

TURLEY V BYRNE

Supreme Court of the Northern Territory (Riley J)
27 May 2009
[2009] NTSC 22

Criminal law – offence of bringing liquor into a prescribed area under the *Liquor Act* (NT), s 75(1) – modifications by the *Northern Territory National Emergency Response Act* (Cth), s 12 – availability of the transport of liquor defence under the *Liquor Act* (NT), s 86 – appeal allowed – remittal for rehearing

Facts:

The appellant was charged and convicted of bringing liquor into a restricted area in violation of the *Liquor Act* (NT), s 75(1) a, where it relates to the *Northern Territory National Emergency Response Act* (Cth) ('*NTNER Act*'), s 12(2)(a)(i). The appellant wished to use a defence available under s 86 of the *Liquor Act* (NT), which provides that it is not an offence to transport liquor through a restricted area for the purpose of transportation to a non-restricted area. The magistrate who originally heard the case concluded that the defence did not apply as a result of the modifications on the *Liquor Act* (NT) by the *NTNER Act*. Consequently the Court did not hear evidence relevant to the merit of the defence.

On appeal, the Northern Territory Supreme Court had to determine whether the defence under s 86 of the *Liquor Act* (NT) was available to the appellant.

Held, allowing the appeal, setting the conviction aside and remitting the case to the Court of Summary Jurisdiction for rehearing:

1. The *Liquor Act* (NT) was modified by the commencement of provisions of the *NTNER Act*. Among them, s 12 provides that offences against s 75(1) of the *Liquor Act* (NT) will be replaced by the provisions contained within s 12 of the *NTNER Act*: [6]–[7]

2. Section 86 of the *Liquor Act* (NT) makes it clear that it is not an offence under s 75(1) to transport liquor to a destination

outside a restricted area. If the appellant can establish that he was transporting liquor to a destination outside the restricted area, he will not be committing an offence under s 75 of the *Liquor Act*, and, therefore, s 12 of the *NTNER Act* will not be activated: [11].

3. Furthermore, the Explanatory Memorandum to the *NTNER Act* states that the *Liquor Act* (NT) will continue to operate while also specifically allowing the transportation of liquor across a general restricted area as provided by s 86 of the *Liquor Act* (NT): [12].