IN THE COURT OF APPEAL OF NEW ZEALAND

C.A. 338/87
339/87
66/88
204/88
301/88

BETWEEN EDWARDS

Appellant

AND MINISTRY OF TRANSPORT

Respondent

Coram: Somers J (presiding)
Hardie Boys J
Smellie J

Hearing: 29 June 1990

Counsel: Appellant in person
Nicola Crutchley for Respondent

Judgments: 29 June 1990

JUDGMENTS OF THE COURT DELIVERED BY SOMERS J

338/87

Mr Edwards was convicted of speeding in the District Court. He appealed to the High Court. The tape recorder used in the District Court had not functioned correctly with the result that the evidence put before the Judge comprised the notes taken by the Justices. Some of the evidence of Mr Edwards was not thus transcribed. Mr Edwards asked the Judge in the High Court to direct a rehearing of the case there or at least to hear his evidence. The Judge said -

> I am not prepared to accept his evidence alone on the matter and any rehearing must be a rehearing in full.

> The charge is not of itself one of a kind which ought to occupy the time of this Court and as the transcript is admittedly deficient the appeal will be allowed to the extent that there will be an order that the charge be reheard in the District Court.

That the Judge had jurisdiction so to direct is clear from s.131 of the Summary Proceedings Act 1957. Mr Edwards, however, has suggested that the terms of the proviso to s.119(2) required that his evidence be reheard in the High Court and excluded the exercise of the discretion in s.131.

We are unable to accept that proposition. The general purpose of the proviso is that the High Court on appeal may not determine an appeal without all the evidence before it.

Accordingly, leave to appeal is refused.

339/87

This application for leave to appeal arises as a result of the rehearing directed in the case just mentioned. As it happened Mr Edwards did not attend the rehearing. Due to weather difficulties he did not arrive back in Wellington from the South Island until the morning of the hearing and did not apprise the Court or its officers of the difficulties in which he then found himself.

We have no doubt that it was his obligation to appear or, by other means, to seek an adjournment; all that failing the most he could do was to apply for a rehearing. This application raises no point of law and leave to appeal is refused.

66/88

This application for leave to appeal concerns a conviction entered in the District Court for operating a motor vehicle not carrying a current warrant of fitness.

The concurrent findings of the District Court and the High Court are that the car was driven without such a warrant; that it was used to take him to his place of business with the intention of proceeding from there to a garage to procure a warrant when convenient to do so. The proviso to Regulation 85(1) of the Traffic Regulations 1976 affords a defence -

> ... if the defendant proves that the motor vehicle was being operated solely for the purpose of obtaining a current warrant of fitness or certificate of fitness or permit.

In our view the meaning of that provision is clear and the Judge was right in holding that the words 'solely for the purpose' mean for the purpose only of securing a warrant.

Leave to appeal is refused.

204/88

In this case Mr Edwards was prosecuted for exceeding the speed limit and for failing to furnish his name and address to the traffic officer who stopped him. His speeding charge was dismissed by the Justices. He was convicted and fined $50 and ordered to pay Court costs on the other charge. His appeal to the High Court was dismissed as was his

application for leave to appeal to this Court and he now applies for leave to appeal to this Court.

The case he puts is that he was stopped without any cause whatever, that the suggestion that he was speeding was knowlingly false and manufactured, and that in those circumstances the traffic officer's request for his name and address was not lawful.

The premise upon which the point is made has not been found as a fact and it is quite impossible for us to make such a finding. That being so the substratum of the case disappears and leave must be refused.

301/88

In this case Mr Edwards was convicted of exceeding the speed limit while riding a motor cycle. His appeal to the High Court was dismissed. He has subsequently found, as he told us, that the motor cycle in question was one of a make and design which had been found faulty by the Transport Department, that fault relating to an instability of the machine when in motion. He says that his excessive speed was due to his attention to the perceived instability of the motor cycle at the time.

Mr Edwards has suggested that the Transport Department were under a duty to have published the defect which it found in the class of motor cycle he was riding and that had

such an advertisement of its defects been made he would never have been riding the motor cycle in the first place.

This particular defence has in our view no merit whatsoever and the case is not one for leave. The application is dismissed.

Solicitors
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