

IN THE HIGH COURT OF NEW ZEALAND
TIMARU REGISTRY

GR 132/83

145

BETWEEN

NEWBERRY

Appellant

A N D THE POLICE

Respondent

Hearing: 9 February 1984
Counsel: S.R. Crush for Appellant
I.H. Main for Respondent

ORAL JUDGMENT OF ROPER J.

This is an appeal which is ostensibly against conviction and sentence on a charge of driving on Wansbeck Street in Oamaru with excess breath alcohol. The reading was 650 micrograms. The Appellant was fined \$300 and disqualified from driving for six months. The appeal against sentence has been abandoned.

The sole issue in the lower Court and on this appeal was whether the Appellant was indeed the driver of the motor vehicle at the relevant time. There was only one witness for the prosecution, Constable Dow, and no evidence was called for the defence. Constable Dow's evidence was to the effect that some time between midnight and 1 a.m. on the 14th September last he was on patrol in Oamaru when he saw a motor vehicle turn into the carpark of a shopping centre. Having regard for the hour he thought an investigation was called for. In evidence in chief he said that he drove his vehicle into the carpark and came upon another vehicle in the carpark with the Appellant standing by. The car could only have entered via Wansbeck Street. There was no one else there with the Appellant and there was no other vehicle that he could recall. Certainly none other with lights on and engine running. The Appellant's explanation for being there was that he was collecting waste for his pigs. He said that he had just come from a friend's wake.

The Appellant smelt strongly of liquor but was co-operative in the taking of screening and evidential breath tests. There was no suggestion at any time by the Appellant that he had not driven the vehicle there and he willingly subjected himself to the tests.

In cross-examination the constable conceded that he could not be sure that the vehicle he saw turn into the carpark was the same as that which he came upon in the carpark with engine running and lights on with the Appellant near it. The constable was cross-examined at length on the issue of whether the Appellant was in fact the driver of the vehicle found in the carpark. The constable had no doubts about it. Mr Crush has joined issue with that conclusion, the question being whether the Appellant said that he had come from a wake or had driven from a wake. The inference drawn by the constable was that the Appellant had driven from the wake, an inference which Mr Crush has submitted was quite unwarranted. The constable had no doubts that the Appellant had driven there and really I fail to see how he could have. A vehicle is seen to drive into the carpark some time between midnight and 1 a.m. A vehicle with lights on and engine running is found in the carpark. The Appellant's explanation was that he had gone to collect waste from the shops there for pig food and apparently he was actually loading the vehicle with waste when the constable arrived. According to the constable the interior of the car was in his words "chock-a-block full" of material such as cabbages and lettuces. There was just no room for anyone but a driver. The Appellant apparently said that he had been earlier to other premises to collect waste.

I see no basis whatsoever for this appeal against conviction and it is therefore dismissed.

Solicitors:

Fitch, Mackay, Walker & Crush, Oamaru, for Appellant
Crown Solicitor, Oamaru, for Respondent