

WELLINGTON CITY COUNCIL  
Informant

v

ANN REEVES  
Defendant

Hearing: 7 February 2012

Appearances: K Anderson for the Informant  
S Robinson for the Defendant

Judgment: 24 February 2012

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ORAL JUDGMENT OF JUSTICES OF THE PEACE I H SYMONDS AND  
E CROSBY

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**BACKGROUND**

[1] The charge is that being a person in charge of a motor vehicle, registration number PM 6331 (the vehicle) on a road, namely Sydney Street West, did cause it or allow it stop, stand, or park on a roadway marked with a broken yellow line, contrary to rule 6.4(4) Land Transport (Road User) Rule 2004.

[2] On the written application of Wellington City Council, a chambers hearing took place in regard to a suppression order for the name of the warden involved, together with suppression of any photographic images of him. There was no objection from Mr Robinson for the defence and the Court agreed to this order.

## THE EVIDENCE

[3] Prosecution evidence: Ms Anderson opened the case for the prosecution with an outline of the WCC position, and cited case law in regards to precedent, and strict liability.

[4] Warden number 191, Mr Toa-Temara, then told the Court of the date, time and place of the alleged offence. He had carried out his usual camera checks prior to commencing his shift.

[5] He noted the defendant's vehicle as he travelled down Bowen Street prior to entering Sydney Street West (the street), and from his knowledge of the area he knew that the vehicle was probably parked on broken yellow lines. The witness then travelled down to The Terrace where he could turn and enter the street. He then proceeded down the street taking a series of images showing the defendant's vehicle. He then proceeded past the vehicle to the bottom of the street, made a three-point turn and proceeded up the street taking further photographs (images). He then left the street, noting that the defendant's car had not moved.

[6] The Wellington City Council resolution of 30 September 1998, designating the no parking zones in Sydney Street, was introduced.

[7] The witness, on returning to base, downloaded his SD card and produced the images and issued the infringement notice, served by post.

[8] Cross examination: Mr Robinson. The witness was questioned on how many infringement notices he had issued on that day which he could not remember, although he added that in a usual day it could be between 40 and 50. Several questions were asked as to whether the witness had a quota or whether he worked on a bonus system, both of which were denied. Mr Toa-Temara was then questioned as to his speed when taking the photographs and to the camera angle as well as the flash on the camera. His reply was that he travelled at normal speed and that the camera had no flash. The ISO is set depending on the weather, that is, bright or dull. He also vehemently denied that he did stop his vehicle. The Court asked the question as

to whether the brake's lights in the vehicle had been on at any time. The reply was no.

[9] Re-examination: nil.

[10] The Defence: Mrs Ann Reeves told the Court that on that day she was going to work as a senior analyst for a government department. She pulled to the side of the road to allow a vehicle coming down the hill to pass her as she was the vehicle travelling uphill. She suggested that the vehicle (the Parkwise car) was travelling slowly down the road and she also suggested that she had seen a flash and related that to a photograph being taken including one which she alleges was so close that it intimidated her. She felt as though the parking vehicle had stopped.

[11] The vehicle then passed her and turned around at the bottom of the street. She felt "under attack". She felt too nervous to start immediately after the vehicle had first passed so much so that she locked her doors and when she arrived at work she was in such a state that a colleague suggested that she should go home. Mrs Reeves described her vehicle as old and somewhat difficult to handle.

[12] Cross examination: Ms Anderson sought to raise the matter of previous infringement notices issued by the Council. Mr Robinson immediately objected and this objection was noted. It was, however, adduced that the defendant had had some previous infringement notices waived by Council on application. Mrs Reeves commented that she has stopped on a broken yellow line that day but it was simply to let a vehicle travelling in the opposite direction to pass. There was no indication from her vehicle that she was going to pull out as should have been shown by indicator lights.

[13] Re examination: nil.

[14] Submissions: Ms Anderson submitted that the decision of *Kerr v Wellington City Council* HC Wellington CRI-2009-485-000079, 22 July 2009 should apply and as to strict liability, the decision of

*Wellington City Council v McCrone* HC Wellington CRI-2010-485-000078,  
7 December 2010 should also apply.

[15] Mr Robinson submitted that the case of *Civil Aviation Department v MacKenzie* [1983] NZLR 78 (CA) should be considered as a counter to this, especially noting the absence of fault and the distinction between truly criminal charges and public welfare regulatory offences.

## **DECISION**

[16] The law is quite definitive on the matter that a driver shall not stand, stop or park on an area designated with broken yellow lines. The decision of *Kerr v Wellington City Council* supports that view.

[17] Mrs Reeves' view is that on that day she made a deliberate and considered move to allow a vehicle travelling down Sydney Street West clear passage to pass, on the face of it, a possible reasonable approach. All of the witness agree that the street is narrow. However, neither the defence nor prosecution felt it was necessary to clarify the matter. It is noted in the images that the defendant's vehicle appears to be parked, rather than simply pulled over to one side of the road.

[18] Mrs Reeves told the Court, and we would agree, that she is of a nervous disposition and her subsequent lack of action in proceeding up the road as soon as it was clear should be explained by that fact.

[19] From the evidence of the warden, he had noticed the defendant's car for some time prior to any images being taken. It is noted that the time from the first image to the last is some 36 seconds, which, in our view, allows for ample time to move from the position in which she had put herself. If she had done so after the Parkwise vehicle had passed her, it is doubtful that the infringement notice would have been issued.

[20] There are times when the strict liability rule may not apply, for example when a vehicle breaks down and cannot be moved or when there is clear and present

danger to oneself or others. Neither of these examples applies in the case. Neither was an alternative except that of courtesy, or the nervous disposition of the driver raised.

[21] This case is simply one to be judged on the facts and we find that the warden's evidence compelling as to fact, and the defendant's explanation somewhat tenuous at best.

[22] The case has been proven beyond reasonable doubt.

[23] Ordered to pay \$60 with Court costs of \$132.89.

I H Symonds  
Justice of the Peace

E Crosby  
Justice of the Peace