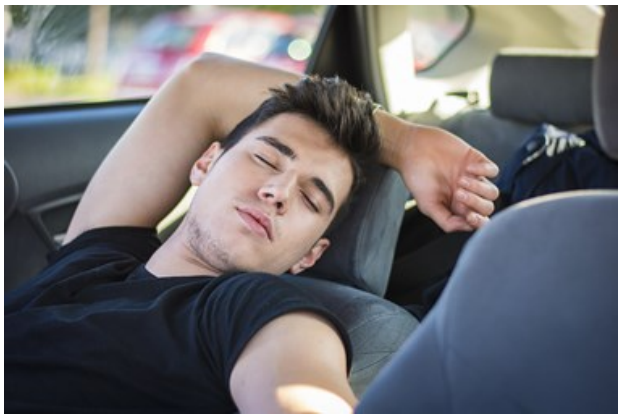
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LEGAL PRACTICE



What does it mean to be ‘in charge’ of a motor vehicle?

Date: Monday October 11, 2021

In this interesting drink driving case of Queensland Police Service v Murray [2021] QMC 5, the court found the defendant not guilty of driving under the influence where he was found asleep in the driver’s seat with the engine running.

The facts

Mr Murray was charged with “being in charge of a motor vehicle while under the influence of liquor or a drug”, an offence against the *Transport Operations (Road Use Management) Act 1995* (‘TORUM Act’).

He pleaded not guilty and the charge proceeded to trial in the Mackay Magistrates Court.

The prosecution’s evidence was that two police officers were on duty at 12.55 am when they came upon Mr Murray’s car. The car was parked with the engine running and with its headlights, taillights and right-hand indicator illuminated. Mr Murray was sleeping on the driver’s seat which was fully reclined.

The officers, with some difficulty, woke up Mr Murray and directed him to undertake a breath test. The roadside test returned a blood alcohol content (BAC) reading of 0.187. When tested again at the station, he returned a further BAC reading of 0.168. He was taken to a cell and informed that his driver’s licence had been immediately suspended.

Evidence for the defence

Mr Murray gave evidence at trial that on the night in question, his crew was celebrating the end of a 60-hour work week with some drinks at his colleague’s house. When Mr Murray was ready to leave, he could not find a lift home and so decided to sleep in his car.

He recalled waking up in his car and feeling extremely hot. Although his recollection of it was not clear, he believed that he then turned the keys in the ignition to open the electric windows before falling back to sleep.

His colleague gave evidence that he had offered Mr Murray a room for the night but that Mr Murray had not wanted to burden him. Instead, he and another colleague had helped Mr Murray to his car with his intention being to sleep there for the night.

Submissions at trial

Mr Murray's lawyers raised the defence provided by section 79(6) of the TORUM Act.

In summary, a defence under this section of the Act requires the court to discharge the defendant if satisfied beyond reasonable doubt that at the material time:

- the defendant was either not in the motor vehicle or was occupying a compartment of the vehicle other than the one containing the driving seat and had manifested an intention to refrain from driving while under the influence of liquor or drugs; and
- the defendant was under the influence of liquor or drugs; and
- the defendant was not so influenced by the liquor or drugs as to render them incapable of understanding what they were doing or incapable of forming the intention to refrain from driving; and
- the motor vehicle was parked in such a way as to not constitute a source of danger to other persons or traffic; and
- the defendant had not been convicted, in the preceding year, of a relevant offence.

In advancing this defence, Mr Murray's lawyers relied on the decision of *Newburn v McCann, ex parte McCann* [1970] QWN 17. In that case, the appellant was found asleep, under the influence of liquor, on the fully reclined driver's seat of his car. He had given his keys to another person and did not have access to them. The defence was found to apply and Newburn was acquitted. The Court emphasised that:

"The subsection requires two things, **the existence of an intention of refraining from driving** whilst under the influence of liquor or a drug and a **manifestation of that intention by occupying a compartment other than that containing** the driving seat…"

The prosecution in Mr Murray's case argued that the defence did not apply to Mr Murray because relevantly:

- there was a "very big distinction" between his case and *Newburn* in that the engine was running and Mr Murray was in possession of his keys;
- in order to open the window, Mr Murray must have, at some stage, occupied the driving compartment; and
- his level of intoxication meant that he could not form the requisite intention.

The decision

The court acknowledged that there were differences between this case and that of Newburn.

Nevertheless, the court found that the defence had been successfully raised and Mr Murray was found not guilty of the charge. Ultimately, the court found that:

- Mr Murray's position within the car was extremely similar to that of Newburn;
- the word 'occupy' within the section "was not to be interpreted as to *exclusively* occupy a compartment other than the driving compartment";
- although at some point, Mr Murray occupied the driving compartment to open the windows, the defence "is directed to the manifestation of the relevant intention, and it is this intention which underpins the defence, not the precise periods during which the relevant compartments are occupied"; and
- although Mr Murray was clearly intoxicated, his actions upon entering his car – reclining the seat and falling asleep – demonstrated he had the requisite intention to refrain from driving.

Get help from a traffic lawyer

If you've been charged with traffic-related offences and require advice about your options, representation at court or appeals in the Magistrate's Court, you should speak with a Gilshenan &Luton criminal lawyer.

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