

DISTRICT COURT OF QUEENSLAND

CITATION: *Freilich v Lambert* [2007] QDC 157

PARTIES: **DAVID MARTIN FREILICH**

Appellant

and

DAVID GEOFFREY LAMBERT

Respondent

FILE NO/S: D423/06

DIVISION: Civil

PROCEEDING: Appeal

ORIGINATING
COURT: Brisbane

DELIVERED ON: 1 June 2007

DELIVERED AT: Brisbane

HEARING DATE: 21 May 2007

JUDGE: Samios DCJ

ORDER: **Appeal dismissed**

CATCHWORDS: Appeal – Appeal against conviction – no registration label attached to motor vehicle – possession of thing that purported to be number plate - alleged duress on part of third party insurer

Transport Operations (Road Use Management) Act 1995

s 13(2)(e), Sch 4

Transport Operations (Road Use Management - Vehicle Registration) Regulation 1999 s 4A, s 10, s 11, s 23, s 33(1) and s 76(1)(a)

Carnes v Essenberg & Ors [1999] QCA 339 CON

Crescendo Management Pty Ltd v Westpac Banking Corporation (1988) 19 NSWLR 40 at 46 APP

Hawker Pacific Proprietary Limited v Helicopter Charter Pty Ltd (1991) 22 NSWLR 298 APP

Hubner v Erbacher (2004) QDC 345 APP

Smith v William Charlick Ltd (1924) 34 CLR 38 CON

*Universe Tankships Inc of Monrovia v International
Transport Workers Federation* (1983) 1 AC 366 at 400 APP

COUNSEL: Appellant in person
Mr Grealy for the respondent

SOLICITORS: Appellant in person
CW Lohe, Crown Solicitor, for the respondent

- [1] On 27 July 2005 the appellant (Mr Freilich) was driving his Daewoo motor vehicle (the Daewoo) on Hooker Boulevard, Broadbeach, Queensland.
- [2] At the same time and place Senior Constable Barker of the Queensland Police Service was performing random traffic registration and driver's licence checks.
- [3] Senior Constable Barker saw the Daewoo bearing what appeared to be current Queensland registration plate 1FREEDOM on the rear of the Daewoo. He did a registration check and this revealed that the registration was not known to Queensland Transport.
- [4] He subsequently stopped the Daewoo and spoke to Mr Freilich who was the driver of the Daewoo. Mr Freilich was polite and cooperative and produced his current driver's licence when asked to do so. Senior Constable Barker also observed the Daewoo was not displaying a current Queensland registration label.
- [5] Senior Constable Barker asked Mr Freilich if the Daewoo was registered. Mr Freilich replied to the effect it was not registered in Queensland, but it was registered under common law.
- [6] After some further short conversation with Mr Freilich, Senior Constable Barker, with the assistance of another police officer, located the chassis number of the

Daewoo. A check then revealed that the Daewoo was currently registered in Mr Freilich's name and should have been bearing Queensland registration plates 041-EXZ.

[7] Senior Constable Barker wrote out and issued to Mr Freilich two traffic offence notices.

[8] A complaint and summons was issued on 18 January 2006 charging Mr Freilich with two breaches of the *Transport Operations (Road Use Management - Vehicle Registration) Regulation 1999* (the Regulation) that:

“Charge 1. On the 27th day of July 2005, when on a road namely Hooker Boulevard, Broadbeach, David Martin Freilich being the registered operator of a vehicle namely a Daewoo motor vehicle, registration number 041EXZ, failed to attach the vehicle's registration label to the vehicle so that it was clearly visible in a way complying with section 33(2) of the regulation.

Further particulars

No registration label was attached to the Daewoo

(Breach of s 33(1))

Charge 2. On the 27th day of July 2005, when on a road namely Hooker Boulevard, Broadbeach, one David Martin Freilich without lawful authority or excuse had in his possession a number plate that purported to be but was not a number plate issued by the Chief Executive.

Further particulars

The vehicle being driven by David Martin Freilich had attached, a number plate with the alpha-numeric characters '1FREEDOM'. This number plate was not a number plate issued by the Chief Executive. The Daewoo was recorded in the register of vehicles held by the Chief Executive as being issued number plates 041EXZ on 30 April 1999. The vehicle had current registration from 30 April 2005 to 29 October 2005.

(Breach of s 76(1)(a)).”

