*Raelene Rosas v Leigh Cahill* [2013] NTSC 65

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| PARTIES: | Raelene Rosas<br><br>v<br><br>Leigh Cahill |
| TITLE OF COURT: | SUPREME COURT OF THE NORTHERN TERRITORY |
| JURISDICTION: | SUPREME COURT OF THE TERRITORY EXERCISING APPELLATE JURISDICTION |
| FILE NO: | 21202735 |
| DELIVERED: | 8 October 2013 |
| HEARING DATES: | 23 September 2013 |
| JUDGMENT OF: | BLOKLAND J |
| APPEAL FROM: | Court of Summary Jurisdiction |

**CATCHWORDS:**

Criminal Law – Liquor Offences – Bringing Liquor into a Prescribed Area - Whether s 12 of the *Northern Territory National Emergency Response* Act 2007 (Cth) means offences under s 75 *Liquor Act* Act (NT) are no longer regulatory offences – whether s 75 (1) (1AA) of *Liquor Act* (NT) of no effect when "modifications" under s 12 *Northern Territory National Emergency Response* Act 2007 (Cth) apply - s 75 (1) offence retains its character as a regulatory offence.

Criminal Law – Liquor Offences – Proof of intention not required – Proof of knowledge of substance required – in this particular case proof of knowledge of the subject liquor required – appeal allowed.

*Hoessinger* (1992) 62 A Crim R 146 at 149; *Kruger v Kidson* (2004) 14 NTLR 91; *Gumbaduck v Rothe* [2011] NTSC 50 at [19]; *Sandby* (1993) 117 FLR 218 at 222; *Rockman v Smallridge* at [34]; (1994) 181 CLR 487, cited

*Pereira* (1988) 35 A Crim R; *Pereira* (1988) 35 A Crim R 382; *He Kaw Teh v The Queen* (1985) 157 CLR 523, discussed

*Kural* (1987) 162 (LR 502); *Rockman v Smallridge* (2012) 268 FLR 379, referred to

**REPRESENTATION:**

*Counsel:*

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| Appellant: | Ms Ozolins |
| Respondent: | Mr Pyne |

*Solicitors:*

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| Appellant: | ODPP |
| Respondent: | NAAJA |

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| Judgment category classification: | B |
| Judgment ID Number: | BLO1315 |
| Number of pages: | 18 |

IN THE SUPREME COURT
OF THE NORTHERN TERRITORY
OF AUSTRALIA
AT DARWIN

*Raelene Rosas v Leigh Cahill* [2013] NTSC 65
No. 21202735

BETWEEN:

**Raelene Rosas**
Appellant

AND:

**Leigh Cahill**
Respondent

CORAM: BLOKLAND J

REASONS FOR JUDGMENT

(Delivered 8 October 2013)

**Introduction**

[1] This appeal raises questions about the interaction between the *Liquor Act* (NT) and the *Northern Territory Emergency Response Act* (Cth), ("*Emergency Response Act*"), particularly as it concerns the offence of bring liquor into a "prescribed area".

[2] The appellant originally faced two counts on complaint in the Court of Summary Jurisdiction. She pleaded not guilty to both. Count one alleged that on 22 January 2012 she possessed liquor, namely two bottles of rum in a prescribed area, namely Bulman Community, contrary to s 75(1)(b) of the

*Liquor Act* "where it relates to" [1] s 12(2)(a)(ii) of the *Emergency Response Act*. Count two alleged that, on the same date, she brought liquor, namely, two bottles of rum, into a prescribed area, namely, Bulman Community, contrary to s 75(1)(a) of the *Liquor Act*, "where it relates to" s 12(2)(a)(i) of the *Emergency Response Act*.

[3] The hearing took place in the Court of Summary Jurisdiction on 5 July 2012; and on 24 and 27 September 2012 at Katherine. On 28 September 2012 the learned Magistrate found the appellant guilty of count two, (bring liquor into a prescribed area), and not guilty of count one (possess liquor in a prescribed area).

