

*Watson v Cassidy* [2011] NTSC 80

PARTIES: WATSON, Jake  
v  
CASSIDY, Craig

TITLE OF COURT: SUPREME COURT OF THE  
NORTHERN TERRITORY

JURISDICTION: SUPREME COURT OF THE  
NORTHERN TERRITORY  
EXERCISING APPELLATE  
JURISDICTION

FILE NO: JA - AS36 of 2011 (21112520)

DELIVERED: 5 October 2011

HEARING DATES: 29 September 2011

JUDGMENT OF: MILDREN J

APPEAL FROM: MR G CAVANAGH SM

**REPRESENTATION:**

*Counsel:*

Appellant: R.D. Anderson  
Respondent: J Tierney

*Solicitors:*

Appellant: NT Legal Aid Commission  
Respondent: Director of Public Prosecutions

Judgment category classification: C  
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IN THE SUPREME COURT  
OF THE NORTHERN TERRITORY  
OF AUSTRALIA  
AT ALICE SPRINGS

*Watson v Cassidy* [2011] NTSC 80  
No. JA - AS36 of 2011 (21112520)

BETWEEN:

**JAKE WATSON**  
Appellant

AND:

**CRAIG CASSIDY**  
Respondent

CORAM: MILDREN J

REASONS FOR JUDGMENT

(Delivered 5 October 2011)

**MILDREN J:**

- [1] At 1.10am on 3 March 2011, the appellant was driving a New South Wales registered Toyota Hilux in Alice Springs. As he approached a sweeping turn on Milner Road, the appellant lost control of the vehicle. The vehicle left the road surface and mounted the kerb. It then slid sideways for approximately 20 metres before colliding with a tree and number of bins. The vehicle eventually came to a stop on the footpath outside house 22 Milner Road. The appellant ran away from the scene of the crash.
- [2] Over the course of the next few weeks police made enquiries interstate in order to establish the owner of the vehicle. The appellant did not report the

accident until he attended the Alice Springs police station on 9 April 2011. The appellant was asked why he failed to report the accident. His response was “I can’t remember”. When asked why he left the accident scene, he said “I think I hit my head. I can’t remember”.

- [3] There were no passengers in the vehicle. The appellant was not injured in the accident.
- [4] The appellant pleaded guilty and admitted the above facts. On his behalf his counsel told the learned Magistrate that the appellant instructed that he had been asleep after he had finished work at 9pm. He received a call from a room-mate at 12.48am asking the appellant to pick him up. He was unable to remember anything until the next morning when he woke up.
- [5] It was put that the appellant went to the police station after a few days and was told that the duty officer was on leave but would contact the appellant after he came back. No further contact having been made the appellant two weeks later went back to enquire further and was told the police officer was still on leave. The matter was eventually reported when the appellant attended the Alice Springs police station himself on 9 April.
- [6] The offences to which the appellant pleaded guilty were both regulatory offences. The first offence was leaving the scene of an accident before allowing sufficient time for enquiries to be made contrary to Regulation 19 (1) (a) of the Traffic Regulations. The second offence was failing to report the accident to a member of the police force at the nearest practical police

station as soon as practicable after the accident contrary to Regulation 19 (2) of the Traffic Regulations.

### **Grounds of Appeal**

[7] The grounds of appeal were:

- a) The learned Magistrate erred in giving insufficient weight to the criteria in Section 8 of the *Sentencing Act (NT)*<sup>1</sup>;
- b) The sentence imposed was manifestly excessive in all the circumstances.

[8] The actual sentence imposed was an aggregate fine of \$400 and a conviction recorded for each of the offences. The learned Magistrate did not suspend the appellant's driving licence.

### **The Argument on Appeal**

[9] The principal ground of appeal was the learned Magistrate erred in recording convictions for these offences. It was put on behalf of the appellant before the learned Magistrate that the offending was trivial and that there were extenuating circumstances in that "he couldn't remember by hitting himself in the head". Character references were also tendered and the appellant had no prior convictions. The appellant was aged nineteen at the time of the offences.

