SUPREME COURT OF SOUTH AUSTRALIA

(Magistrates Appeals: Criminal)

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ROSSITER v ADELAIDE CITY COUNCIL

[2020] SASC 61

Judgment of The Honourable Justice Livesey

23 April 2020

MAGISTRATES - APPEAL AND REVIEW - SOUTH AUSTRALIA - APPEAL TO SUPREME COURT

TORTS - TRESPASS - TRESPASS TO GOODS

TRAFFIC LAW - TRAFFIC REGULATION - RESTRICTIONS ON STOPPING AND PARKING

Appeal against a parking conviction by a Magistrate.

The appellant received an expiation notice as the driver of a vehicle parked in excess of the 30-minute time limit indicated by a permissive parking sign. The appellant elected to be prosecuted and was issued an information and summons.

On the day of trial, but before the matter was called on, the appellant showed the prosecutor a notice which read, “Notice: private property, no trespassing”. The appellant said that the notice was displayed on the vehicle when the expiation notice was left on the windscreen.

In the Magistrates Court the appellant did not enter a plea. The Magistrate directed that a plea of "not guilty" be entered and proceeded as if the matter was ex parte. The prosecution proceeded to prove the appellant’s guilt beyond reasonable doubt with the assistance of statutory aids to proof. The Magistrate did not rely on s 62BA of the Criminal Procedure Act 1921 (SA) (“the Act”) which allows the Magistrates Court to regard any allegation contained in the information and summons as sufficient evidence of the matters alleged.

The appellant was found guilty of breaching r 205 of the Australian Road Rules and was fined without a conviction recorded.

On Appeal from MAGISTRATES COURT OF SOUTH AUSTRALIA (MAGISTRATE MCLEOD) AMC-19-6855

Appellant: TIMOTHY NOEL ROSSITER In Person
Respondent: ADELAIDE CITY COUNCIL Counsel: MR C MUSCAT

Hearing Date/s: 20/04/2020

File No/s: SCCIV-20-299

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In this Court, the appellant sought to appeal his conviction on 11 grounds, including on the bases that no plea was entered and that the inspectors trespassed when attaching the expiation notice to the windscreen.

Held, dismissing the appeal; each ground of appeal is without merit and misunderstands the statutory and regulatory authority of the respondent.

1. In the circumstances of this case, where the appellant was present but refusing to participate, there was no good reason not to take advantage of the statutory aid in s 62BA(1). Nonetheless the Magistrate's adjudication on evidence in this case reinforced the absence of any miscarriage of justice to the appellant.

2. The affixation of the expiation notice to the vehicle was explicitly permitted by the Expiation of Offences Act 1996 (SA) and could not comprise trespass.

Criminal Law Consolidation Act 1935 (SA) Pt 8A; *Criminal Procedure Act 1921* (SA) s 62BA, s 129; *Expiation of Offences Act 1996* (SA) s 6; *Local Government Act 1999* (SA) s 208, s 260, s 261, s 292; *Road Traffic Act 1961* (SA) s 5, s 17, s 35, s 80, s 174A, s 174B, s 174C s 174D, s 174E, s 175; *Road Traffic (Miscellaneous) Regulations 2014* (SA) reg 9, reg 63; *Supreme Court Civil Supplementary Rules 2014* (SA) r 238, referred to.
Penfolds Wines Pty Ltd v Elliott (1946) 74 CLR 204; *Plenty v Dillon* (1991) 171 CLR 635; *R v Hall* [1971] VR 293; *Walker v Eves* (1976) 13 SASR 249, considered.

ROSSITER v ADELAIDE CITY COUNCIL
[2020] SASC 61

Magistrates Appeal: Criminal

LIVESEY J:

Introduction

1 The appellant describes himself as "Tim: Rossiter, a man" for reasons that will become clear. Whatever his name, he objects to the imposition of a parking expiation notice, and appeals against conviction for a breach of r 205 of the *Australian Road Rules*.

2 The prosecution case was that the appellant was the driver of a Toyota sedan when, on Sunday, 7 April 2019, he parked on Grote Street, Adelaide between 1.20 pm and 2.09 pm, well exceeding the 30-minute time limit indicated by the permissive parking sign.[1]

The trial

3 Covered by the words "all rights reserved, without prejudice" the appellant elected to be prosecuted by a notice dated 8 April 2019, following which an Information and Summons was issued and the matter was eventually listed for trial on 24 February 2020.