[4] The significantly overlapping grounds of appeal are as follows:

1. That having regard to the evidence, the learned Magistrate's finding of guilt was unsafe and unsatisfactory;

2. The learned Magistrate erred in finding that the defendant brought liquor, namely two bottles of rum, into the Bulman Community;

3. The learned Magistrate erred in finding that the defendant was guilty of the offence where he was not satisfied beyond reasonable doubt that the defendant had knowledge that there were two bottles of rum in her vehicle.

[1] This expression appears in both charges, referencing s 12(1)(b) of the *Emergency Response Act*

**The Construction Issue**

[5] Although the grounds of appeal require a review of both the evidence and the learned Magistrate's reasons, much of the argument on appeal concerned the construction of s 75(1)(a) *Liquor Act* (NT) "where it relates to" s 12(2)(a)(1) of the *Emergency Response Act*.

[6] The appellant's primary argument was that s 12(1) (b) of the *Emergency Response Act,* (now repealed but in force at the material time), had the effect of modifying the *Liquor Act* by *iner alia* repealing s 75(1)(1AA) of the *Liquor Act*. Section 75(1)(1AA) declares the relevant offences to be *"regulatory"* offences.[2] If the offence of "bring liquor into a prescribed area" was not properly classified as a "regulatory offence" at the time of the offending, the appellant argues that the full array of exculpatory matters available under the *Criminal Code* (NT) would have been relevant to the assessment of criminal responsibility. If this construction is correct, there remains a consequential issue as to whether criminal responsibility is to be determined by Part II or Part IIAA of the *Criminal Code* (NT).

[7] In urging this conclusion the appellant emphasises that s 12 of the *Emergency Response Act* on its terms, "has effect" as if the offences against s 75(1) of the *Liquor Act*, so far as they relate to a prescribed area, were replaced by [the offence provisions contained in s 12 of the *Emergency Response Act*].

[2] s 14 of the *Interpretation Act* provides "regulatory offences" are those that are specified in an Act or Subordinate legislation to be a regulatory offence.

[8] For offences committed in, or connected with a "prescribed area", (as opposed to the *Liquor Act* "general restricted area"), the content of the offence provision is in s 12 of the *Emergency Response Act*. Commonwealth legislation prevails over Northern Territory legislation to the extent of any inconsistency. In this particular context, as Mildren J held in *Rockman v Smallridge*, [3] if the area in question is both a general restricted area and a prescribed area, the provisions of s 12(2) of the *Emergency Response Act* must take priority over s 75 of the *Liquor Act* (NT). I fail to see any inconsistency relevant to the argument or outcome of this appeal.

[9] One consequence of the "replacement" is the removal of the possibility of imprisonment for this particular offence. [4] Section 12 also created new offences of supplying and transporting liquor and imposed harsher penalties when the quantity of liquor was greater than 1350 mls. [5] Those modifications are not in contention here, however, additionally, the appellant argued s 12 of the *Emergency Response Act* removed s 75(1)(1AA) that declared the offences under s 75 to be "regulatory" offences. The submission in support of this proposition is that by operation of s 12 of the *Emergency Response Act* there is no longer a provision stipulating the

[3] (2012) 268 FLR 379
[4] The maximum penalty prescribed is 10 penalty units for a first offence and 20 for a second or subsequent offence: s 12(2)(c) and (d) *Emergency Response Act*
[5] s 12(4),9(6) *Emergency Response Act.* Interesting early observations about the complications of Northern Territory alcohol laws were made by David Dalrymple, The Drum, *NT Intervention bulldozes the successful patchwork*, David Dalrymple, 12 May 2011 <http://www.abc.net.au/unleashed/2621614.html>

offence as a regulatory offence as required by s 14 *Interpretation Act* (NT) to enable this classification.