[9] Section 33 of the regulation provides as follows:

- “33. Position for attaching registration label
- (1) The registered operator of a vehicle must attach the vehicle’s registration label to the vehicle –
 - (a) so as to be clearly visible from outside the vehicle; and
 - (b) in a way complying with subsections (2) to (6).
 - ...
 - (5) If the vehicle is other than a vehicle mentioned in subsection (2) to (4) and has a windscreen, the label must be placed –
 - (a) to the lower left-hand corner of vehicle’s windscreen; or
 - (b) to a fixed or pivoted window on the left-hand side of the vehicle.”

[10] Section 4A of the regulation provides:

- “4A Meaning of registered operator in this regulation
- (1) This section defines registered operator for its use in this regulation only, and has the effect despite the expression’s definition in the Act.
 - (2) The registered operator of the vehicle is the person in whose name the vehicle is currently registered.”

[11] Section 76 of the regulation provides as follows:

- “76. Offences involving registration certificates etc.
- (1) A person must not, unless the person has a reasonable excuse –
 - (a) make, sell or have in the person’s possession anything that purports to be, but is not, a registration certificate, registration label, number plate or permit;”

[12] The term number plate is defined in Sch 4 of the *Transport Operations (Road Use Management) Act 1995*(the Act) as follows:

“Number plate means a plate or other device designed to be attached to a vehicle to identify the vehicle.”

[13] The regulation provides with respect to number plates:

- “Division 4 Number plates
23. Chief Executive to assign registration number and issue number plates.
- (1) If the Chief Executive registers a vehicle, the Chief Executive must –
 - (a) assign a distinguishing registration number to the vehicle; and

(b) issue to the registered operator of the vehicle the number plates displaying the assigned number required under subsection (2).”

[14] The hearing of the charges against Mr Freilich took place before the Learned Magistrate at Southport on 19 July 2006. On 26 July 2006 the Learned Magistrate gave reasons for her decision finding Mr Freilich guilty of the two charges.

[15] The Learned Magistrate imposed one fine of \$350 to be paid within three months and ordered the number plates “1FREEDOM” be forfeited.

[16] Mr Freilich appeals against the Learned Magistrate’s decision. In his Notice of Appeal his grounds of appeal are stated as follows:

“The grounds of my appeal are:

I am relying upon my memory of the Magistrate’s decision and this is to be confirmed by a transcript that I have requested but not yet received:

- (1) the Magistrate declared that the matter was too complex to be adequately assessed by the court and that it would be difficult, if not impossible to bring all parties referenced into the court;
- (2) the advice of conviction or order was sent to the wrong address and is incorrect;”

[17] Mr Freilich has filed an outline of argument that raises a number of issues beyond those raised in the grounds of appeal. In his Certificate of Readiness Mr Freilich certifies the issues in the appeal are those set out in the Certificate of Readiness.

[18] I proceed to decide this appeal on the issues set out in the Certificate of Readiness which have been cross-referenced by Mr Freilich with his outline of argument.

[19] Mr Freilich complains about the conduct of the hearing.

[20] He says the Learned Magistrate failed to accept a plea of “no plea” when Mr Freilich deemed that the charges were not applicable to the Act. Mr Freilich refers to the “plea bargaining” when he made the request. However, he accepted on the hearing of the appeal there was no record of this “plea bargaining” process.

[21] Even if some discussion took place which is not recorded, what followed and is recorded could only lead the Learned Magistrate to one result, namely treating Mr Freilich as pleading not guilty. That is because a plea of guilty or a plea of not guilty are the only pleas the *Justices Act* recognises (see ss 145 and 146).

[22] Therefore, this is no ground for setting aside the convictions.

[23] Mr Freilich also says there was an acceptance of evidence before the court of prosecution records that were the subject of a parallel unresolved dispute. In this respect Mr Freilich is referring to his principal claim which is best set out from his

Outline of Argument:

“The appellant in this matter drives a vehicle in the State of Queensland, and has obtained the vehicle registration with an association of electors known as UPMART, which vehicle registration exists pursuant to common law, constitutional law, and any other holy and righteous grounds, and which registration satisfies the appellant’s duty of care to the community to register the appellant’s vehicle for various purposes.

The appellant also chooses to insure his vehicle and has taken steps on occasions to do so, but has experienced financial duress when obtaining insurance for his vehicle, which duress was occasioned by various communications both spoken communications and written communications between the various parties involved in the third party insurance process, and which facts have been put before the Magistrates Court as evidence. These facts of duress are not in dispute by either party in the matter.”

[24] Mr Freilich says he has declared the records to be false evidence because the certificates were subject to annulment as a result of the voiding rule of duress that had previously been notified to Queensland Transport by Mr Freilich by a letter dated 18 June 2006.

