engaged as a self-litigant. Given the short time for which the extension is required, the respondent does not oppose the application for an extension of time. I, therefore, grant the appellant an extension of time to appeal.

26 I also take into account that fact that the appellant represented herself at the appeal hearing and at the trial. The considerations to be applied when dealing with litigants in person were set out in *Tobin v Dodd* [2004] WASCA 288 [13] - [14]. I apply these principles when considering the appellant's appeal.

Grounds 2 and 3 - Error in amending charge PE 55253/2023

27 These grounds relate to the decision of the magistrate on 23 April 2024, immediately prior to delivering her Honour's reserved decision, to amend charge PE 55253/2023 to replace the reference to reg '273(1)(a)(i)' of the Code as the written law with a reference to s 44 of the RTAA.¹⁰

28 Section 132 of the CPA relevantly provides:

⁸ *Briggs v Houlihan* [2018] WASC 301 [47].

⁹ *JAD v McRae* [2022] WASC 220 [25].

¹⁰ Second transcript 1 - 3.

132 Amending charges etc

- (1) The powers in this section may be exercised by a court in relation to a charge at any time before or during trial.
- (2) The powers in this section may be exercised by a court on its own initiative or on the application of a prosecutor or an accused, unless the contrary intention appears
- (3) A court, on the application of the prosecutor, may amend a charge.
- (4) Without limiting subsection (3) a court may amend a charge to correct any variance between the charge and the evidence led by the prosecutor in support of it.
- ...
- (10) A court may refuse to amend a charge, prosecution notice or indictment if it is satisfied-
 - (a) the amendment is material to the merits of the case; and
 - (b) the amendment would prejudice the accused's defence of the charge, prosecution notice or indictment; and
 - (c) an adjournment would not overcome the prejudice.

29 The court's power to amend a charge includes the power to amend to a different offence where the new offence is similar in nature and character to the original charge.¹¹

30 The appellant submits that the magistrate's decision to amend the charge was made after the trial and therefore was not amended in accordance with s 132(1) of the CPA.

31 There is no merit in this submission. Section 132(4) of the CPA permitted the magistrate to amend the charge to correct any variance between the charge and the evidence led in support of it. The evidence led at trial supported the charge pursuant to s 44 of the RTAA. The amendment reflected the evidence.

32 Further, while I accept that the written law upon which a charge is based is material to the merits of the case, I do not consider that any prejudice was caused to the appellant by the amendment of the charge. The description of the charge was not amended. The description of the

¹¹ *Taylor v Hodgson* [2013] WASC 237 [40] (Allanson J).

charge made it clear that the nature of the allegation was a failure to comply with a direction given under s 39 of the RTAA, that being that the appellant:

drove a vehicle, namely a Suzuki Grand Vitara station sedan, registered number PRIVATE (False Plate) on a road, namely, Marmion Avenue, Karrinyup and when given a direction by a police officer in accordance with section 39 of the *Road Traffic (Administration) Act 2008* to stop the vehicle failed to comply with the direction.

33 There is, in fact, no reg '273(1)(a)(i)' of the Code. Reg 273(1)(a) of the Code provides for an offence where a driver of a vehicle approaching a police officer, who is regulating traffic, disobeys that officer's hand signal to stop. One of the elements of that regulation is that the police officer giving the direction is already regulating traffic, rather than undertaking a traffic stop as contemplated by s 44 of the RTAA.

34 The trial was conducted by both parties on the basis that the allegation was a failure by the appellant to stop her car when directed to do so by Sergeant Neeter. The appellant did not defend the charge on the basis that it was a charge pursuant to reg 273 of the Code. The appellant sought to defend the charge on the basis that Sergeant Neeter did not have authority to issue the direction and that she had a reasonable excuse for failing to comply with that direction (which is considered in Grounds 18 and 19 of the appeal). Regulation 273 of the Code does not provide for a defence of reasonable excuse. I draw the inference that the appellant would not have approached the trial any differently had s 44 of the RTAA been correctly identified as the written law for the charge.

35 I find that magistrate had the power to amend the charge and there was no prejudice occasioned to the appellant as a result of the amendment of the charge. There was no substantial miscarriage of justice as a result of the amendment to the charge.

36 Grounds 2 and 3 have no reasonable prospects of success.

Grounds 4, 15, 16 and 17 - No written delegation

37 The appellant contended at trial that Sergeant Neeter did not have a written delegation under s 8 and s 9 of the RTAA and, therefore, did not have power to issue a direction for the appellant to stop the Suzuki.

38 The magistrate was correct in finding that s 39 of the RTAA directly conferred a power on Sergeant Neeter, as a police officer, to direct the appellant to stop the Suzuki for the purposes of investigating an offence under a road law.¹² Sergeant Neeter did not require a written delegation under s 8 and s 9 of the RTAA to issue a direction to the appellant to stop the Suzuki.