4 At an earlier hearing on 4 October 2019 another Magistrate spoke to the appellant whilst he was sitting at the bar table. He replied only with words to the effect, "I am a man".[2] In the absence of a plea, the Magistrate treated the response as a plea of "not guilty" and set the matter down.

5 On the day of the trial, but before the matter was called on, the appellant showed the prosecutor the notice that he said was displayed in the windscreen on the day the expiation notice was issued. It read: "Notice: private property, no trespassing". When the matter was called on, the appellant did not approach the bar table and remained seated in the back row of the public gallery. He apparently remained mute throughout the trial and during the delivery of *ex tempore* reasons.

6 The Magistrate treated the appellant's failure to respond as another plea of "not guilty" and proceeded as if the matter was *ex parte*. The prosecution opened and proceeded in the ordinary way, although without any interaction from the appellant. In his reasons, the Magistrate accepted the evidence of two parking inspectors who gave evidence (using photographs that recorded the date and

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[1] The term "permissive parking sign" is used in r 204 of the *Australian Road Rules*.
[2] Affidavit of Charles Muscat affirmed 16 April 2020.

times at which they were taken), that the Toyota was parked for longer than 30 minutes, and that certain statutory presumptions had "not been rebutted".[3]

7 In so far as is material to the appeal, those presumptions under s 175 of the *Road Traffic Act 1961* (SA) included the following:

> (1) In proceedings for an offence against this Act, an allegation in a complaint that—
>
> …
>
> (b) a specified vehicle was parked in a specified place; or
>
> …
>
> (i) a specified person was the owner, operator, person in charge or driver of a specified vehicle,
>
> is proof of the matters so alleged in the absence of proof to the contrary.

8 Where the appellant elected to remain mute and not participate in the trial, it was inevitable that he would be found to be the driver given that was what had been alleged.

9 The Magistrate found the appellant guilty of the charge, but explained that it was usual not to record a conviction, and so the penalty without conviction was a fine of $52, a court fee of $286, a victims of crime levy of $160 and prosecution counsel fees of $1,270, a total of $1,768.

The appeal

10 The handwritten grounds of appeal are unusual:

> 1. No plea was entered,
> 2. a notice was on car front windscreen that says 'Notice, private property, no trespassing' clearly visible
> 3. respondent attached a sticker over it without permission or consent,
> 4. the 'election to be prosecuted' and 'stat dec' was signed with 'all rights reserved, without prejudice' which I do not consent to be used in court,
> 5. i am not the 'registered owner' of the car
> 6. the local government has no constitutional recognition, (1988 referendum, Question 3)
> 7. i do not have any contract with the corporation with the ABN: 20 903 762 572
> 8. and i do not consent to contract with them,

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[3] Magistrate's reasons [4].

9. i emailed the respondent a letter denying consent on 3/9/2014 which was not responded to or refuted, i have attached a copy,

10. i did not cause any harm, injury or loss,

11. the 'Expiation Notice' has foreign text on it which is not english, and i do not understand the nature of it.

11 It is not necessary to address appeal grounds 4, 5, 7, 8, 10 or 11 in much detail because they do not raise matters capable of giving rise to any defence, and they misunderstand the nature of the statutory and regulatory authority by which the respondent is authorised to control and regulate parking.

12 The *Road Traffic Act 1961* (SA) and the *Local Government Act 1999* (SA) confer the statutory and regulatory powers by which the respondent controls parking and enforces parking offences within its area. That statutory and regulatory regime is as follows:

1 The appellant was charged with a breach of r 205 of the *Australian Road Rules*, which are made under s 80(a) of the *Road Traffic Act 1961* (SA).

2 By s 17 of the *Road Traffic Act 1961* (SA) a "road authority" may with Ministerial approval install "a traffic control device on, above or near a road". The term "road authority" is defined by s 5 to mean, amongst other things, an "authority … responsible for the care, control or management of a road". The term "traffic control device" is defined by s 5 to mean, amongst other things, a sign, signal or parking ticket-vending machine and parking meter.

