

VicRoads
Victoria Police
Magistrates.

Sunshine Transcript.
- June 2019.

SUNSHINE MAGISTRATES COURT VICTORIA JUNE 2019

**VICROADS MATTER
MAGISTRATE KILIAS
POLICE OFFICER ANDREW McSWAIN**

(CONSTANTINOS)

COURT CLERK: Calling the matter of Brian Shaw

MAGISTRATE: Thanks Mr Shaw, just come and take a seat here on one of the red chairs. You've got the one charge of exceeding 60 by less than 10 Kilometers.

POLICE OFFICER: Morning your Honour, I know a bit about this I did a case conferencing if it would easier

MAGISTRATE: So what are we doing with it?

POLICE OFFICER: Your Honour it's going to be affected and adjourned for a contested hearing, I've not been able to resolve the matter outside a suido contest might be of assistance, I'm optimistic, but think it's worth looking into. Effectively you'll note on form 12

POLICE OFFICER: Is that it was considered a speed camera was set up and operating correctly, it's considered the accused was the driver of the motor vehicle in the photograph, the defence raised by Mr Shaw, he is one that might leave him to explain, because I don't wish to do it any injustice by paraphrasing.

MAGISTRATE: I will hear from Mr Shaw, so before I set this down for a contested hearing Mr Shaw, do you have any difficulty in standing, Sir.

MR SHAW: Beg your pardon

MAGISTRATE: Do you have any difficulty with standing.

MR. SHAW: Just a bit of age.

MAGISTRATE: Sit down. Before I set it down for a hearing and allocate time and a Magistrate to it, Senior Constable suggested we have a bit of a chat about it and do what's called contest mention which is basically you tell me what your defence is, I give you my opinion on it, you don't have to agree with my opinion, all I am as a lawyer of 35 years, but you might have more knowledge about this particular thing than I do, so that's

alright, I can't force you to do anything, I can't force the Police to do anything, but I can give you a recommendation, and I can tell what is likely to happen, if you can tell me openingly, and without fear or favour what your defence will be, if you choose to do so, because I will not hear the final hearing if it doesn't resolve today, another Magistrate will be allocated to it, Ok?

So, you are charged with exceeding a speed by less than 10 Kilometers over the limit, being 67 but then because it is on a Camera they reduce it to 64 but that is what the law says they have to do, not because the Police want to, the law says, the Road Safety Act says if recorded at 67 on a Camera it must be reduced by 3 Kilometers to the alleged speed of 64, it would mean one point off your Licence, right, and possibly a fine, and possibly no fine, like you would have been here and seen I proved and dismissed a case to a fellow who had 40 odd years on the road, without any infraction, and I've got the brief here and I can see that there is a four wheel drive, looks like, is it a Nissan or Toyota?

MR SHAW: Toyota.

MAGISTRATE: Toyota, yes I can, that's your car. I've been told by Police Officer that you accept that's your car.

MR SHAW: I'm the driver of the car.

MAGISTRATE: You're the driver. Alright, so if you accept that you're the driver, and if you, I have also been told that you accepted the Camera was properly set up and operational because you would have been properly shown the certificate that it had been checked and all that particular stuff, prior to it being used. That checking can happen anytime between 12 months prior to that day. So what's our defence?

MR SHAW: A constitutional one your Honour.

MAGISTRATE: A constitutional one, right. What's that.

MR SHAW: I was just told by this particular officer, that they don't succeed, but the problem with that particular answer is that I am probably the only person that has issued a writ against a Magistrates Court, and the High Court collectively, and that's already at the High Court.

*writ at High Court.
1999 - 2019.*

MAGISTRATE: Yep.

MR SHAW: The Magistrates Court of Victoria is one of 43 defendants, but the reply that I gave to the Police Officer in relation to this, is because something happened in Melton that was unconstitutional.

MAGISTRATE: And What's that? Melton being, the point on the road?

MR SHAW: Melton Shire, the whole shire.

MAGISTRATE: Right, what's that.

