

MAGISTRATES COURTS OF QUEENSLAND

CITATION: \

PARTIES: **Queensland Police Service**
(Prosecution)

v

Rotraud Christine Loiterton
(Defendant)

FILE NO/S: MAG-00153298/19(0)

DIVISION: Magistrates Courts

PROCEEDING: Criminal

ORIGINATING COURT: Brisbane

DELIVERED ON: 27 November 2019

DELIVERED AT: Brisbane

HEARING DATE: 14 November 2019

MAGISTRATE: Noel Nunan

ORDER: **Not Guilty. Charge Dismissed.**

COUNSEL: Mr Dean Wells

SOLICITORS: Caxton Legal Service

- [1] The defendant is charged under s 791(2) of the *Police Powers and Responsibilities Act 2000* with contravening a direction given by Sergeant Stephen Edwards. The address of the offence on the charge sheet is said to be the corner of Margaret Street and William Street, Brisbane City.
- [2] The direction was given under s 59 of that Act. Subsection 1 says:

“A police officer may give to a driver of a vehicle or to a pedestrian on or about to enter a road, or to a passenger in a vehicle, any direction the police officer reasonably considers necessary for the safe and effective regulation of traffic on the road”.

The Facts

- [3] The facts are not in dispute. Senior Constable Vincenzo Fioriti gave evidence that at about 11:00am on Tuesday, 6 August 2019 about 100 to 200 Extinction Rebellion protestors swarmed onto the intersection of Margaret and William Streets.
- [4] His body worn camera footage (exhibit 1) shows the arrest of the defendant who was wearing a yellow high Viz vest. After a polite warning she was given a formal

direction by Sergeant Stephen Edwards, who also gave evidence, to leave the roadway and move onto the footpath as she was part of a group obstructing vehicular traffic coming via four lanes from the South-East Freeway, both from the south and the north. Traffic was stationery and backed up on the Freeway, both officers said.

- [5] One can see what Constable Fioriti called the State Government Building (transcript page 11) in William Street in the background, a big tall building.
- [6] Eventually the defendant moved a few metres away and a short time later she was arrested.

Peaceful Assembly Act 1992

- [7] The prosecution generously made admissions (exhibit 3) to enable the defence to establish that an assembly that day was deemed to be authorised under the *Peaceful Assembly Act 1992*.
- [8] A notice of intention to hold a Public Assembly dated 22 July 2019 from Councillor Jonathon Sri was tendered by consent, again relying on the generosity of the prosecution.
- [9] Under this Act if such a notice is served at least five days before a protest demonstration the Police Commissioner may request mediation and if that fails, apply to the Magistrates Court for an Order refusing to authorise the holding of the assembly.
- [10] Such an application was made in this case but it was dismissed on 2 August 2019 thereby making the proposed demonstration authorised.
- [11] Section 6 of the Act then provides legal immunity for participants if, inter alia, it is held “substantially” in accordance with the particulars on the exhibit 2 Notice. Relevantly, the place of the assembly is said to be: “On road, William St between Margaret St and Alice St”.

Between Streets

- [12] From the Macquarie Dictionary the most appropriate meaning of “between” in this context is: “in the space separating (two or more points, objects, etc)”
- [13] The question then is: is it the inner edge of Margaret Street or the outer edge? The edge closer to Alice Street or the edge across its intersection with William Street?
- [14] Any position in the intersection is still on both William and Margaret Streets. If for instance it has been a T intersection like that of William and Alice streets the assembly would have been ‘unauthorised’ because William Street doesn’t cross Alice Street. But it does cross Margaret Street and I see no reason to limit it to the inside edge.
- [15] As no map was tendered here I am taking some limited judicial knowledge of the locality. This is allowed to a certain extent but it would not include particular features of which general knowledge cannot be assumed. See Cross on Evidence, Lexis Red paragraphs 3130 to 3065.

- [16] The prosecutor seemed to be admitting that the Place included the intersection in submissions by basing his argument on the defendant being, as Sergeant Edward said, 10 metres down Margaret Street away from William Street where it crossed Margaret Street.
- [17] In any case this is a penal provision and where there is any ambiguity in interpretation the construction favourable to the defendant should prevail: see Keane JA (as he then was) in *R v Shetty* [2005] 2 QD R 540.

Substantially in Accordance

- [18] Despite Constable Fioriti's evidence that it all happened in the intersection, Sergeant Edwards gave unchallenged evidence that the defendant was on Margaret St precisely 10 metres north of the intersection.
- [19] In submissions this positioning seemed to be accepted by the defence but Mr Wells argued that there had been substantial compliance under s 6 of the Act.
- [20] Looking at the Macquarie Dictionary "substantial" in the context used in this legislation means "*of ample or considerable amount*" or "*pertaining to the essence of a thing; essential, material or important*". So there has to be "considerable" compliance with the condition as to Place on the exhibit 2 Notice of Intention.
- [21] Again, because of the penal consequences, the defendant is entitled to a liberal not strict interpretation of the meaning of substantial.
- [22] On viewing the video exhibit 1, the defendant seems to be standing with other chanting protestors near the intersection with the State Government tall building in the background. Clearly she is part of the authorised assembly. It was the blocking of the intersection which banked up the traffic and precipitated the formal direction to move to the footpath.
- [23] So I am satisfied that she is substantially complying with the condition as to place even if she was 10 metres north of the intersection on Margaret Street.
- [24] She is therefore entitled to legal immunity and I find her not guilty and the charge is dismissed.