3 Under s 208(1) of the *Local Government Act 1999* (SA) all "public roads in the area of a council are vested in the council in fee simple under the *Real Property Act 1886* (SA)". As the owner of a road, a council is responsible for the care, control and management of a road, and it is therefore a "road authority" permitted to install "traffic control devices" such as signs and parking ticket-vending machines near a road under the *Road Traffic Act 1961* (SA).

4 By an instrument dated 22 August 2013 Ministerial approval was granted to the respondent (and all other councils) pursuant to s 17 of the *Road Traffic Act 1961* (SA) to install "any traffic control device on, above or near a road which is under its care, control and management…". A copy of this instrument is available from the website of the Department of Planning, Structure and Infrastructure.

5 Whilst that Ministerial approval was not the subject of any proof, and not the subject of any ground of appeal, formal proof was not required. First and foremost, by s 22 of the *Road Traffic Act 1961* (SA) it is conclusively presumed that, in proceedings for an offence against the Act commenced by

the complaint of a police officer, or otherwise on behalf of the Crown, or on the complaint of an officer or employee of a council, where a traffic control device is proved to have been on, above or near a road, it was "lawfully installed or displayed there under this Act".[4] Secondly, this is an example of the kind of formal or peripheral issue which need not be proved where the provisions of s 62BA(1) of the *Criminal Procedure Act 1921* (SA) are engaged (under the second discretion discussed below). Thirdly and finally, but relatedly, this formal or peripheral issue is amenable to dispensation from compliance with the rules of evidence under s 59J of the *Evidence Act 1929* (SA) because it is not a matter that can be "genuinely in dispute" or formal proof "might involve unreasonable expense or delay".[5]

6 Compliance with traffic control devices is a matter for the Governor under s 80(b) of the *Road Traffic Act 1961* (SA), and any regulations or miscellaneous provisions that may be made, "relating to matters of a kind referred to in" s 80(a).

7 By reg 9 of the *Road Traffic (Miscellaneous) Regulations 2014* (SA), for the purposes of s 35 of the *Road Traffic Act 1961* (SA), the provisions of Part 12 of the *Australian Road Rules* (Restrictions on stopping and parking) are prescribed provisions.[6] Within Part 12 is to be found r 205, the rule relied on in this case, which prohibits parking for longer than is indicated by a "permissive parking sign".

8 By s 35 of the *Road Traffic Act 1961* (SA), an "authorised person" as defined in the *Local Government Act 1999* (SA) is an "authorised officer" under the *Road Traffic Act 1961* (SA) for the purposes of enforcing prescribed provisions or exercising prescribed powers. Authorised persons are appointed under s 260 of the *Local Government Act 1999* (SA) and, under s 261, they may issue expiation notices. By s 292 of the *Local Government Act 1999* (SA) it is not necessary in any legal proceedings to prove the existence or constitution of a council, the appointment of an officer, or the appointment of an authorised person.

9 By s 174D of the *Road Traffic Act 1961* (SA) no person "other than a police officer or an officer or employee of a council" may commence proceedings against a person for an offence against a prescribed provision of the Act.

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[4] By s 44(3) of the *Acts Interpretation Act 1915* (SA) a reference to a complaint is taken to be a reference to an Information under the *Summary Procedure Act 1921* (SA) (now the *Criminal Procedure Act 1921* (SA)), and likewise, a reference to a complainant is taken to be a reference to an informant.

[5] *Southern Equities Corporation Ltd (In Liq) v Bond* (2001) 78 SASR 554, [329] (Lander J): "While s 59J is silent as to when the discretion mentioned in the section should be exercised, in my opinion, the discretion would not be exercised unless it could be done so without injustice to any party and when it was in the interests of justice to do so".

[6] *Howie v Burgess* [2005] SASC 368, [37]-[40] (Layton J).

10 By reg 63 of the *Road Traffic (Miscellaneous) Regulations 2014* (SA), for the purposes of various provisions of the Act (ss 174A, 174B, 174C and, relevantly, 174D), Part 12 of the *Australian Road Rules* (Restrictions on stopping and parking) are prescribed provisions.