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<sup>1</sup> This section empowers a Court not to record a conviction having regard to the circumstances of the case including certain criteria such as prior good character, triviality and exceptional circumstances.

[10] As to the extenuating circumstances, the appellant's lack of memory related to both the accident itself, his reason for leaving the scene of the accident and for the failure to report. As to the cause of his lack of memory, the Crown facts to which he admitted indicate that he *thought* that he had hit his head. Indeed if he had no memory at all until the next morning that explanation could only be reconstruction.

[11] Even if the appellant had no memory of the accident when he awoke the following day it was not suggested that he did not know about the accident until some days later. Presumably he made enquiries about the whereabouts of the car he had been driving. Nothing was put to the learned Magistrate to suggest he suffered from concussion. Although this is a possibility which might explain memory loss, there are other possibilities such as gross intoxication. It was not put that the appellant had no memory of driving the vehicle at all.

[12] The burden of proving extenuating circumstances rests upon the appellant on the balance of probabilities. Although there is nothing to suggest that the learned Magistrate or the prosecutor cavilled in any way with the appellant's then counsel at the time of the original sentencing hearing, whatever else might be said, there was no real explanations as to why it "took some days" for the appellant to report the matter to the police. Even if he was unable to remember the details of the accident or why he left the scene he was still required to report the accident as soon as reasonably practical and in any

event within twenty four hours.

- [13] No medical evidence or medical certificates were tendered on behalf of the Defendant before the learned Magistrate.

### **Relevant Principles**

- [14] The principles under which the Court will not record a conviction in relation to regulatory offences were discussed by Southwood J in *Hales v Adams*<sup>2</sup> where His Honour noted that provisions such as s 8 (1) of the *Sentencing Act (NT)* have a restricted application in respect of offences against regulatory and social legislation. The deterrent aspect of punishment is paramount when an offender is being sentenced for breaches of regulatory legislation and in those circumstances there must be good reasons for refusing to record a conviction. It should be at least demonstrated there was a real effort to ensure that the law was complied with.

- [15] Subsequently His Honour said in *Burrarrwanga v Rigby*<sup>3</sup> that the weight to be given to prior good character is less in the case of regulatory offences than in the case of simple offences or crimes that contain overtones of considerable moral turpitude.

- [16] As counsel for the respondent pointed out in his written submissions, general deterrence is particularly important for infringements against these particular regulations. The duty to stop at the scene of an accident is

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<sup>2</sup> [2005] NTSC 86 at [18]

<sup>3</sup> [2009] NTLR 234 at [26]

imposed so that drivers may assist anyone else who maybe injured, and to enable those involved in an accident to obtain information from each other. This is important both in more serious accidents where a party has been injured as well as in more minor matters where people need to obtain information for insurance purposes. Often offenders run away from accident scenes as a way of avoiding detection for other offences such as driving with alcohol or other drugs in their system. There is a strong need for courts to send a message that running away after an accident is unacceptable.

[17] In this case there was no other vehicle involved, although there presumably was some damage to other property (the bins), not to mention to the car which the appellant was driving. I think the main problem for the appellant in this case was that not only did he not comply with that regulation, he did not report the matter to the police as soon as was reasonably practicable and in any event within twenty four hours. Although some excuse was give to the learned Magistrate as to why it took him so long to report the matter, this really did not cover the first three or four days or so after the accident when even on his counsel's explanation, he made his first attempt to contact police.

### **Conclusions**

[18] I think the learned Magistrate, in the exercise of his discretion, might have declined to have recorded a conviction for the offence of failing to stop for a

sufficient time to allow necessary enquiries to be made if he had been satisfied that at that stage the reason why the appellant left the scene was due to a head injury, but I do not think it has been demonstrated that he erred in not doing so on the material that was put before him. I certainly do not think he was obliged not to record a conviction in the exercise of his discretion in relation to the offence of failing to report the matter to the police.

[19] In the circumstances I do not think it can be said that the sentence actually imposed was manifestly excessive.

[20] For these reasons, after hearing submissions from counsel for the appellant I dismissed the appeal.