[25] At the hearing before the Learned Magistrate the prosecution tendered four certificates. These certificates showed that at the material times Mr Freilich had renewed the registration of the Daewoo, registration number 041-EXZ, in his name

and the registration label in respect of the vehicle registration 041-EXZ was issued on 29 June 2005. Further, Daewoo registration 041-EXZ was recorded under the regulation in the name of Mr Freilich and two number plates 041-EXZ were issued in respect of the Daewoo recorded in the name of Mr Freilich. Finally, there was no record of registration number plates bearing the assigned distinguishing registration number 1FREEDOM being in respect of a vehicle in the name of Mr Freilich.

[26] In the first instance it is to be noted that Mr Freilich's letter to Queensland Transport, purporting to annul the records as a result of a voiding rule of duress is dated 18 June 2006. That is after the date it is alleged Mr Freilich committed these offences. Therefore at that time Mr Freilich had not purported to annul the records as a result of the voiding rule of duress. The records therefore were accurate.

[27] Further, I accept the validity of the Act and the Regulation. In this respect I respectfully adopt the reasons for judgment of White DCJ in *Hubner v Erbacher* [2004] QDC 345 citing with approval the judgment of Chesterman J in *Carnes v Essenberg & Ors* [1999] QCA 339.

[28] Assuming Mr Freilich's letter was in time to annul the records, the question remains whether Mr Freilich's duress claim is a valid claim.

[29] In this respect Mr Freilich relies upon the New South Wales Court of Appeal decision of *Hawker Pacific Proprietary Limited v Helicopter Charter Pty Ltd* (1991) 22 NSWLR 298. In particular he highlighted for my attention par 1 of the head note which provides:

“The legal wrong of ‘compulsion’ which includes every species of duress or conduct analogous to duress, actual or threatened, exerted by or on behalf of the promisee and applied to the person or the property or any right of the person who promises, applies in relation to a contract which is sought to be set aside as well as a payment of which refund is sought.”

[30] He also highlighted for my attention the following passage at p 301 of the judgment quoting Isaacs J in *Smith v William Charlick Ltd* (1924) 34 CLR 38 where his Honour said:

“ ‘Compulsion’ in relation to a payment of which refund is sought, and whether it is also variously called ‘coercion’, ‘extortion’, ‘exaction’, or ‘force’, includes every species of duress or conduct analogous to duress, actual or threatened, exerted by or on behalf of the payee and applied to the person or the property or any right of the person who pays or, in some cases, of a person related to or in affinity with him. Such compulsion is a legal wrong, and the law provides a remedy by raising a fictional promise to repay.”

Another passage highlighted for my attention repeats Isaacs J’s judgment.

[31] In my opinion the principle decided by the *Hawker Pacific* case is not in issue in these proceedings. What is in issue is the application of the principle of duress to the circumstances.

[32] Mr Freilich tendered as evidence before the Learned Magistrate a letter signed by an employee of Suncorp as follows:

“I, Mr Daniel Martin Freilich agree that I have been advised by Tara-Lee Bourke of Suncorp Elanora Branch the CTP certificate G162 643 9A purchased today will not be valid until presented to Qld Transport.”

[33] As I understand Mr Freilich’s submissions, he says this is evidence that the third party insurer “forced” him to register his vehicle with Queensland Transport.

[34] However, the Regulation (s 10) provides a person must not use, or permit to be used, on a road a vehicle that is not a registered vehicle. There are exceptions not relevant to the issues here. Further, s 11 of the Regulation provides:

“(1) An application for registration of a vehicle must be made to the Chief Executive in the approved form accompanied by the following:-
 (a) any relevant registration fee;

...

(e) an insurance certificate under the *Motor Accident Insurance Act* 1994 for the vehicle for the proposed registration term or the insurance premium payable under the Act for the certificate;
...”

[35] In the case of economic duress it has been held by Lord Scarman in *Universe Tankships Inc of Monrovia v International Transport Workers Federation* (1983) 1 AC 366 at 400, there are two elements in the realm of duress: (a) pressure amounting to compulsion of the will of the victim and (b) the illegitimacy of the pressure exerted. Lord Scarman said, “There must be pressure the practical effect of which is compulsion or the absence of choice”.

[36] McHugh AJ (as he then was) said in *Crescendo Management Pty Ltd v Westpac Banking Corporation* (1988) 19 NSWLR 40 at 46 the proper approach was to ask whether any applied pressure induced the victim to enter into the contract and then ask whether that pressure went beyond what the law is prepared to countenance as legitimate? Pressure will be illegitimate if it consists of unlawful threats or amounts to unconscionable conduct.