11 By s 174E of the *Road Traffic Act 1961* (SA), if it appears from the complaint that the complainant is a police officer or an officer or employee of a council, it is presumed "in the absence of proof to the contrary" that the proceedings have been commenced by a police officer or an officer or employee of a council, as the case may be. The Informant in this case (an employee of the respondent) was, therefore, authorised to commence proceedings for a breach of a provision within Part 12 of the *Australian Road Rules*.

13 Rule 165 of the *Australian Road Rules* provides for certain defences, none of which was invoked in this case.

14 Ground 1 complains that no plea was entered.

15 It has long been recognised that a defendant's right to attend a criminal trial is a right capable of being waived, with the result that a trial judge has a discretion, to be "exercised with great care" in the case of unrepresented defendants, to proceed *ex parte*,[7] whether the absence is due to the misconduct of the defendant in the courtroom, or a deliberate refusal to attend at, or participate in, the trial.[8]

16 According to *Archbold*, the English practice requires that a jury be empanelled to determine in a hearing whether the defendant was "mute of malice or by the visitation of God", because this cannot be determined by the court.[9] If the finding is that the defendant is "mute of malice", the court may, under the relevant statute, direct that a plea of "not guilty" be entered, otherwise, if "mute by visitation of God" (perhaps because of deafness),[10] the court must then determine whether there exists a disability that prevents the defendant from being tried.[11]

17 In 1971 in *R v Hall* the Full Court of the Supreme Court of Victoria described the direction of a trial judge that a plea of "not guilty" be entered, after the defendant said that he could not plead, as a "well-established practice".[12] In South Australia, the issue is addressed by the *Criminal Procedure Act 1921* (SA), portions of which were known as the *Summary Procedure Act 1921* (SA) until

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7 *Stusser v Police* [2013] SASC 73, [13] (Gray J).

8 *R v Hayward* [2001] QB 862, [6] (Rose LJ), citing *R v Jones*, *Planter and Pengelly* [1991] Crim LR 856.

9 Mark Lucraft (ed), *Archbold: Criminal Pleading, Evidence and Practice* (Sweet & Maxwell, 2019) [4-228], citing *R v Scheleter* (1866) 10 Cox 409.

10 *R v Halton* (1824) Ry & M 78, or deaf and dumb, *R v Pritchard* (1836) 7 C & P 303.

11 *R v Governor of His Majesty's Prison at Stafford; Ex parte Emery* [1909] 2 KB 81.

12 [1971] VR 293, 294 (Winneke CJ, Little and Gowans JJ).

2018.[13] Section 129 of the Act, which is found in Part 5 "Indictable offences", Division 6 "Pleas and proceedings on trial in superior court," provides:

> **129—Plea of not guilty and refusal to plead**
>
> (1) A person arraigned on an information who pleads not guilty will, by that plea, without any further form, be taken to have put themself on the country for trial (and the court must, in the usual manner, proceed to the trial of that person accordingly).
>
> (2) If any person, being so arraigned, refuses or fails to enter a plea to the information, it is lawful for the court to order a plea of not guilty to be entered on the person's behalf and the person will be treated as if the person had pleaded not guilty.

18 Thus, where the defendant remains "mute" it is lawful for the superior court to order that a plea of "not guilty" be entered. If the defendant is under a mental impairment this is separately addressed by the provisions of Part 8A in the *Criminal Law Consolidation Act 1935* (SA).

19 In summary proceedings, where it is proved that the defendant has had notice of the proceeding, and a reasonable opportunity to attend and participate, the trial may proceed.[14] The procedure is, as one might expect, simplified so that where the defendant does not respond, the adjudication may proceed "as fully and effectually … as if the defendant had personally appeared" and, indeed, the Magistrates Court may "in so doing regard any allegation contained in the summons, or information and summons, (as served upon the defendant) as sufficient evidence of the matter alleged".[15]

20 Whilst it is not made explicit by s 62BA(1) of the *Criminal Procedure Act 1921* (SA), it appears that the trial may proceed as if the Magistrate has ordered that a plea of "not guilty" be entered. I was told by the respondent on the hearing of this appeal that this is often done in Magistrates Court trials in this State.

21 In this case, the Magistrate directed that a plea of "not guilty" be entered after the appellant refused to participate in the trial.[16] As might be clear from the terms of s 62BA(1), and what appears to be long-established practice, the decision to proceed in the absence of any plea from the appellant did not, therefore, detract from the Magistrate's power to adjudicate the question of guilt.