MR SHAW: In the year 2011 a Federal Court Judge in the matter of Melton Shire v A.T.O. ruled that Melton is a new State. Your Honour

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Melton.

MAGISTRATE: I'm not aware of that ruling. Do you have it on you?

MR SHAW: No. I'm sorry your Honour, I will put in the contest mention documents, but no one is aware of this, because under the Commonwealth Constitution there were things that had to be abided by which a Federal Court Judge sitting alone could not do, it's constitutionally impossible, but compounding.....

MAGISTRATE: How does this affect whether or not you were driving above the speed limit on the day.

MR SHAW: No it affects what you'd call validity

Validity.

MAGISTRATE: Validity of what?

MR SHAW: If I could extend that.

MAGISTRATE: So you're saying Melton is not part of Australia, or more specifically Victoria, and therefore then Victoria Police don't have authority to perform their duties within Melton

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MR SHAW: There's a bigger problem than that

MAGISTRATE: Is that what you're saying?

MR SHAW: There's a bigger problem than that

MAGISTRATE: There's something bigger than that?

MR SHAW: Yes

MAGISTRATE: What could be bigger than that?

MR SHAW: The Removal of the Queen.

Removal of Queen.

MAGISTRATE: I'm sorry how does the Queen have an impact on this case.....

MR SHAW: We have just had the Commonwealth Election. Nobody knows that the Queen's been removed, because the same way That they did here in Melton, they did without consulting

NO REFERENDUM.

MAGISTRATE: Who's they?

MR SHAW: Who's ever doing this. Well in this case the Federal Court Judge Michelle Gordon in the Melton issue, and in the removal of..

MICHELLE GORDON.

MAGISTRATE: Who's the removal of Queen though?

MR SHAW: That was done by a State Governor and an Attorney General

MAGISTRATE: And did they do that? By what instrument did they do that?

WHAT INSTRUMENT.

MR SHAW: An Act of the Western Australia Parliament

WA PARLIAMENT

MAGISTRATE: An Act of Western Parliament who removed the Queen of England who is also Queen of Australia. Do you have that Act?

MR SHAW: Sitting over there your Honour

MAGISTRATE: You have the Act of the Western Australia Parliament!?

The Act.

MR SHAW: It's sitting in my bag your Honour

MAGISTRATE: Bring it up.....and how do you say that that Act impacts on the case in front of me now.

MR SHAW: It impacts on everybody, what you call grant of power.

Grant of Power

MAGISTRATE: So your saying that I have or Police have no grant of power, because the Queen has been removed as head of State, is that what you are saying? So your saying the Western Australia Parliament

MR SHAW: Your Honour can I turn to.....

MAGISTRATE: No please, I'm just trying to understand your argument. Your saying that Western Australia Parliament has the power....

MR SHAW: It didn't have the power....

No Power

MAGISTRATE: To remove her Majesty as the Queen of Australia

MR SHAW: They used the fraudulent power

Fraudulent Power

MAGISTRATE: Wait a sec, Her Majesty is still the Queen of Australia?

MR SHAW: Of course.

MAGISTRATE: Well there you go. So there is your authority.

MR SHAW: The Act is invalid.

MAGISTRATE: So how's the authority of Western Australia Parliament on whether you drove above the speed limit in Victoria.

MR SHAW: I'm talking about grants of Power.

Grant of Power

MAGISTRATE: But with regard to what?

MR SHAW: Your Honour, Your Honour you actually said your comments would be in relation to the contested hearing.

MAGISTRATE: I'll tell you what. I tell you what Mr Shaw you're absolutely right I'm clearly not as good a constitutional lawyer as you are Sir you must know a lot more than, and I said to you that you may well know more than I you clearly do and I'll just do is exercise my authority that I hope I've still got and I will adjourn your case for a contested hearing.

MR SHAW: Thank you.

MAGISTRATE: ...and the best of British luck, although may not think that British luck has authority in this Country but the best of luck to you...

MR SHAW: No your Honour please don't go down that road.

MAGISTRATE: The Best of luck but I'm just saying I'm not going down any road Mr Shaw.

