IN THE HIGH COURT OF NEW ZEALAND
WELLINGTON REGISTRY

BETWEEN ROY BRIAN QUINN
Appellant

AND MINISTRY OF TRANSPORT
Respondent

Hearing: 13 May 1981

Counsel: J.V.B. McLinden for Appellant
K.G. Stone for Respondent

Judgment: 18 May 1981

JUDGMENT OF HOLLAND J.

This appeal against conviction on a charge of driving a motor vehicle with an excess of alcohol in the appellant's blood emphasises the necessity for prosecutors to ensure accuracy in the preparation of certificates to be relied on as evidence under the statutory provisions authorising them in lieu of the normal legal requirement that facts be proved by viva voce evidence by those directly responsible.

The appellant was injured in a motor accident while he was driving a motor vehicle. He was taken to hospital and samples of blood were taken from him by the medical practitioner who was in immediate charge of his treatment. The samples were taken pursuant to the provisions of Section 58D of the Transport Act 1962. The doctor gave the samples to a traffic officer for the purpose of his taking them to the Department of Scientific and Industrial Research for

analysis by a Government Analyst. The traffic officer later delivered the samples to an employee of the Department of Scientific and Industrial Research duly authorised to receive them.

The prosecution produced a certificate signed by a Government Analyst as follows :

> " 25 September 1980
>
> ANALYST'S CERTIFICATE UNDER SECTION 58B(9)(a) TRANSPORT ACT 1962
>
> This is to certify that -
>
> A blood specimen in a sealed bottle, taken from
>
> QUINN, Roy Brian
> Photoengraver
> 17 Belgrave St
> Wainuiomata
>
> was delivered on 15 September 1980 to the Dominion Analyst by Traffic Officer R.G. Brown personally for analysis: and
>
> Upon analysis of the blood specimen by W.T. Cleary, analyst, a proportion of 263 milligrams of alcohol per 100 millilitres of blood was found in the specimen; and
>
> No such deterioration or congealing was found as would prevent a proper analysis. "

The only witness called by the prosecution was the traffic officer. Reliance was placed on another certificate signed by the Doctor who took the samples. The material part of that certificate for this appeal was part B which provided as follows :

" I, LEE TORINE COLEMAN

Registered Medical Practitioner, certify that -

1. I took a specimen of venous blood in accordance with normal medical procedures from the person whose name, address and occupation are set out in the schedule to this certificate.

2. The specimen was insufficient for division and I took a further specimen and I placed and sealed in a separate bottle each part or specimen.

3. Each such separate bottle was received by me in a sealed blood specimen collecting kit.

4. (c) I caused to be personally delivered on 14/9/80, both parts of the specimen or both specimens, to the Dominion Analyst (or to a person employed in the Department of Scientific and Industrial Research, on his behalf) by handing each bottle to Traffic Officer R.G. Brown. "

The viva voce evidence of the traffic officer clearly established that the certificate of the Government Analyst was wrong in stating that:- "a blood specimen . . . . was delivered on 15 September 1980 to the Dominion Analyst . . . . " The specimen was not delivered to the Dominion Analyst but to a Mrs Brown who is an employee of the Department of Scientific and Industrial Research authorised to receive such specimens.

The Act clearly authorises delivery to the Dominion Analyst or to an authorised departmental employee In this case there is no evidence that the Dominion Ana-

lyst ever received the specimen. The Government Analyst signing the certificate does not purport to be the Dominion Analyst.

Although it is not disputed that the specimen was properly delivered to an authorised employee of the Department of Scientific and Industrial Research, counsel for the appellant submits that in the light of the viva voce evidence of the traffic officer, the certificate from the Government Analyst must, or may, relate to another specimen from the one delivered by the traffic officer to Mrs Brown. He submits that the analyst's certificate cannot be taken to read "delivered to the Dominion Analyst or to a person employed in the Department of Scientific and Industrial Research on his behalf" and if the specimen is delivered to someone other than the Dominion Analyst he or she must be named in the certificate. The purpose of this submission is to enable the defence to enquire as to the person accepting delivery and, if necessary, challenge his or her right to accept delivery.

There is a good deal of merit in counsel's submission in this regard but the provisions for the analyst's certificate contained in s 58B(9) of the Act clearly provide that the certificate shall be sufficient evidence, until the contrary is proved, of the matters so certified. Hence, if the certificate had certified that the specimen had been delivered to an employee of the Department of Scientific and Industrial Research employed on behalf of the Dominion Analyst, it would have been sufficient evidence in the absence of anything to the contrary even though it would have been preferable to have named the person as well.

