

**IN THE DISTRICT COURT  
AT PUKEKOHE**

**I TE KŌTI-Ā-ROHE  
KI PUKEKOHE**

**CRI-2020-092-000045  
[2022] NZDC 10954**

**LYAL DONALD GLASS**

v

**NEW ZEALAND POLICE**

Hearing: 13 July 2021 and 14 June 2022

Appearances: Mr Fredric for the appellant  
Sergeant Watkins for the New Zealand Police

Judgment: 16 June 2022

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**DECISION OF JUDGE K GRAU  
[Appeal against conviction]**

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**Introduction**

[1] Mr Glass appeals his conviction for failing to provide his address, contrary to s 114 of the Land Transport Act 1998. When he was pulled over for speeding in January 2020 and the police officer asked for his address, he said he did not have one. He was then asked to give a mailing address where the infringement notice could be posted to. He did not provide a mailing address. He maintained he was of no fixed abode and he was eventually arrested for failing to provide an address.

[2] He was convicted of this offence on 15 May 2020 after a hearing before Justices of the Peace.<sup>1</sup> The Justices found that it was a “...perfectly reasonable

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<sup>1</sup> At the same hearing the Justices of the Peace convicted Mr Glass on an infringement offence of speeding. Mr Glass does not appeal against that decision.

expectation and request...” for police to ask for a mailing address so the infringement notice could be posted to it when it had been established Mr Glass did not have a physical address. The police officer had explained why it was needed and Mr Glass did not supply the information that was asked for.

[3] Mr Glass appeals on the basis that he had no obligation to provide a mailing address, contrary to the finding of the Justices of the Peace. Nor did the evidence establish he had a mailing address at the time. His evidence at the hearing established he was living out of his car and did he not have an address to provide to the police officer. Therefore, there was an error of law by the Justices of the Peace, when the only authority on the meaning of “address” in the context of the Land Transport legislation, *Mitchell v Police*, has defined address as the normal place where a person lived at the time, but excluded temporary or transient addresses or addresses of convenience.<sup>2</sup> Mr Glass submits that the Justices of the Peace misinterpreted the *Mitchell* case, by misstating its facts.

[4] The Police support the decision of the Justices of the Peace, submitting that they were correct to find that Mr Glass was required to provide an address where the infringement could be sent to, and that they had distinguished *Mitchell*, not misinterpreted it. In *Mitchell* the police needed to find a physical address to take an impaired driver to. In this case the police needed a mailing address because an infringement notice must be posted to the driver. The law requires that all motorists must provide an address.

## **Law**

[5] The District Court is the first appeal court.<sup>3</sup> The first appeal court must determine the appeal in accordance with s 232 of the Criminal Procedure Act 2011. Relevantly, the Court must allow the appeal if the Justices of the Peace erred in their assessment of the evidence to such an extent that a miscarriage of justice has occurred; or in any case, a miscarriage of justice has occurred for any reason. Miscarriage of justice means any error, irregularity, or occurrence in, or in relation to, or affecting,

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<sup>2</sup> *Mitchell v Police* HC WGTN AP244/95, 22 November 1995.

<sup>3</sup> Section 230(a) Criminal Procedure Act 2011.

the trial that has created a real risk the outcome of the trial was affected or has resulted in an unfair trial or a trial that was a nullity. The Court must dismiss the appeal in any other case.

[6] Section 114 of the Land Transport Act 1998 provides as follows:

**114 Power to require driver to stop and give name and address, etc**

(1) An enforcement officer who is in uniform, or wearing a distinctive cap, hat, or helmet, with a badge of authority affixed to it, may signal or request the driver of a vehicle to stop the vehicle as soon as is practicable.

(2) An enforcement officer in a vehicle following another vehicle may, by displaying flashing blue, or blue and red, lights or sounding a siren, require the driver of the other vehicle to stop.

[(2A) Subject to subsections (4) and (5), the driver of a vehicle that is stopped by an enforcement officer under this Act must remain stopped for as long as is reasonably necessary for the enforcement officer to complete the exercise of any powers conferred, or duties imposed, on an enforcement officer by this Act.]

**(3) An enforcement officer may require the driver of a vehicle that is stopped under this Act to—**

**(a) Remain stopped for as long as is reasonably necessary for an enforcement officer to obtain the particulars referred to in paragraph (b), or to complete the exercise of any other power conferred on an enforcement officer by this Act; and**

**(b) On demand by an enforcement officer,—**

**(i) Give his or her [full name, full address, date of birth, occupation, and telephone number,] or such of those particulars as the enforcement officer may specify; and**

**(ii) State whether or not he or she is the owner of the vehicle; and**

**(iii) If the driver is not the owner of the vehicle, give the name and address of the owner or such particulars within the driver's knowledge as may lead to the identification of the owner.**

[7] An enforcement officer may arrest a person without warrant if they have good cause to suspect the person of having failed to comply with s 114 or a request or requirement under this section.