[10] As s 8 of the *Liquor Act* (NT) now declares offences under the *Liquor Act* to be offences to which Part II AA *Criminal Code* applies, it is argued criminal responsibility should be determined accordingly; notwithstanding offences against s 75(1) of the *Liquor Act* are expressly excluded by s 8 of the *Liquor Act*. It is suggested the reason for the exclusion of general restricted area offences as opposed to prescribed area offences is because the former are in the nature of strict liability offences. The exclusion, it is argued, does not include offences contained in s 12 of *the Emergency Response Act*; the intention was to modernise the offences by bringing all offences under the *Liquor Act* (NT) into Part IIAA *Criminal Code*. On this reasoning criminal responsibility for the offence of "bring liquor into a prescribed area" would consist of "conduct" sufficient to constitute "bringing". Given no "fault element" is prescribed, by default, the fault element would be "intention", requiring proof that the person *meant* to bring the liquor into a prescribed area.[6]

[11] Ultimately the appellant submits, in accordance with this argument that to be successful, the prosecution would be obliged to prove the appellant intended to bring the subject liquor (two bottles of rum) into a prescribed area (Bulman Community).

[6] ss 43 ACA, 43 AE,43 AM, 43 AI *Criminal Code* (NT)

[12] In my opinion this part of the appellant's argument must fail. Part 2 of the *Emergency Response Act* specifically provides for matters relating to alcohol,[7] and declares that the *Liquor Act* (NT) "as modified by this Part" has effect as laws of the Northern Territory and also has effect "subject to the modifications in this Part in relation to a prescribed area". The relevant sections provide:

> **Section 9 Modifications**
>
> The Liquor Act, the Liquor Regulations and the Police Administration Act have effect subject to the modifications in this Part in relation to a prescribed area.
>
> **Section 10 Effect of Modified Northern Territory Laws**
>
> The Liquor Act, the Liquor Regulations and the Police Administration Act, as modified by this Part, have effect as laws of the Northern Territory.
>
> **Section 12 Modification: Prescribed Areas**
>
> (1) The Liquor Act has effect as if:
>
> (a) Each prescribed area were a general restricted area under that Act; and
>
> (b) The offences against subsection 75(1) of that Act, so far as they relate to a prescribed area, were replaced by the following provisions of this section. [Subsections (2) – (14) not reproduced].

[7] s 6A "The object of this part is to enable special measures to be taken to reduce alcohol related harm in Indigenous communities in the Northern Territory".

[13] Section 12 of the *Emergency Response Act* created "replacement" offence provisions, but they operate only to the extent that they "replaced" the provisions of s 75(1) of the *Liquor Act* in so far as they relate to prescribed areas. The effect of this legislative "replacement" is therefore limited by the terms of s 12. Section 75(1) of the *Liquor Act* is overridden only in relation to offences on prescribed areas; section 75(1) is "replaced" in accordance with the terms of s 12 of the *Emergency Response Act*; it is not repealed or cancelled. I agree with the submission made on behalf of the respondent that if the contrary were the case and s 12 of the *Emergency Response Act* had repealed s 75 of the *Liquor Act*, the complaint would need to be laid pursuant s 12(1)(b) of the *Emergency Response Act*, rather than the *Liquor Act*. The effect of s 12 of the *Emergency Response Act* is that when a relevant offence relating to alcohol is committed in a prescribed area, the charge may be laid pursuant to s 75(1) of the *Liquor Act* as it relates to s 12 of the *Emergency Response Act*.

[14] I respectfully agree with Mildren J's analysis in *Rockman v Smallridge*: [8]

> "It is notable that the Response Act does not purport to repeal any of the provisions of the *Liquor Act* which are relevant to this case. I do not think it was the intention of the Commonwealth to, in effect, repeal s 75(1) of the *Liquor Act*. This was supported not only by the wording of s 12 itself, but also by the fact that ss 9 and 10 of the Response Act talk about "modifying" the *Liquor Act* rather than repealing it. It is to be further noted that s 12(i)(a) modifies the *Liquor Act* as if each prescribed area were a general restricted area under the *Liquor Act*. The conclusion to be drawn from this is that s 75 of the *Liquor Act* is not amended at all".