MR SHAW:.. But when you say that the United Kingdom may or may not be is a question here but its not we have what is called a rule of law, and a chain of authorities.

MAGISTRATE:... You're saying the chain is broken.

Rule of Law.

MR SHAW: Where it got interfered with that. Where it got interfered with no referendum your Honour.

No Referendum.

MAGISTRATE: No referendum, OK alright, well Good luck to you with it, I'll be waiting with baited breath for the result of this and I'll adjourn it to a contested hearing, How long do you think it will take.

MR SHAW: well the..

MAGISTRATE: the case will run for about 5 minutes, you will seek to run a constitutional argument, you'll be running it on your own Sir? Or with a lawyer.

MR SHAW: a lawyer wouldn't understand it.

MAGISTRATE: No of course not, no you are right, lawyers don't want to understand it, I get it Ok. So what if I allow two hours for this.

POLICE OFFICER: I think that's sufficient your Honour.

MAGISTRATE: Is that sufficient, Mr Shaw 2 hours, right, We need a two hour contest please, and I can't hear it now because effectively done a contest mention, so I can't as we've discussed the case openly and I have said to Mr Shaw he can speak to me without fear or fate because I won't hear it.

MR SHAW: Sorry, could I ask if Magistrate Fitzgerald still in the System

MAGISTRATE: He's in the system but not in this Court.

MR SHAW: So not in the Sunshine Court.

MAGISTRATE: Not the Sunshine Court, no.

MR SHAW: I'm saying that because he was probably the fairest Magistrate I have ever been in front of.

MAGISTRATE: I'll pass it onto him.

MR SHAW: Something happened. He actually told the Victorian Police when you bring the matter back in front of me make sure you have written submissions against Mr Shaw's submissions.

written submissions.

MAGISTRATE: Yes.

MR SHAW: They removed him from the matter, and never saw him again.

MAGISTRATE: What this matter.

MR SHAW: No ,just traffic / issues constitutional issues....

MAGISTRATE: Oh another matter.

Victorian Police.

MR SHAW: The Victorian Police never replied in writing to the issues or applications. He ordered them to do it, the simplest way to do it never came back in front of him again. That was why I was asking if he was still in the system.

MAGISTRATE: He's very much in the system. His Honour now runs the drug Court he's helping people with significant drug issues.

MR SHAW: We'll he's the correct guy to do that because I think he was a very compassionate Magistrate , and your Honour with respect to you, so are you.

MAGISTRATE: I'm just a working class boy.

MR SHAW: No, your a Spanish parrot Magistrate

MAGISTRATE: I'm actually Greek but I speak a bit of Spanish that is why I had a little chat with the other fellow who was in today, and I try and practice it whenever I can.

MR SHAW: I heard that.

Kyneton

MAGISTRATE: There is but there's technical, legal argument.

MR SHAW: Would that be a highly technical argument.

MR SHAW: I think the Kyneton Court is up for a renovation, I didn't think it was open.

MAGISTRATE: Kyneton Court.

MR SHAW: No Sunshine, I don't think it is operating, I think it is being renovated.

MAGISTRATE: The coordinator says Kyneton must be the top operating, and if it's not at the moment it will be by the time your case becomes... it won't be next week, that's for sure..... We're getting a date. We'll just all wait until they tell us until that's on. Can I make suggestions that you prepare your argument which is a legal argument. You're not arguing on the facts your arguing on the legality of the facts. That you just, my suggestion, you don't have to take the advice. Prepare it in writing, and have it ready to provide to both the prosecution and whoever hears it because from my point of view, I love to read things

"LEGACITY OF THE FACTS"

MR SHAW: Your Honour I have stated that in the High Court document, there if you want a copy of it.

High Court.

MAGISTRATE: I don't need it for my purposes now.

MR SHAW: I simply saying

MAGISTRATE: When I say prepare it in writing, you might prepare a document that contains attachments The High Court Case etc etc I'd urge you to do that. It's an interesting issue, and why not prepare it fully and properly, and then everybody has a chance to turn their minds to it.