Here, however, the certificate was wrong in a material respect. There is no doubt that the specimen was not delivered to the Dominion Analyst. Does that require the Government Analyst's certificate to certify the various steps from the receipt of the specimen by Mrs Brown to the analysis by the analyst?; or is it necessary to prove those steps by viva voce evidence and not rely on the certificate?; or, is the certificate with its error still sufficient evidence that the analysis is an analysis of the sample taken from the appellant?

Counsel for the respondent, in this regard, relies on s 58B(9)(b) which provides as follows :-

> " (b) Where a certificate given under paragraph (a) of this subsection refers to the blood specimen analysed as being a specimen that had been taken from a person having the same name, address, and occupation as the defendant, it shall be presumed, until the contrary is proved, that the blood specimen was taken from the defendant. "

The certificate is that a specimen was taken from

> " Quinn, Roy Brian
> Photoengraver
> 17 Belgrave St
> Wainuiomata "

The Information laid against the appellant is against Roy Brian Quinn of 17 Belgrave Street, Wainuiomata. His occupation is not stated in the Information. There is nothing in the evidence to indicate that the defendant's occupation is anything other than a Photoengraver. I am satisfied that the omission to state or prove the defendant's occupation is an omission of the type intended to be covered by Section 58E of the Act as explained by the Court of Appeal in Coltman v Ministry of Transport 1979 1 N.Z.L.R. 330. The provisions of s 58 (9) (b) accordingly apply.

The District Court Judge's finding that the analysis referred to in the certificate was an analysis of the specimen of blood taken from the appellant at the hospital by the medical practitioner is accordingly correct.

The second point relied on by the appellant relates to the doctor's certificate purportedly dated 13 September 1980 certifying that she "caused to be personally delivered on 14/9/80 both parts of the specimen or both specimens to the Dominion Analyst . . . . "

The evidence from the traffic officer is that although the specimens were taken at approximately 8.30 p.m. on 13th September, he did not actually uplift them from the doctor until after midnight. When the doctor was completing the relevant part of the certificate he drew her attention to the fact that it was then 14th September and she inserted 14/9/80 in the body of the certificate but the date alongside her signature at the foot is 13/9/80. The authority for this certificate is Section 58 D(5) and authorises that a certificate shall be sufficient evidence, until the contrary is

proved, inter alia that "he or she caused to be sent . . . by personal delivery by a named person . . . on a specified date, both parts of the specimen or both specimens, as the case may be, to the Dominion Analyst . . . "

The form of certificate used in this case and set out earlier in the judgment is not very felicitously worded. The matter referred to in the statutory provision requiring the date to be specified, I should have thought, would in the case of personal delivery, have been the date of delivery to the Dominion Analyst or his employee and not the date on which the specimen was given to another person to be so delivered. However, it is not necessary for me to decide that matter, as clearly in this case the prosecution did not rely on the certificate to establish either the date of delivery or the actual delivery by the traffic officer to the Dominion Analyst or his employee. Such evidence was given viva voce and established clearly that the specimen was delivered on 15th September by the traffic officer to Mrs Brown who was an authorized recipient.

There would appear to be some possible conflict between the decisions of this Court in Sharkey v Auckland City Corporation (1975) 1 N.Z.L.R. 281 and Transport Ministry v Verey (1976) 1 N.Z.L.R. 169. I agree with what was said in Verey's case that the statute merely makes the certificates prima facie evidence of the facts certified and the reliance on the certificate in whole or in part cannot be a bar to evidence being called to demonstrate that a fact or facts in the certificate are wrong. That does not necessarily make the conclusion in Sharkey's case wrong where the Court held

that evidence cannot be produced by a non-medical witness to add to or vary the facts of a medical nature certified by a medical practitioner.

Such an issue does not arise here. The District Court Judge correctly found on the evidence that the specimen taken from the appellant was duly delivered by the traffic officer to Mrs Brown.

The appeal, which like the defence to the information is not coloured by any degree of merit in substance, is accordingly dismissed.

Solicitors for Appellant : Tripe Matthews & Feist (Welling
Solicitors for Respondent : ~~Crown Law Office~~ (Wellington)