[8] (2012) 268 FLR 379at [28]

[15] In my opinion, the express exclusion of s 75(1) offences from s 8 of the *Liquor Act* in relation to the application of Part IIAA of the *Criminal Code* also results in the exclusion of s 12 *Emergency Response Act* modifications which form part of s 75(1) of the *Liquor Act*, save that the *Liquor Act* offences are modified by virtue of being committed in connection with a prescribed area. It may be noted s 12(1)(b) refers only to the replacement of the offences in s 75(1) and makes no reference to other subsections of s 75 of the *Liquor Act*. It makes no reference to s 75(1AA). There is no basis for concluding that s 75(IAA) of the *Liquor Act* has been removed, repealed or otherwise made of no consequence in relation to the subject offence.

[16] Both counsel have drawn my attention to the *Stronger Futures in the Northern Territory Act* (2012) (Cth), (*Stronger Futures Act*), which replaced the *Emergency Response Act* in June 2012. Section 8 of the *Stronger Futures Act* enacted a Division to be inserted into the *Liquor Act* that expressly provides new offences and penalties for "alcohol protected areas". The legislative mechanism dealing with relevant offences under the *Stronger Futures Act* differs markedly from the "replacement" mechanism under the *Emergency Response Act*. The *Stronger Futures Act* expressly provides Part IIAA of the *Criminal Code* (NT) applies to the new offences. This development does not assist the appellant's argument as the legislative regime that applied to the appellant was of a markedly different character.

[17] In my opinion the offence against s 75(1)(a) of the *Liquor Act* as it relates to s 12 (2)(a)(i) of the *Emergency Response Act*, at the time the appellant was charged and dealt with, was a regulatory offence.

**The Elements of the Offence**

[18] As with simple offences and crimes, a person is liable for a regulatory offence if they have committed the prohibited act with any prescribed mental element constituting the offence.[9] Unless the definition of the offence requires proof of intention or foresight the prosecution would not need to prove those subjective elements as s 31 *Criminal Code* (NT) does not apply. A number of other excuses and defences do not apply.[10] For a prosecution to succeed, all relevant constituent elements of the offence must still be proven.

[19] Although nice questions [11] surround what may be required for proof of a 'prescribed area' under the *Emergency Response Act*, those questions do not arise here as it is accepted by both parties that Bulman Community was a prescribed area. Essentially in this case the respondent was required to prove the appellant did "bring" liquor, here, (two bottles of rum) into Bulman Community.

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[9] s 2 *Criminal Code*.
[10] See s 22 *Criminal Code*; however it is a defence to a regulatory offence that the act, omission or event is done in obedience to the order of a competent authority or pursuant to authority lawfully granted: s 26 (i) (c) and (d) *Criminal Code*; similarly "immature age" provides an excuse to a regulatory offence: s 38 and acting in contravention of an unpublished statutory instrument: s 30 (3). See also *Kruger v Kidson* (2004) 14 NTLR 91.
[11] *Rockman v Smallridge* at [34] makes the point there is no authority to use a certificate to prove a prescribed area; cf *Liquor Act* and proof of general restricted areas.

[20] In my opinion there was no need for the respondent to prove intention to bring the liquor into a prescribed area as s 31 of the *Criminal Code* (NT) is excluded, however, the act of "bringing" must be a voluntary act and inherently requires proof of "knowledge" as that term is understood by the law of (here) the two subject bottles of rum.