[37] In my opinion, the context in which the Learned Magistrate had to decide Mr Freilich’s claim of duress was the law. The law was that if he, as the operator of the motor vehicle, wished to drive the motor vehicle on a public road, then it was required to be registered with Queensland Transport and insured under the *Motor Accident Insurance Act* and to have attached to it the number plates issued by the Chief Executive and to display the registration label as required by the regulation.

[38] It was up to Mr Freilich to decide whether he would comply with his legal obligations if he was to be the operator of a motor vehicle on a public road in Queensland. In my opinion, it is not valid for Mr Freilich to assert he was compelled or given no choice to register the Daewoo with Queensland Transport

because an employee of Suncorp had signed a document to say the policy of insurance would not be valid until presented to Queensland Transport. He could have chosen not to register the motor vehicle and not driven the motor vehicle on public roads.

[39] Therefore, in my opinion, Mr Freilich's duress claim is not a basis for setting aside the convictions.

[40] Mr Freilich says there was a failure to admit evidence submitted to the court by Mr Freilich.

[41] This related to the record of the conversation between Senior Constable Barker and Mr Freilich at the roadside.

[42] In my opinion, the Learned Magistrate was correct not to accept the recording as evidence. In my opinion, the Learned Magistrate was intimating that whatever was said on the recording was not in issue. That is, it was accepted by the Learned Magistrate Senior Constable Barker had asked for proof of payment of third party insurance premium. What could be made of that by Mr Freilich was not then a matter of evidence to put before the court but was a matter for the argument that Mr Freilich could advance on that accepted fact.

[43] On this basis, the Learned Magistrate did not make any error in the conduct of the hearing.

[44] Mr Freilich also complains there were errors of law made by the Learned Magistrate.

[45] He says there was an incorrect interpretation of s 76 of the Regulation.

- [46] The evidence before the Learned Magistrate was that the number plates on the Daewoo were not the number plates issued by the Chief Executive for the Daewoo and these issued number plates were not attached to the vehicle.
- [47] Mr Freilich submits no one could be deceived by his use of the number plate 1FREEDOM and that it was issued by the Chief Executive. I do not agree. In this respect, the Learned Magistrate did not make any error of law.
- [48] Mr Freilich also says the charges were brought before the court in breach of the principle of “equality under the law”.
- [49] Mr Freilich says number plates issued by the New South Wales Road Traffic Authority for example, more closely match the number plates issued by the Queensland Government than does the 1FREEDOM plate, because they have the same number of alphanumeric characters. Yet the drivers of motor vehicles bearing New South Wales plates are not charged with an offence against s 76(1).
- [50] In my opinion, this comparison does not amount to a breach of equality before the law and the concept is not relevant to the issue in this appeal. Therefore, the Learned Magistrate did not make any error of law in this respect.
- [51] Mr Freilich says the Learned Magistrate accepted the charges without addressing the parallel dispute as the applicability of those charges under the Act.
- [52] This raises the duress claim and Mr Freilich’s reliance upon the *Hawker Pacific Proprietary Limited* case which I have dealt with earlier in these reasons. As in my opinion Mr Freilich’s duress claim is not a valid claim, in my opinion the Learned Magistrate did not make any error of law in this regard. Even Mr Freilich in his outline of argument accepted the validity of the Act.

[53] In my opinion, the Learned Magistrate did address the parallel dispute in the sense of finding Mr Freilich's duress claim did not invalidate the charges. The Learned Magistrate did refer to proceedings outside the current proceedings. However, that was unnecessary when it is accepted, as I do, Mr Freilich's claim of duress is not in the circumstances valid.

[54] That is, it was Mr Freilich's choice to decide to register his motor vehicle with Queensland Transport and that required payment for third party insurance. In my opinion, Mr Freilich was not forced to make that payment nor to register the motor vehicle with Queensland Transport and duress does not apply.

[55] In my opinion, the Learned Magistrate could, on the evidence, come to the conclusion beyond reasonable doubt that Mr Freilich was guilty of the charges and that any lawful defence or excuse on his part was negatived beyond reasonable doubt.

[56] In my opinion, no error of law is demonstrated on the part of the Learned Magistrate.

[57] Mr Freilich also says the Learned Magistrate used precedents for the decision when those cases were not precedents for the matters that were in dispute before the court.