22 The prosecution then proceeded to prove guilt beyond reasonable doubt at the trial in the ordinary way, with the assistance of statutory aids to proof, rather

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[13] *Summary Procedure (Indictable Offences) Act 2017* (SA), s 5, commencing 5 March 2018.

[14] *Adelaide City Council v Lepse* [2016] SASC 66, [51]-[52] (Peek J): in the Magistrates Court, the procedure for trying defendants on criminal charges in their absence is governed by ss 62(1)(b) and 62BA of what was then the *Summary Procedure Act 1921* (SA). See also *Re Magistrate M M Flynn; Ex parte McJannett* [2013] WASC 372, [14] (McKechnie J).

[15] *Criminal Procedure Act 1921* (SA), s 62BA(1).

[16] Trial transcript 3.16-17.

than utilising the assistance of s 62BA(1) of the *Criminal Procedure Act 1921* (SA), which treats the allegations "as sufficient evidence of the matter alleged". That the Magistrate's adjudication in this case proceeded with the benefit of the calling of evidence was, if anything, a precaution which merely reinforced the absence of any miscarriage of justice to the appellant.

23 Whilst the respondent suggested on this appeal that the Magistrate required that the matter proceed on evidence, that is not how I read the transcript.

24 The summary trial can be considered in terms of three distinct steps. The first concerned the procedure to be applied when the appellant refused to participate. The Magistrate saw that the appellant was in the courtroom and, after questioning him, exercised the first discretion conferred by s 62BA(1) and decided to proceed, effectively *ex parte*. It is primarily that discretion which it has been said should be exercised "with caution",[17] as Bray CJ explained in *Walker v Eves*:[18]

> … the vital word is "may", not "shall". It is not mandatory for a court of summary jurisdiction to proceed *ex parte* under this section whenever a complaint has been made by a police officer and the summons is served as authorized by the Act and the defendant does not appear. It should not automatically do so. It should consider the seriousness of the offence and the possibility of a satisfactory explanation for the failure to appear. Requests for adjournment should not be lightly refused.

25 The second step involved the taking of a plea. As I have explained, in the absence of participation from the appellant, the Magistrate directed that a plea of "not guilty" be entered, as was appropriate. It is for that reason that this first appeal ground must be rejected.

26 The third step involved the form in which the trial would proceed. There was in fact no argument on that point at trial, and the Magistrate was not invited to proceed in accord with the second discretion conferred by s 62BA(1), on the basis that he could treat the allegations "as sufficient evidence of the matter alleged". As Bray CJ went on to explain in *Walker v Eves*:[19]

> The Court has not only a discretion whether to hear the case *ex parte* at all, but another discretion once it has been decided to hear it *ex parte* whether or not to regard the allegations in the complaint or summons as sufficient evidence of the matter alleged.

27 Whilst there may in some cases be good reason to be cautious and proceed with proof in the ordinary way, that inevitably involves time spent on matters that may not genuinely be in issue. In the circumstances of this case, where the appellant was present but refusing to participate, there seems to have been no good reason not to take advantage of this statutory aid.

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[17] *Kyriacou v Police* [2007] SASC 341, [74] (Gray J).
[18] (1976) 13 SASR 249, 255 (Bray CJ).
[19] (1976) 13 SASR 249, 256 (Bray CJ).

28 Grounds 2 and 3 complain that the parking inspectors attached the expiation "sticker" over the "no trespassing" sign.

29 As may be obvious to some, there has been a tendency in recent times to try and exploit the proposition that, where there has been a revocation by written notice of the implied licence to enter a property, if that property is then entered, there is a trespass which can be made the subject of an action for damages.[20] It is not necessary for the purposes of these reasons to determine whether that proposition is correct, or indeed what notice by words or conduct is effective to revoke the implied licence to enter property.[21]

30 In this case the same idea is used in a different way. The appellant says that no expiation notice could be affixed where any implied licence to encroach on property has been revoked by a notice on a chattel, here the Toyota sedan.

31 The implication underpinning these arguments is that because the expiation notice could not be left on the vehicle the prosecution founders.