[21] I mention the two subject bottles of rum because that is precisely how the prosecution put its case. The case was not put on an inchoate basis, although it appears it could have been. It was not put on an acting in concert or common purpose basis. It was put, (and the evidence was directed accordingly), that the appellant brought in the two bottles of rum that were found in the back seating area of the car. In most cases it will be sufficient for the prosecution to prove knowledge of the substance generally, however here, the case was directed to the two subject bottles, at least impliedly excluding other liquor in the car.

[22] Under Part II of the *Criminal Code* (NT), [12] "act" in relation to an accused means "the deed alleged to have been done by him" and "it is not limited to bodily movement"; "it includes the deed of another caused, induced or adopted by him or done pursuant to a common intention". For some time it has been settled that a person is not guilty of a regulatory offence in the Northern Territory unless they have voluntarily committed the act.[13]

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[12] s 1 definitions

[13] *Kruger v Kidson* (2004) 14 NTLR 91. Similarly, a range of (the former) s 154 cases, (a provision that also excluded s 31 *Criminal Code)*, concluded the act must be voluntary: See eg. *Hoessinger* (1992) 62 A Crim R 146 at 149; *Sandby* (1993) 117 FLR 218 at 222

[23] In common with the possession charge where knowledge is required to be proven, to prove the prohibited act of "bring liquor", knowledge is similarly required. It is a matter of language and common usage. A person does not generally speak of "bringing" an item unless they have knowledge of that item. The word 'bring', like 'possession', in its ordinary sense connotes knowledge or awareness of the thing being brought. Although "possession" has a lengthy historically developed common law definition that includes proof of 'knowledge', in my view, in the context of this statutory offence, the same applies to the offence "bring liquor". It follows that only those persons who know they are bringing liquor into a restricted or prescribed area would be guilty of an offence. In this context 'knowledge' and 'awareness' may be used interchangeably. On behalf of the respondent it is accepted proof of knowledge of the substance is an element of the charge.

[24] As to what is meant by knowledge, there are some similarities with how 'knowledge' is defined in the context of the common law '*mens rea*' applicable to charges of importation and possession of narcotics. As is well known, in *He Kaw Teh v The Queen*,[14] when declaring importation and possession of narcotics to be offences of full *mens rea*, the High Court held knowledge must be proven beyond reasonable doubt. Chief Justice Gibbs, (with Mason J agreeing), held the prosecution bears the onus of proving beyond reasonable doubt that an accused knew he was importing a narcotic substance or that he was wilfully blind in that he shut his eyes to the

[14] (1985) 157 CLR 523

probability that he was importing narcotics; Brennan J held importation required knowledge of the nature and character of the object imported, (such that when the goods are imported in a container the prosecution must prove that the accused knew that it contained or was likely to contain, an object that was, or was likely to be, narcotic goods); Dawson J held that an intentional importation of narcotic goods was required. [15]

[25] A majority accepted that in appropriate cases, (an example might be narcotics concealed in containers), it is sufficient for the Crown to prove that the accused knew that it was likely that he or she was involved in dealing with prohibited narcotics. In *Pereira*, [16] members of the High Court referred to this as 'lawyers shorthand'; that it is sufficient for the Crown to prove 'wilful blindness' in the sense that one is wilfully blind when one suspects a fact but closes one's eyes to avoid confirmation of the suspicion. In *He Kaw Teh*, with regard to "wilful blindness" Gibbs CJ said:

> "..... if the suspicions of an incoming traveller are aroused, and he deliberately refrains from making any inquiries for fear that he may learn the truth, his wilful blindness may be treated as equivalent to knowledge. If he is given a bag or parcel to carry into Australia and is suspicious about the appearance, feel or weight of his own baggage, and he deliberately fails to inquire further, the jury may well be satisfied that he wilfully shut his eyes to the probability that he was carrying narcotics and for that reason should be treated as having the necessary guilty knowledge".[17]