[58] In my opinion, the Learned Magistrate made no error of law citing the precedents cited. There was no error of law citing *Hubner v Erbacher* (2004) QDC 345, when to do so only gave authority for the validity of the Act and the Regulation.

[59] Mr Freilich also says the Learned Magistrate dismissed his argument because it was too complex for the court to address. In my opinion, the Learned Magistrate did not do that. The Learned Magistrate did not say it was too complex. What the Learned

Magistrate did was to point out the duress claim was “beyond the scope of this hearing”. That was the Learned Magistrate’s view. In my opinion it was unnecessary from the Learned Magistrate to come to that view when regard is had to the context of the duress claim and the law in Queensland.

[60] Mr Freilich also says the Learned Magistrate cited “insufficient evidence” as grounds for dismissing his argument after having refused to admit his evidence that had been brought before the court during the hearing.

[61] I have already dealt with the Learned Magistrate’s response to the recording of the conversation between Mr Freilich and Senior Constable Barker. In my opinion, no error of law by the Learned Magistrate is shown to exist.

[62] Mr Freilich also says the Learned Magistrate accepted the charge in breach of s 13 of the Act and finding in favour of that charge. Section 13 provides:

“13. Guidelines

- (1) This section applies to the Minister and Chief Executive in developing and implementing policies about road use management, and in exercising powers under this Act.
- (2) The Minister and Chief Executive must endeavour to –
 - (a) ...
 - (e) ensure competition is not unjustifiably restricted;”

[63] Hence the appellant says Queensland Transport is not entitled to restrict the competition of the registration services offered by UPMART without providing justification for this restriction. The appellant goes on to say:

“Thus the act of putting extraordinary contractual conditions in place that restrict access to insurance cover or placing a complaint before a court that seeks to restrict the appellant in his use of competitive registration services provided by UPMART, without any evidence showing the justification for that complaint, is a breach of s 13(2)(e) of the Act.”

[64] In my opinion, what Mr Freilich says on this issue is assertion and do not provide any evidence which the Learned Magistrate was bound to accept to find a breach of

s 13(2)(e). In my opinion, no error of law by the Learned Magistrate is demonstrated.

[65] Further, s 13(2)(e) or a breach thereof does not provide Mr Freilich with any rights.

[66] Mr Freilich also says the Learned Magistrate found in favour of the charge when the respondent produced no evidence in support of the charge, whereas the course of the hearing had revealed two major pieces of evidence that contradicted the charge.

[67] However, there was evidence in the form of the four evidentiary certificates and Senior Constable Barker's evidence. That was evidence in support of the charges.

[68] What Mr Freilich produced was evidence that he had obtained registration services from an organisation called UPMART and that these registration services encompass all of the duty of care features that are embodied in the Act. Mr Freilich says that the UPMART registration services are therefore, a common law equivalent of the registration services offered by Queensland Transport and, as such, amount to "competition" as per s 13(2)(e) of the Act.

[69] However, Mr Freilich says the 1FREEDOM number plates were produced to the court and, according to Senior Constable Barker, bear no resemblance to the number plates issued by the Chief Executive.

[70] In my opinion, the evidence of Senior Constable Barker was not that the 1FREEDOM number plates bore no resemblance to the number plates issued by the Chief Executive. He said the number plates appeared to be Queensland number plates.

[71] Therefore, notwithstanding the evidence of the involvement of UPMART, it was open to the Learned Magistrate to find Mr Freilich did not have a reasonable or

recognised excuse to comply with his obligations under the State's transport laws and regulations. The Learned Magistrate went on to find that the 1FREEDOM number plate was not a number plate issued by a corresponding law to the regulation, nor issued under a law of a foreign country about the registration of vehicles. These findings were open to the Learned Magistrate to make. There was no error of law by the Learned Magistrate in this regard.

[72] I am satisfied the Learned Magistrate could be satisfied of all elements of the charges and find Mr Freilich guilty of the charges.

[73] Finally, Mr Freilich contends there has been administrative errors.

[74] He is right that the time to pay the fine on the Notice of Conviction or Order only allowed 28 days to pay the fine, whereas the Learned Magistrate gave Mr Freilich three months to pay the fine. I direct the Notice of Conviction or Order be amended to provide 3 months to pay the fine.

[75] Mr Freilich has also changed address and as at the date of the hearing of the appeal has changed address again. At the hearing of the Appeal Mr Freilich gave his current address. He must file a Notice of Address for Service stating the new address.

[76] In all the circumstances I dismiss the appeal.