39 Grounds 4, 15, 16 and 17 have no reasonable prospects of success.

Ground 5 - Error in entering not guilty pleas

40 Section 126(5) of the CPA provides that the Court must enter a plea of not guilty on behalf of the accused where, among other circumstances, the accused refuses to enter a plea. The magistrate was correct to proceed on the basis of a not guilty plea. In any event, there has been no miscarriage of justice as a result of the not guilty pleas being entered, as the appellant maintains that she is not guilty of the Offences.

41 Ground 5 has no reasonable prospects of success.

Grounds 6 and 23 - 'Estoppel' by legal notices, evidence of licence

42 By these grounds of appeal, the appellant contends that the magistrates court was prevented from hearing the charges by virtue of three legal notices and an estoppel. The appellant also contends that she should not be identified by her driver's licence which lists her name in all capitals.

43 Similar arguments have been considered in this court in matters involving the appellant and have been held to have no merit.¹³ For the same reasons, I find that these grounds have no basis in law and have no reasonable prospects of success.

Ground 7 - Alleged failure to give discovery

44 The appellant contends that she was unable to mount an adequate defence at trial due to the magistrate's failure to require the respondent to comply with s 61 of the CPA in relation to discovery.

45 Putting aside the issue of whether s 61 of the CPA applied to the matter, s 61(5) and s 61(6) of the CPA provides that the prosecutor

¹² Second transcript 6.

¹³ *Kelly v Fiander* [2023] WASC 187 [11] - [13] and *Kelly v Fiander* [2024] WASC 275 [26] - [31].

must, at least 28 days before the trial date, serve the accused with the following material that is relevant to the charge:

- (1) any confessional material of the accused;
- (2) any evidentiary material;
- (3) a copy of the accused's criminal record; and
- (4) any document that is prescribed.

46 Disclosure of all witness statements and evidentiary material
relied upon at trial was served on the appellant on 15 March 2024.

47 The appellant did not seek to adjourn the trial based on any
alleged failure of the prosecution to provide disclosure. Further, the
appellant has not articulated how any alleged failure to provide
disclosure prejudiced her defence.

48 I find that there is no merit to the appellant's contention that full
discovery was not provided and therefore this ground of appeal has no
reasonable prospects of success.

Grounds 8, 9, 11 and 20 - Apprehension of Bias

49 By these grounds, the appellant alleges that the magistrate was
biased in the conduct of the trial in that the magistrate:

- (1) did not allow the appellant to explore whether the legal
authority for the charges pursuant to the transport laws was
unlawful;
- (2) acted as a lawyer for the prosecution;
- (3) prevented the witnesses from answering questions during cross-
examination; and
- (4) categorised the appellant as belonging to a class of people who
avoid the operation of laws with which they do not want to
comply.

50 A miscarriage of justice will be established if the appellant can
demonstrate that the magistrate displayed apprehended bias. The test to
be applied in determining whether a judicial officer is disqualified by
reason of the appearance of bias is: whether a fair-minded lay observer
might reasonably apprehend that the judicial officer might not bring an

impartial and unprejudiced mind to the resolution of the question that the officer is required to decide.¹⁴

51 The application of that test involves two steps. First, it requires the identification of the facts and circumstances said to give rise to the apprehension of bias. Second, it requires that there is a logical connection established between those facts and circumstances and the asserted conclusion that the judicial officer may not decide the case on its merits.¹⁵ The party who alleges an apprehension of bias bears the onus of proving the facts upon which that allegation is made.¹⁶

52 The test is objective and it is to be assumed that the lay observer will base his or her opinion on a fair assessment of the judicial officer's conduct in the context of the hearing as a whole. Apprehended bias must be firmly established. Suspicions of an ultra-sensitive, paranoid or cynical person do not determine the applicable legal standard of impartiality.¹⁷

53 The respondent submits that none of the matters raised by the appellant would have caused a fair-minded lay observer to reasonably apprehend that the magistrate might not bring an impartial and unprejudiced mind to the proceeding.

54 In support of the allegation of apprehended bias, the appellant relies upon rulings of the magistrate that were unfavourable to the appellant. These rulings are separately the subject of grounds of appeal 10 and 12. For the reasons I set out below, the magistrate did not make any error in making those rulings. It follows that such rulings do not establish that the magistrate might not decide the case on its merits.

55 The magistrate said the following in relation to the appellant belonging to a group of people who avoid operation of laws they do not want to comply with:¹⁸

It became apparent that the accused was a person in a group of people who attempt to continually and without success and without legal training to avoid the operation of the laws which they don't want to comply with. This line of thought has emerged in the USA and spread to a number of other locations across the world. Unfortunately,

¹⁴ *Johnson v Johnson* [2000] HCA 48; (2000) 201 CLR 488 [11].