32 There is no merit in any of these arguments.

33 The appellant cited *Entick v Carrington*, a case of trespass to land.[22] There it was said that "our law holds the property of every man so sacred, that no man can set his foot upon his neighbour's close without his leave; if he does he is a trespasser, though he does no damage at all; if he will tread upon his neighbour's ground, he must justify it by law".[23] Whilst that famous case has often been followed,[24] it does not assist the appellant in this case where there was explicit statutory authority to leave an expiation notice on the vehicle and where, more importantly, the right to park the vehicle was the subject of a lawful regulation, only permitting occupation of the relevant parking space for a specified period of time. I shall set out my reasons for finding that these grounds of appeal must be rejected.

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[20] See by way of example, *Cosenza v Origin Energy Ltd* [2017] SASC 145; *Cosenza v Roy Morgan Interviewing Services Pty Ltd* [2019] SASC 95.

[21] In *Plenty v Dillon* (1991) 171 CLR 635 the High Court stated that a majority of the Full Court of the Supreme Court of South Australia had found on the facts that "Mr. Plenty had expressly revoked any implied consent given to any police constable to enter upon his farm" (638). The decision of the High Court is therefore authority for the proposition that, assuming a common law trespass, the service by the police of a summons to appear was not justified at common law or by any of the legislation considered. The High Court did not address, because it was not relevant, what words or conduct comprised an effective revocation.

[22] (1765) 2 Wils KB 275; 95 ER 807.

[23] *Entick v Carrington* (1765) 2 Wils KB 275, 291; 95 ER 807, 817.

[24] See, most recently, *Smethurst v Commissioner of Police* [2020] HCA 14, [124]-[126] (Gageler J) where an Australian Federal Police search warrant was held invalid. Justice Gageler explained that: "[i]t is now more than 250 years since the celebrated judgment of Lord Camden in *Entick v Carrington* cemented the position at common law that the holder of a public office cannot invade private property for the purpose of investigating criminal activity without the authority of positive law" (at [124], citation omitted) and the "principles of constitutional liberty and security carried forward from *Entick v Carrington* are part of our common law inheritance. We ignore them – or, worse, devalue them – at our peril" (at [126]).

34 First, there is an issue as to whether the principles mentioned in cases such as *Plenty v Dillon* have any application where the property is not real property but personal property, a chattel. The appellant could not explain whether the proposition on which he relied had ever been applied to chattels. Whilst the tort of trespass to goods may be available even where there is no detinue,[25] or conversion,[26] and no damage to or asportation of the chattel is necessary, there must nevertheless be an "unprivileged interference with a chattel in the possession of another".[27]

35 Here there can be no suggestion of an unprivileged interference with the possession of the vehicle.

36 In *Penfolds Wines Pty Ltd v Elliott* the appellant sought an injunction to stop the respondent filling its bottles with the wine of others.[28] Dixon J explained why trespass to the appellant's chattels was not available:[29]

> What wrong to possession or property on the part of the respondent do these facts disclose? I know of none. It cannot be trespass because there is, on the part of the respondent, no infringement upon the possession of anyone. It cannot be conversion, because, on his part, there is no act, and no intent, inconsistent with the appellants' right to possession and nothing to impair or destroy it. It cannot be an innominate injury to the appellants' right to possession for which the remedy would have been a special action on the case, because he did no damage to the appellants' goods, the bottles. Detinue is, of course, irrelevant and so too would have been replevin.
>
> In English law what amounts to an infringement upon the possessory and proprietary rights of the owner of a chattel personal is a question still governed by categories of specific wrong. Trespass was the wrong upon which reliance appeared to be placed in support of the appeal when it was opened, but, in the end, it seemed to be conceded that this cause of action was untenable. I think that it is quite clear that trespass would not lie for anything which the foregoing facts disclose. Trespass is a wrong to possession. But, on the part of the respondent, there was never any invasion of possession.

37 Quite apart from these difficulties with the trespass cases relied on by the appellant, the affixation of the expiation notice to the vehicle was here explicitly permitted by s 6(1)(j)(iii) of the *Expiation of Offences Act 1996* (SA).

38 Secondly, even if these trespass principles could be applied to chattels, any right vests in the owner or person entitled to possession. Absent proof that the appellant was, or was acting with the requisite authority of, the owner or person

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[25] The wrongful detention of goods despite the plaintiff's lawful request for their return, see *John F Goulding Pty Ltd v Victorian Railways Commissioners* (1932) 48 CLR 157.