[15] Wilson J dissented.
[16] (1988) 35 A Crim R.
[17] (1985) 157 CLR 523 at 536

[26] In the later cases of *Kural* [18] and *Pereira*, [19] the position of 'wilful blindness' was clarified as being an evidentiary means of arriving at actual knowledge when proof of nothing less is required. In *Pereira*, the High Court said that when knowledge is inferred from the circumstances surrounding the commission of the alleged offence, knowledge must be the only rational inference available. The combination of suspicious circumstances and failure to make inquiry may sustain an inference of knowledge of the actual or likely existence of the prohibited substance. Where the trier of fact is invited to draw an inference, a failure to make inquiries, may, as a 'lawyers shorthand' be referred to as wilful blindness; however, the court has stressed that "care should be taken to ensure that a jury is not distracted by it from a consideration of the matter in issue as a matter of fact to be proved beyond reasonable doubt".

[27] As with other relevant mental states, unless there are admissions, knowledge can generally only be proven by inference from the surrounding proven facts. So called 'wilful blindness', if found, is really but one of a number of circumstances from which an inference of knowledge may be drawn.

[28] I conclude therefore that in this case, the elements that were required to be proven were that on 22 January 2012; the appellant by her voluntary acts or by causing others to act on her behalf, brought (that is knowingly brought or knew it was likely that she brought), two bottles of rum into a prescribed

[18] (1987) 162 (LR 502)
[19] (1988) 35 A Crim R 382

area, namely Bulman community. Knowledge may be proven by the cumulative facts and inferences that maybe properly drawn. For the "bring liquor" charge, it is not necessary for the prosecution to prove the rum was possessed, (including an element of control), or owned or purchased by the appellant. "Bring" is constituted by causing the rum to be transported into the prescribed area with the requisite knowledge.

**Review of the Evidence and the Learned Magistrates Reasons**

[29] In reviewing the learned Magistrate's approach to the evidence, although not expressly stated in these terms, His Honour proceeded on the basis that proof of knowledge was required for the possession charge. His Honour dismissed that charge. His Honour did not appear to approach the "bring liquor" charge in the same way. This appears to have resulted in the acquittal of the possession charge and the finding of guilt on the subject charge.

[30] At the outset it must be borne in mind the particulars of the "bring liquor" charge were the two bottles of rum found in the rear section of the car. As mentioned, the prosecution case was not put on any other basis.

[31] There was evidence implicating the appellant and to suspect her. The car belonged and was registered to the appellant. At the material time it was driven by Lachlan Lawrence (from Katherine back to Bulman Community) at the appellant's request. The occupants of the car were the appellant,

Lachlan Lawrence, Charmaine Brinjen, Desmond Lindsey, Francis Murray, and Jerry Martin.

[32] The subject bottles of rum were found in the seating area behind the back seat of the Pajero. The evidence was that the appellant was seated in the front passenger seat. The single bottle of rum found underneath the appellant's seat was claimed by another occupant (Desmond Lindsey). Desmond Lindsey received an infringement notice for his possession of it. The appellant indicated to police that during the journey she became aware of that bottle of rum.[20] That bottle of rum was not the subject of this charge.

[33] There was discreditable evidence against the appellant to the effect that she had agreed with one Loretta Lindsay to bring her back some rum from Katherine; and that she later advised her that the rum had been purchased. There were however some intervening facts; in particular the appellant and others in the car had been informed of a sudden death of a relative and they went to a house in Katherine and were drinking in association with grieving. There was also evidence that Desmond Lindsay may have bought three bottles of rum. Other than the fact that he travelled in the appellant's car, there is nothing connecting "his" rum (whether one or three bottles and there is some variation about that fact), with the appellant's earlier discreditable conduct in agreeing to bring rum back to Bulman for Loretta Lindsay. Clarity and detail from the witnesses was not at a high level. This was most

[20] Exhibit one, EROI, at 25

likely because they had been at various levels of intoxication after drinking at the residence in Katherine.

