

***Andalong v O'Neill* [2017] NTSC 77 (19 October 2017) – Northern Territory Supreme Court**

‘Autrefois acquit’ – ‘Autrefois convict’ – ‘Double jeopardy’ – ‘Double punishment’ – ‘Sentencing’

Charges: Driving unregistered vehicle x 1; driving uninsured or improperly insured vehicle x 1; driving whilst disqualified x 1; driving with a high range breath alcohol content x 1.

Case type: Appeal

Facts: On 25 November 2015, the appellant was apprehended while driving a motor vehicle while intoxicated. The appellant was charged with a range of offences under the *Traffic Act* (NT) (the Act), including driving an unregistered vehicle on a public street (section 33(1)), and driving a vehicle in relation to which a current compensation contribution had not been paid (section 34(1)). The appellant indicated that he would plead guilty to the offence of driving an unregistered motor vehicle, but contended that the offence of driving an uninsured vehicle was a ‘similar offence’ and thus entitled him to the defence under section 18(b) of the Criminal Code (NT). The Local Court found the appellant guilty of these offences.

Issue: The issue for determination is whether the offence under section 33(1) of the Act is a ‘similar offence’, within the meaning of section 18 of the Criminal Code (NT), to the offence under section 34(1).

Held: The Court held that the offence under section 33(1) was not a ‘similar offence’ to the offence under section 34(1). While it may be accepted that the 2 offences shared common features, they nevertheless remained distinct and addressed separate obligations imposed under traffic laws for the protection of the community ([53]-[54]).

The fundamental principle is that a person cannot be prosecuted twice for the same criminal conduct ([16]). The double jeopardy doctrine has a number of different aspects with different operation, including the pleas of autrefois acquit and autrefois convict and the rule against double punishment ([17]). The availability of the pleas of autrefois acquit and autrefois convict will depend on a comparison between the elements of the two offences under consideration. It is insufficient that the two offences arise out of the same conduct, or out of a single event or connected series of events ([21]). The question is whether the elements of the offences charged are identical, or substantially the same in the sense that all the elements of one offence are wholly included in the other ([23]). The Court considered *Ashley v Marinov* [2007] NTCA 1, and adopted the principles expressed by the High Court in *Pearce v The Queen* [1998] HCA 57 where it was held that no double prosecution arises if the offences with which the accused was charged required proof of a fact which the other did not ([33]).

Note: This case is relevant in terms of domestic and family violence matters in the NT as it considers the law surrounding double punishment.