"INTERESTING ISSUE"

MR SHAW: The critical issue your Honour is that it was a compulsory referendum's which were just chucked down the rubbish bin, and probably that they jumped over the top of the referendum.

NO REFERENDUM

MAGISTRATE: Referendums about what

The Referend.

MR SHAW: The moment you've removed... particular in Western Australia. West Australia's got the best State Constitution in the country. There are six sections of the Western Australia's Constitution that are compulsory and binding to a State Referendum, if you touch those sections in the Western Australia Parliament. Of those six it affected four of the six, there was no State Referendum, if there had been a State referendum it automatically escalated to a Commonwealth Referendum and they took the Queen out. In the structure of our, what you call...

MAGISTRATE: Sorry a State Referendum in Western Australia triggers a Commonwealth referendum

"The Question"

MR SHAW: Yes.

MAGISTRATE: under, hold on, under what legislation does that.

MR SHAW: well a State, sorry.....what was your actual question.

MAGISTRATE: under what legislation, under what Act does a State referendum in the case of Western Australia cause the triggering of a Commonwealth referendum.

MR SHAW: It's a true question your Honour. The Western Australia Constitution Section 73 section sub section 2 (iii) activates State Referendum. In the Commonwealth Constitution in Section 123 activates and consolidates the other one, but section 128 of the Commonwealth Constitution compulsory referendums. So there is actually three referendum requirements, State Constitution, two in the Commonwealth.

MAGISTRATE: On the top of my head, sorry to interrupt you I don't remember Section 128 of the Commonwealth Constitution but doesn't that relate only to Commonwealth referenda?

MR SHAW: That's exactly and it

MAGISTRATE: Doesn't relate to State referendum

MR SHAW: Your Honour, had both.....

MAGISTRATE: Be patient with me I'm not as across with this as you are.

MR SHAW: That's Ok, but both constitutions State and Commonwealth the central figure of both is the Queen. To remove the Queen is to affect the whole structure

MAGISTRATE: Yes I see where you are going with it, but if you are saying Western Australia removed the Queen, Western Australia was a colony before it became part of the federation.]

MR SHAW: Correct.

MAGISTRATE: Thus a State, and I don't remember off the top of my head now, and I'm not a constitutional lawyer, I remember bits and pieces, but I don't remember off the top of my head whether or not the authority of Her Majesty as it flowed through to the colonies, then shipped it across to the Commonwealth upon the establishment of the Commonwealth of Australia, I would have thought it did.

MR SHAW: It did touch once you become, and your argument is correct in relation to the Colony then the State, but then into the Commonwealth, the Colony structure drops off the moment they actually become a State.

MAGISTRATE: and sign up.

CONFLICT.

MR SHAW: But then if a State Legislation creates an Act that would be in conflict with a Federation Act and Commonwealth Constitution, its automatically invalid.

MAGISTRATE: Correct.

'CRIMINAL JURISDICTION'

MR SHAW: But here comes the problem, and it's a big problem it automatically moves into criminal jurisdiction. Someone's acting outside the valid grant of power that is no Governor can sign a Bill that will remove the Queen because under that would create invalidity.

Governor - Queen - Bill.

MAGISTRATE: Governor can't do that, because Governors report to the Queen.

MR SHAW: That's the exact point I'm making.

MAGISTRATE: and the power only flows one way, down the line.

'The Power'

MR SHAW: Absolute point I'm making.

MAGISTRATE: Yes.

MR SHAW: But here's the point I'm making.

MAGISTRATE: But here's the problem I think with your case. Let's assume that everything you have said about Western Australia is correct, this is an offence in Victoria.

MR SHAW: The problem is your Honour I totally hear your point, very valid, but the problem is, Victoria is a Federated State.

MAGISTRATE: Oh no I know, but if Victoria had not signed up to the expulsion of the Queen.