¹⁵ *Ebner v Official Trustee in Bankruptcy* [2000] HCA 69; (2000) 205 CLR 337 [8].

¹⁶ *Y v X* [2024] WASC 104 [123].

¹⁷ *B v Coan* [2021] WASC 127 [103] citing *S & M Motor Repairs Pty Ltd v Caltex Oil (Australia) Pty Ltd* (1988) 12 NSWLR 358, 374.

¹⁸ Second transcript 6.

Australia has not been exempt from that and, primarily, that has been accessed by those who abide by it through the internet.

...

The points put were largely incoherent and the incomprehensible defence presented here was without any merit and totally misguided and ill-conceived. The accused took sections out of context and sought to apply them to her particular situation.

56 The magistrate's comments, while critical of the appellant, were made in response to the appellant's position adopted at trial. These comments were not unfounded and do not establish any apprehended bias on the part of the magistrate.

57 I find that these grounds of appeal are without merit and have no reasonable prospects of success.

Grounds 10 and 12 - Interventions during cross-examination

58 The magistrate interjected numerous times during the appellant's cross-examination of the prosecution's witnesses and ruled that certain questions were irrelevant and that the witnesses were not required to answer them.

59 The appellant submits that the magistrate's rulings that questions and evidence were not relevant placed an 'estoppel' on the appellant's defence.

60 A magistrate must conduct a trial in accordance with the rules of procedural fairness. This includes ensuring that an accused is provided with a reasonable opportunity to present their case.¹⁹ However, this does not give an accused an unfettered right to present his or her case in any manner they chose. The material presented by an accused must be sufficiently relevant and probative to warrant being received by the court.²⁰

61 At the trial, the appellant's approach to cross-examination was to persistently pose questions to witnesses which were not relevant to the charges - the questions related to the appellant's freedom of information requests to the Department of Transport, the ownership of roads and the

¹⁹ *Brooks v Drysdale* [2020] WASC 466 [61].

²⁰ *Stack v The State of Western Australia* [2004] WASCA 300; (2004) 29 WAR 526 [101].

authority to make and interpret the law such as the RTAA and whether the Police Officers had a delegation of powers.²¹

62 In my view, it was appropriate for the magistrate to intervene and rule that such questions could not be asked because they were not relevant to the charges. In any event, the answers to those questions had no bearing on the outcome of the trial. There was no miscarriage of justice occasioned by the magistrate's ruling that the questions could not be asked.

63 These grounds of appeal are without merit and have no reasonable prospects of success.

Ground 13 - Error in allowing Exhibits G and H into evidence

64 The appellant submits that the magistrate was in error in allowing Exhibits G and H to be tendered by the prosecution without a witness from the Department of Transport available for cross-examination. Exhibits G and H are certificates from a delegate of the Department of Transport pursuant to s 110(1) of the RTAA confirming that, at the time of the offences, the appellant's driver's licence was cancelled and that the Suzuki was not registered. These Exhibits were tendered through Constable Banner and were objected to by the appellant.²²

65 The appellant relies on a transcript of a previous decision on 15 December 2023 by Magistrate Oliver, in a different prosecution against the appellant, where her Honour dismissed other charges against the appellant due to deficiencies with the content of evidentiary certificates. That decision was overturned on appeal in *Porter v Kelly*²³ in which Musikanth J held:²⁴

...if a document purporting to be ... a [s 110(1)] certificate says a fact is recorded in (or derived from) a register or other record maintained under a road law, then I consider that fact to be admissible, without more, by force of s 110(2).

66 The magistrate was correct in finding that the certificates were admissible pursuant to s 110(2) of the RTAA. This ground of appeal has no reasonable prospects of success.

²¹ ts 9 - 27, 35, 41 - 50.

²² ts 38 - 39.

²³ *Porter v Kelly* [2024] WASC 282.

²⁴ *Porter v Kelly* [42].

Ground 14 - Refusal to issue summons

67 The appellant submits that the magistrate's refusal to issue a summons to the Commissioner of Police²⁵ at her request resulted in a substantial miscarriage of justice. The appellant submits that the summons was necessary to her defence as the Commissioner of Police was the only person that had firsthand knowledge of the delegation of function under the RTAA.

68 The appellant's purpose in applying for the summons and the evidence the appellant sought to obtain from the Commissioner of Police was irrelevant to the charges. I therefore, find that no miscarriage of justice has been occasioned by the magistrate's refusal to issue the summons.