[26] The intentional tort of dealing with chattels in a manner inconsistent with the actual or constructive possession, or immediate right to possession, of another, and includes a refusal to deliver up, or the disposal, destruction or change in the nature, of the chattel, see *Penfolds Wines Pty Ltd v Elliott* (1946) 74 CLR 204.

[27] Carolyn Sappideen and Prue Vines (eds), *Fleming's The Law of Torts* (Thomson Reuters, 10th ed, 2011), [4.10].

[28] (1946) 74 CLR 204.

[29] *Penfolds Wines Pty Ltd v Elliott* (1946) 74 CLR 204, 224-225 (Dixon J).

entitled to possession, the requisite right could not vest in or through this appellant.[30] As with the absence of a plea, the appellant's decision during the trial to remain mute denied him an opportunity to demonstrate any relevant factual basis for the requisite right. Thus, though he was deemed to be the driver, that fell a long way short of showing a basis for any finding of possession, whether as (or as the agent for) the owner or the person entitled to exclusive and immediate possession.

39 Thirdly, even if it could be said that the leaving of the expiation notice on the windscreen was in some way unlawful, at best this might possibly lead to a civil remedy in damages (although that seems doubtful given the terms of the *Expiation of Offences Act 1996* (SA)). Whether that civil action is available does not avoid the fact that for the purposes of these proceedings the expiation notice was indeed left on the vehicle, as the photographic evidence proved. No occasion arose for the exclusion of the evidence of that fact, and it is difficult to imagine how any discretion to exclude could have been exercised in favour of the appellant.[31] It goes without saying in this case that there can be no unfairness or miscarriage in admitting evidence that was never the subject of an application to exclude because the appellant elected to watch the trial from the back of the courtroom, mute.

40 Fourthly, the prosecution did not depend on the expiation notice. The giving of an expiation notice, together with the opportunity to elect to be prosecuted, is a procedure created by the *Expiation of Offences Act 1996* (SA). As the word "expiation" suggests, it is a procedure for summarily expiating what is otherwise, and in any event, an offence.[32] The right to prosecute does not ultimately depend upon whether the defendant has been given an effective expiation notice.[33]

41 Ground 4 assumes that the election to be prosecuted had some bearing on the prosecution. It did not. It simply operated as a notice advising the respondent that the appellant had no intention of paying the expiation fee. Ground 5 assumes that the prosecution depended on proof that the appellant was the registered owner. It did not. It was sufficient that he was a deemed driver.

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[30] *Halliday v Nevill* (1984) 155 CLR 1; *Plenty v Dillon* (1991) 171 CLR 635, 647 (Gaudron and McHugh JJ); *Police v Dafov* (2008) 102 SASR 8, [12]-[13] (Gray J).

[31] The exclusion of this evidence would probably depend upon the exercise of a discretion of the kind described in *Bunning v Cross* (1978) 141 CLR 54, 78 (Stephen and Aicken JJ). The argument would inevitably have failed absent evidence, and any balancing of the relevant considerations would demonstrate that there was no relevant "unfairness", and that the evidence was admissible.

[32] See s 5(1) which provides: "[i]f an expiation fee is fixed by or under an Act, regulation or by-law in respect of an offence, an expiation notice may be given under this Act to a person alleged to have committed the offence and the alleged offence may accordingly be expiated in accordance with this Act".

[33] *Walker v Police* [2014] SASC 32, [26] (Blue J).

42 Ground 6 is a complaint that there is no constitutional recognition of local government. This has been tried by others before.[34] It is without merit. Because the 1988 constitutional referendum failed, local government remains a matter within the residual power of the States. The failure of the constitutional amendment says nothing about the legal existence and validity of local government entities such as the Adelaide City Council, and their capacity to regulate parking and prosecute parking offences.[35]

43 Grounds 7 and 8 assume that the prosecution depended upon the existence of a contract with the respondent and that the respondent's Australian Business Number was relevant. Both assumptions are wrong.