[34] After reviewing the evidence, I find myself in a similar frame of mind as the learned Magistrate apparently did. There was evidence that must raise a significant amount of suspicion in relation to whether the appellant knew of the rum in the back of the vehicle. His Honour revisited the appellant's counsel's submissions and concluded as follows, (emphasis added) [21]:

> "Mr Moore says that the two bottles of rum concerned are effectively particularised as being the two in the back, but there is no evidence that Ms Rosas knew that these particular bottles of rum were in the back of the car. Indeed, there is no evidence that they were her bottles of rum. There is no evidence on which one could conclude that these were the bottles bought at her instruction and placed in the vehicle with a view to supplying one of them to Loretta Lyndsay, *and all of that is, I think true. There is a high probability that those were the bottles, but there is no good reason to think that they were anybody else's bottles. There is no account of anyone else placing a couple of bottles of their rum in the vehicle, but Ms Rosas did not have any direct hand, as far as we know, in putting the rum in the car, and concealing it to the extent it was concealed; which was not very effectively, since the police were able to see it through the windows of the car when they stopped it".*

[35] His Honour then listed the various acts and circumstances he found proven that I have referred to as discreditable acts (above) and then said:

> "It seems to me absolutely unarguable that a person in that situation must be found guilty of bringing whatever rum there is in the vehicle; whether that person has detailed knowledge; whether the person is the owner, possessor, custodian or definitely not the owner, not the possessor, not the custodian, there is in my view, no conclusion consistent with the wording or contention of the Liquor Act, section provided that could possibly bring a court to conclude

[21] T, 28 September 2012 at 6

> that a person in Ms Rosas position was anything but guilty of bringing that rum into the prescribed area".

[36] His Honour went on to discuss the possession charge and to explain the concept of the requirement of knowledge of the actual substance. In relation to the question of knowledge and possession, His Honour concluded:

> "In the circumstances of this case, given as far as I know, and on the evidence, Ms Rosas had never touched these two bottles, but knew there was rum in the car; that they had been bought on her instructions, but not certainly, because we do not know for sure that these were the bottles bought on her instructions, that the expedition had among its aims to bring back rum, and that is exactly what they were doing. It seems to me the doubt about whether this liquor is the liquor bought on her instructions is enough to create a doubt about possession on her part and the possession charge ought not to be found proved on that basis".

[37] If the learned Magistrate could not be satisfied as to knowledge of the charged rum, whether by direct evidence or by inference, including the possibility of wilful blindness as an evidential aid, it seems to me in this particular case given the way it was framed the same must be said for the bring liquor charge. I appreciate possession requires proof of control, actual or de facto, that is not required for "bring" liquor. His Honour could not be satisfied, however, that the appellant knew the subject rum was present in the car; or indeed that she had any connection with any of the rum found. It is unknown whether the appellant put into action an earlier discreditable plan to bring back rum at all. The connection with her earlier plan and rum in the car was not made out. Further, after reviewing the evidence, the matters raised on behalf of the appellant as amounting to a reasonable

hypothesis consistent with innocence could not be excluded, particularly that the rum could have all belonged to Desmond Lindsey, purchased by Francis Murray on his behalf that was quite separate to the appellant's original plan.[22] I fully appreciate the principles of *M v The Queen*[23] are applicable to the review of Magistrates decisions;[24] however, the combination of the witness testimony of somewhat poor quality coupled with His Honour's reasons lead me to the conclusion that there exists a reasonable doubt about the appellant's connection with and knowledge of the rum brought into Bulman Community.

[38] I therefore conclude the appeal should be allowed. The conviction entered for bringing liquor into a prescribed area is quashed.

[22] T. 24 September 2012 at 7-8; Evidence of Francis Murray at T 20, 22 23, 24; Evidence of Desmond Lindsey at T 15, 16, -18
[23] (1994) 181 CLR 487
[24] *Gumbaduck v Rothe* [2011] NTSC 50 at [19]