MR SHAW: Sorry, when they added the word the "Commonwealth" into the Act in Western Australia inherently signed up Victoria

"The Commonwealth"

MAGISTRATE: No it doesn't, Western Australia cannot possibly cannot possibly under law make any laws that affect Victoria.

MR SHAW: and

MAGISTRATE: and that you'll find in any Commonwealth, that you'll find will be the end of your case

MR SHAW: I know it won't because you're missing a point, "the election"

MAGISTRATE: What's your point

"The Election writ"

MR SHAW: the election writ. We've just had a Commonwealth Election

MAGISTRATE: Your stringing a very long bow, because of the election doesn't affect a driving offence in Victoria.

MR SHAW: It affects.

MAGISTRATE: No.

MR SHAW: It affects.

MAGISTRATE: No I think you'll lose I might be wrong, I think you can lose.

MR SHAW: It's called "grants of power".

grants of power

MAGISTRATE: I think you'll lose I might be wrong and I'll wait with great interest to what happens.

MR SHAW: I absolutely understand where you are coming from

MAGISTRATE: We've just agreed to disagree.

MR SHAW: Will still have to have a chat,

MAGISTRATE: Of course we can that is what we are doing, it's fascinating.

MR SHAW: It's to do with legal honing, You're a magistrate they're Police Officers, and down the track there will be some pretty serious criminal issues here, some bodies are functioning illegally, and unfortunately, but under section Criminal Code Act 1995 that's the section that...

MAGISTRATE: Commonwealth Criminal Code .

1995 Section 80

MR SHAW: Commonwealth Criminal Code Act 1995 Section 80, and I love the sub header the security of the Commonwealth, but that's the section that deals with treason. Treason is as simple as "breach of allegiance" you can't have a bigger breach and chuck the lady out, fair comment.

TREASON / BREACH OF ALLEGIANCE

MAGISTRATE: Interesting.

MR SHAW: It automatically brings the treason problem and that actually says when you read that Act, it's in that brief.

MAGISTRATE: Umh.

The Police.

MR SHAW: Do I have to inform a Police Officer, fill them in, they just heard it.

MAGISTRATE: Inform them of what?

OF THE TREASON

MR SHAW: Of the Treason that has occurred.

MAGISTRATE: By the State of Western Australia or the Governor.

REFERENCE MADE

MR SHAW: It implicates the whole of the Country.

MAGISTRATE: Ok alright.

MR SHAW: It took me a long time to understand as to why they were not dealing with them. It was only this year did I understand why it has not been dealt with, correctly.

MAGISTRATE: Why is that.

Trustee was the Monarch

MR SHAW: "We have a trustee", we don't have a Monarch we have a trustee. Now that trustee.....

[**MAGISTRATE:** Well probably not because I don't know if Victoria exists anymore]

MR SHAW: Sorry, but I'm doing it in the correct process.

MAGISTRATE: You are well within your rights to challenge it.

The Right

MR SHAW: But it took a long time before I understood that in 1948 from Yalta in Russia an agreement in a communist country.

YALTA 1948

MAGISTRATE: Can I interrupt you I'm sorry I'm still waiting on a date, and I've got a young lady here that I need to deal with her case. No, I want to tell you the date it is before your brief. You can wait in here, or pop outside, it's a matter for you... we'll page you when we've got a date and waiting for a call back. Right thanks Mr Shaw. I'll stand it down, can I stand it down, hold on, don't go yet Mr Shaw I think I might I've lost the case no hold on, that's good I'm standing it down your still in play.

2nd August

MAGISTRATE: got a date 2nd August Mr Shaw we've got a date for you, it is 2nd August 2019 at Kyneton, yes. Just bear with me Mr Shaw. Thank you Mr Shaw your matter is adjourned for a contest 2 hours length at 10am or thereabouts, whenever they start on 2nd August at Kyneton Magistrates Court.

KYNETON

MR SHAW: Thank you.

MAGISTRATE: Thank you very much.

MR SHAW: I'll get a letter for that.

MAGISTRATE: Yes, up one now?

MR SHAW: No I will get it in the Mail.

MAGISTRATE: Thank you, and good luck with it.