44 Ground 9 refers to the appellant's letter dated 14 December 2012, apparently sent to the respondent on 3 September 2014, "denying consent". It is this letter that explains why the appellant is concerned not to be described by the name he was, nonetheless, prepared to use on his notice of appeal.

45 The implication underlying this ground is that the appellant sent the 2014 letter to the respondent making it clear that, unless there was a response to it, he was to be taken as having certain rights and immunities. These include the "right to travel freely without limit". The appellant's letter is addressed generically to "Dear Madams and Sirs" and says that it comprises his "Notice of Understanding and Intent and Claim of Right and denial of consent for your understanding". The letter is said to be from "Timothy-Noel: Rossiter, Free-spirit man" who is "man and man has certain inalienable rights":

> 3. My truth and law exists inside me …
>
> …
>
> 15. People living on the geographical area commonly referred to as Australia have the right to revoke or deny consent to be represented and thus governed, and;
>
> 16. I, commonly known as Timothy-Noel: Rossiter do not consent to being governed/represented, and;
>
> 17. If anyone does revoke or deny consent they exist free of government control and statutory restraints …

46 Despite the intention eight years ago to disengage from society and to "direct my life which ever [sic] way I see fit", the appellant was nevertheless concerned to claim the right to "use the police to protect me, my friends, family and my property", as well as the "right to free education".

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[34] *Glew v Shire of Greenough* [2006] WASCA 260, [22]-[24] (Wheeler JA); *Glew v Shire of Greenough* [2007] HCATrans 520, "entirely lacking in legal merit" (Gummow J); *McDougall v City of Playford* [2017] SASC 169, [2]-[6] (Nicholson J).

[35] See, for example, *Local Government Act 1999* (SA), s 6.

47 The letter comprises three pages, and is witnessed, stamped and sealed by Joseph Pertl, Solicitor, Barrister and Notary Public.

48 The precept that the appellant can only be governed by that to which he explicitly consents possibly explains why he sent a handwritten "Notice" to my chambers in the following terms:

> Notice:
>
> Dear Sir,
>
> i, a man, accept your oath of office,
>
> yours faithfully,
>
> [signed, together with a fingerprint]
>
> Tim: Rossiter 15/04/2020

49 Quite apart from the absence of any evidence at the trial that the 2012 letter was ever sent to the respondent, its effect is "most unclear",[36] and it is incapable of having any bearing at all on the prosecution case. It is incapable of generating any defence.

50 Various terms have been used to describe "pseudolegal arguments"[37] such as those advocated by the appellant in this case.[38] They have without reservation been rejected as involving both legal nonsense and an unnecessary waste of scarce public and judicial resources.[39] So too here.

51 Grounds 10 and 11 refer to the absence of harm or injury and to the foreign language text on the expiation notice, included no doubt for the assistance of those who have difficulty with English. None of that was relevant to the efficacy of the expiation notice or the prosecution for which the appellant elected on 8 April 2019.[40]

Conclusion

52 It is regrettable that the appellant has advocated the various pseudolegal arguments underpinning this appeal. If he has acted on the advice of others, he is

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36 *Millington v Police* [2015] SASC 52, [17]-[18] (Parker J).

37 *Adelaide City Council v Lepse* [2016] SASC 66, [57] (Peek J).

38 These include the "blood and bone" defence: in *Meads v Meads*, 2012 ABQB 571, [243] (Rooke ACJ) referred to a defendant insisting that "the court state whether it is addressing the litigant in one of two roles, such as whether this is to a "legal person" or a "corporation", vs. a "flesh and blood person", or a "natural person"".

39 *Meads v Meads*, 2012 ABQB 571 (Rooke ACJ); *Kosteska v Magistrate Manthey* [2013] QCA 105, [17] (Martin J); *Re Magistrate M M Flynn; Ex parte McJannett* [2013] WASC 372.

40 *Best v Police* [2015] SASC 190, [68]-[69] (Bampton J).

well advised to stop doing so. His decision to defend has resulted in a trivial parking fine escalating to a financial burden exceeding $2,000.

53 Each ground of appeal is without merit and the appeal is dismissed.

54 After hearing the parties on costs, and pursuant to r 238 of the *Supreme Court Civil Supplementary Rules 2014* (SA), the respondent is entitled to costs, fixed at $500, together with transcript costs of $178.30, a total of $678.30.