[8] Section 52A(1)(c) prescribes an offence if a person fails or refuses to provide information or provides false or misleading information in response to a demand for information made by an enforcement officer under section 114(3)(b).

### **Analysis**

[9] In my view I am bound by the High Court decision of *Mitchell v Police* with the result that the appeal must be allowed.

[10] In that case the High Court did not (as the Justices have stated) find that the address Ms Mitchell gave (her parents' address) would suffice. Mr Fredric is correct that it is in fact the opposite – Ms Mitchell was *not* entitled to give her parents' address. She had given a false address, knowing she lived at a different address.

[11] In that case, Ms Mitchell's vehicle was stopped by police. She gave an address which was the address where her parents lived. She drove off before the officer had completed checking the details she gave. She was stopped again. The police considered she was unfit to drive and should be assisted to get home. They took her to the address she gave (her parents') which was consistent with their computer check. The District Court Judge was satisfied on the evidence that the appellant was not living there (even though she had associations with it) and had therefore not given her true address. The High Court agreed and dismissed the appeal.

[12] The High Court in *Mitchell* said an address was:

“the normal place at which a person lived at that time. It would not be a temporary or transient address. It would not be a box number. It would not be an address of convenience. It would be the place at which the person giving the address could normally be found.”

[13] Although the Justices were correct that the police in that case needed a physical address to take the impaired driver home to, the police were given such an address. But it did not suffice, as the Justices said it did. Thus, in my view, the Justices' conclusion in this case, that because the police needed a mailing address, Mr Glass should be convicted for not providing one as that would suffice, was based on an incorrect premise. On the definition of address set out in *Mitchell*, a mailing address, which would clearly be only an address of convenience, would not suffice.

[14] I accept that it is reasonable for police to ask for a mailing address if a driver does not have a physical address, so that an infringement notice can be posted to them. But that is not what the terms of s 114 require and it is not consistent with the *Mitchell* case. I note that Mr Glass did in fact receive the infringement notice which was posted to his parents' address. But he did not live there. It was not his address. It was not necessarily his mailing address either. His parents could have put 'return to sender' on the envelope and sent it back. Applying the *Mitchell* case, had Mr Glass supplied his parent's address to the officer he would have provided a false address.

[15] The effect of what the police submit - that any motorist *must* provide an address on demand – would be that a homeless person could not legally drive on a road in New Zealand. That cannot be correct. While it might create a practical difficulty for the police, I agree with Mr Fredric that a homeless person should not be prosecuted for failing to provide something that they do not have.

[16] In addition, s 114 itself does not inevitably require an address be given on demand. It requires the driver give their "...full name, full address, date of birth, occupation, and telephone number, *or such of those particulars as the enforcement officer may specify.*" Thus an officer does not have to insist on requiring a driver to provide their address. If a driver did not have an address, the officer could ask for a telephone number to enable contact, and/or the officer could inform the driver that they would need to make arrangements to pay the infringement and give the relevant contact details to enable the driver to do so. A driver who did not do so would eventually be subject to a warrant to arrest for unpaid fines. Thus, while I agree with the police that s 114 requires a driver to provide a contact point for administration of the Land Transport Act, I do not agree that necessarily requires provision of an address.

[17] Presumably a person without a phone would not be arrested and prosecuted if they did not provide a phone number. Why then should a person without an address be arrested and prosecuted for not providing one?

[18] This issue would not arise if the police had the ability to hand a paper ticket to the driver, as they used to. And at the time this provision came into force, New Zealand did not have the homelessness problem that now exists. I cannot accept that a homeless

person should be convicted of a criminal offence for failing to provide something that they do not have, just because the police no longer give the driver a ticket on the spot. Nor can I accept that this provision, which creates the basis of a criminal offence, should be expanded for reasons of convenience. It needs to be applied on its terms, or amended. The current provision does not require a mailing address to be provided.

[19] Mr Glass did not have an address that was the normal place at which he lived. The Justices did not reject his evidence that he lived in his car. He did not have an address at which he could normally be found where an infringement could be posted to.

[20] Homeless people may not have an address of convenience, or a mailing address, and the only relevant authority on the meaning of “address” is clear that such addresses would not suffice.

[21] Accordingly, the appeal is allowed.

[22] The decision of the Justices of the Peace is set aside. I direct that a judgment of acquittal be entered.

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Judge K Grau

District Court Judge | Kaiwhakawā o te Kōti ā-Rohe

Date of authentication | Rā motuhēhēnga: 14/06/2022