

Turley v Byrne [2009] NTSC 22

PARTIES: LESLEY JAMES TURLEY

v

NICHOLAS O'SHEA BYRNE

TITLE OF COURT: SUPREME COURT OF THE
NORTHERN TERRITORY

JURISDICTION: SUPREME COURT OF THE
NORTHERN TERRITORY
EXERCISING APPELLATE
JURISDICTION

FILE NO: JA 14 of 2009 (20827809)

DELIVERED: 27 May 2009

HEARING DATE: 27 May 2009

JUDGMENT OF: RILEY J

APPEAL FROM: CAREY SM

CATCHWORDS:

CRIMINAL LAW – JUSTICES APPEAL – Transporting liquor through a prescribed area – offence provision not activated – appeal allowed – remitted for rehearing

Northern Territory National Emergency Response Act (Cth) s 9, s, 10, s 12
Liquor Act (NT) s 75, s 86

REPRESENTATION:

Counsel:

Appellant: S Barlow
Respondent: N Browne

Solicitors:

Appellant: Northern Australian Aboriginal Justice Agency

Respondent: Office of the Director of Public Prosecutions

Judgment category classification: B

Judgment ID Number: R110906

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

Turley v Byrne [2009] NTSC 22
No. JA 14 of 2009 (20827809)

BETWEEN:

LESLEY JAMES TURLEY
Appellant:

AND:

NICHOLAS O'SHEA BYRNE
Respondent:

CORAM: RILEY J

REASONS FOR JUDGMENT

(Delivered 27 May 2009)

- [1] The appeal in this matter relates to the relationship between the *Liquor Act* (NT) and the *Northern Territory National Emergency Response Act* (Commonwealth).
- [2] On 24 February 2009 the appellant was found guilty in the Court of Summary Jurisdiction of the offence of having brought liquor into a prescribed area contrary to s 75(1)(a) of the *Liquor Act* where it relates to s 12(2)(a)(i) of the *Northern Territory National Emergency Response Act*. It was the submission of the appellant that he had the liquor in his possession in the restricted area for the purpose only of transporting that liquor to a destination outside the area. Prior to calling the relevant evidence counsel

for the appellant informed the court that he proposed to rely upon the defence available under s 86 of the *Liquor Act* which provides:

86. NOT AN OFFENCE TO TRANSPORT LIQUOR THROUGH GENERAL RESTRICTED AREA

(1) It shall not be an offence under section 75(1) where a person brings liquor into, or has liquor in his possession or under his control within, a general restricted area, for the purpose only of transporting that liquor to a destination outside a general restricted area.

(2) In any proceedings for an offence under section 75(1), the onus of establishing a purpose of a nature referred to in subsection (1) shall be on the accused.

- [3] The learned magistrate rejected the submission that the defence was available. In light of the provisions of the *Emergency Response Act* his Honour concluded that s 86 of the *Liquor Act* did not provide an available defence to the appellant. The relevant evidence was not led and the factual merit of the defence was not explored. His Honour proceeded to find the appellant guilty and then, without proceeding to conviction, placed him on a bond to be of good behaviour for 12 months.

The scheme of the legislative provisions

- [4] The *Liquor Act* contains provisions enabling the Northern Territory Licensing Commission the power to declare general and public restricted areas for the purposes of the Act. Where an area has been so declared s 75 of the Act creates various offences. The section provides that a person shall not:

- (a) bring liquor into;
- (b) have liquor in his possession or under his control within; or
- (c) consume, sell or otherwise dispose of liquor within,
a general restricted area.

[5] The section contains various exceptions and, in addition to those exceptions, the provisions of s 86 are available to anyone charged with an offence under s 75.

[6] In August 2007 the *Northern Territory National Emergency Response Act* (Commonwealth) commenced. It made provision, inter alia, in relation to various aspects of existing legislation of the Northern Territory. For present purposes it modified the operation of the *Liquor Act*, the *Liquor Regulations* and the *Police Administration Act* in relation to prescribed areas (s 9). There was no dispute that the area with which the learned magistrate was concerned was a prescribed area for the purposes of the legislation.

Section 10 of the *Emergency Response Act* went on to provide:

The Liquor Act, the Liquor Regulations and the Police Administration Act, as modified by this Part, have effect as laws of the Northern Territory.

[7] Section 12 of the *Emergency Response Act* then provided:

12 Modification: prescribed areas

(1) The Liquor Act has effect as if:

- (a) each prescribed area had been declared by the Commission to be 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.
- (2) A person commits an offence if:
- (a) the person:
 - (i) brings liquor into an area; or
 - (ii) has liquor in his or her possession or control within an area; or
 - (iii) consumes liquor within an area; and
 - (b) the area is a prescribed area.

Maximum penalty:

- (c) 10 penalty units for a first offence; or
- (d) 20 penalty units for a second or subsequent offence.

[8] Section 12 then went on to provide for various defences which are not relevant for present purposes.

[9] The learned magistrate considered the legislative provisions and concluded that the “defence” provided for in s 86 of the *Liquor Act* did not have application. He observed that the only intent necessary to create the offence was for the appellant to bring alcohol into the area and his Honour went on to note that the only defences available were those prescribed by s 12 of the *Emergency Response Act*. The sole ground of appeal is that his Honour erred in so interpreting the *Emergency Response Act*.

[10] The parties are agreed that the appeal must be allowed and the matter remitted to the Court of Summary Jurisdiction for rehearing. It was agreed

that the defence provided for in s 86 of the *Liquor Act* remained available notwithstanding the modifications effected by s12 of the *Emergency Response Act*. I agree s 86 of the *Liquor Act* may continue to have application in the present circumstances although not for the reasons expressed by counsel.

[11] Section 12 of the *Emergency Response Act* provides that "offences against subsection 75(1)" of the *Liquor Act* will be replaced by the identified provisions contained within s 12. Reference to s 86 of the *Liquor Act* makes it clear that it "shall not be an offence under section 75(1)" where the person is transporting liquor to a destination outside a general restricted area. In the present case, if the appellant establishes that he was transporting liquor to a destination outside the identified general restricted area, he will not be committing an offence for the purposes of s 75 of the *Liquor Act* and, therefore, s 12 of the *Emergency Response Act* will not be activated.

[12] Reference to the Explanatory Memorandum to the *Emergency Response Act* makes it clear that this result was intended. The Explanatory Memorandum includes the following:

Part 2 modifies the Liquor Act of the Northern Territory. Although the Liquor Act is modified by this bill, the new obligations, offences, penalties and requirements have effect as Northern Territory law. **The Liquor Act will continue to operate in areas that are not prescribed areas and its provisions as modified will also apply to prescribed areas. For example, section 86 of the Liquor Act currently allows people to transport liquor across a general restricted area. The modifications will mean that people travelling around the Northern Territory by road are able to carry liquor across a prescribed area provided they do not**

consume or dispose of the liquor in that area as provided for by section 86 of the Liquor Act. Similarly, aircraft that land in a prescribed area are able to carry liquor provided the liquor is not consumed while the aircraft is on the ground and the final destination is not a prescribed area. (emphasis added)

[13] The appeal is allowed, the conviction set aside and the matter remitted to the Court of Summary Jurisdiction for rehearing.