69 This ground of appeal has no reasonable prospects of success.

Grounds 18 and 19 - Fear and reasonable excuse

70 The appellant asserts, by ground 18, that when she was stopped and stationary in her car, she was 'accosted by armed assailants, a member charged at the window with weapon drawn, his body language would suggest he is going to break the window and drag me out onto the road in stopped traffic... the trigger response we felt, of armed assailants advancing upon us, we're put in a state of absolute fear from the military force formation in battle mode engagement'. By ground 19, the appellant asserts that the 'prosecution could not prove beyond reasonable doubt that fear and flight or fight reaction was not a plausible reason for not stopping for men carrying handcuffs, a Glock pistol, a taser and an AR15 (semi-automatic assault rifle).'

71 These grounds of appeal appear to be a contention that the magistrate erred in law by incorrectly finding that the appellant did not have a 'reasonable excuse' for failing to comply with Sergeant Neeter's direction as provided in s 44 of the RTAA. The appellant's excuse appears to be that the appellant was fearful of Sergeant Neeter when he approached the Suzuki and she drove away out of a flight response.

72 Section 78(3) of the CPA provides that:

- (5) If a written law creates a simple offence and provides an exception in respect of the offence, the exception is to be taken not to apply unless the accused proves, on the balance of probabilities, that it does.

²⁵ Magistrate's Court proceeding Exhibit E.

73 Therefore, the onus was on the appellant to prove, on the balance of probabilities, that she had a reasonable excuse for failing to comply with Sergeant's Neeter's direction to stop.

74 A 'reasonable excuse' must be considered in the circumstances of the individual case and also having regard to the purpose of the provision to which the defence of 'reasonable excuse' is an exception.²⁶

75 A reasonable excuse 'is one which the court thinks that an ordinary and reasonable person in the accused's position, but without any of the idiosyncratic characteristics of an individual accused, would think was reasonable'.²⁷

76 While the magistrate did not expressly state that the appellant did not have a 'reasonable excuse' pursuant to s 44 of the RTAA, there is no error because of that omission. That is because the appellant has the burden of proving a defence of reasonable excuse. The appellant did not adduce any evidence in support of a 'reasonable excuse'.

77 In any event, on the evidence adduced at trial, I find that the appellant did not, in fact, have a reasonable excuse for failing to stop because:

- (1) the appellant did not adduce any evidence that she was in fear of Sergeant Neeter. At the trial, the appellant asked Sergeant Neeter questions as to whether it was plausible that a person in her situation would be fearful,²⁸
- (2) the appellant's questions to Sergeant Neeter about drawing his baton were irrelevant to a defence of 'reasonable excuse' as Sergeant Neeter only drew his baton on the second occasion that the appellant was stopped in traffic, that is *after* he had made the direction to stop and the appellant had failed to comply;
- (3) even if the appellant had proven that she failed to comply with the direction to stop out of fear, this excuse must be objectively reasonable in all the circumstances;
- (4) the context in which the direction to stop was made was that the Police Officers had activated their emergency lights and

²⁶ *Taikato v The Queen* (1996) 186 CLR 454, 464. Cited with approval by the majority in *Attorney - General (Cth) v Breckler* (1999) 197 CLR 83, 102 - 103.

²⁷ *Tey v Plotz [No 2]* [2011] WASC 34 [67].

²⁸ ts 33 - 35.

signalled the Suzuki to pull over. It was only after the appellant had failed to pull over that Sergeant Neeter approached the appellant in full police uniform, from a marked police vehicle, and gave a clear but nonthreatening direction for the appellant to pull over. These facts are evident from the body worn camera vision;²⁹and

- (5) given the circumstances in which the direction to stop was made, and the purpose of s 39 RTAA to which I have referred, it is not objectively reasonable for a driver to avoid their obligation to obey a direction because they are in fear of a police officer directing them to stop - if this were considered to be an objectively reasonable excuse then it would frustrate the purpose of s 39 of the RTAA.

78 There is no merit in these grounds of appeal. They have no reasonable prospects of success.

Grounds 21, 22 and 24 - Assault, deprivation of liberty and contempt

79 By these grounds of appeal, the appellant alleges that she was assaulted, deprived of her liberty and threatened with contempt at the conclusion of sentencing before the magistrate on 23 April 2024.

80 These grounds of appeal relate to matters that are alleged to have occurred after the sentencing process had concluded. They are not relevant to the convictions of the Offences.

81 These grounds of appeal have no reasonable prospects of success.

Appeal against Sentence

82 By the appeal notice filed 23 May 2024, the appellant indicated that she sought to appeal against the sentences imposed for the Offences. However, the appellant's grounds of appeal related solely to an appeal against conviction. It appears that the appellant appeals the sentences imposed on the basis that she ought not to have been convicted of the Offences.

83 For the reasons I have outlined, none of the grounds of appeal have any reasonable prospects of success. I therefore refuse leave to appeal and dismiss the appeal.

²⁹ Magistrate's Court proceeding Exhibit A.

WHITBY J

84 I will hear the respondent as to the appropriate costs orders.

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

RP
Associate to the Honourable Justice Whitby

11 OCTOBER 2024