30/10

IN THE HIGH COURT OF NEW ZEALAND M. 695/84

AUCKLAND REGISTRY

1291

BETWEEN TREGEA

APPELLANT

A N D MINISTRY OF TRANSPORT

RESPONDENT

Judgment: 9 October 1984

Hearing: 9 October 1984

Counsel: Stewart for Appellant
Miss Shine for Respondent

ORAL JUDGMENT OF CASEY J.

This is an appeal against conviction by Mr Tregea on his conviction in the District Court at North Shore on a charge of failing to permit a specimen of blood to be taken and involves a very short point indeed. Mr Stewart argued that on the evidence of the traffic officer, there had been in effect no valid request for the Appellant to accompany him to the Ministry of Transport office for testing procedures following a positive breath screening test. He pointed to the officer's evidence that he required him "to accompany me to the Takapuna Ministry of Transport for the purpose of an evidential breath test or blood test or both."

No criticism is made on this appeal of the subsequent procedures, but Mr Stewart submits that they must fall to the ground if no proper initial request was made. He based his case on an unreported decision of Eichelbaum J. in Meaclem v. Police, (Palmerston North, M. 116/83, 18th May 1984) in which the step-by-step nature of the blood/alcohol procedures was emphasised, and he contended that all that the traffic officer was entitled to do was to request Mr Tregea

to accompany him for the purposes of undergoing an evidential breath test. Although he suggested that this would not lead to any difficulties if it turned out that a testing device was not available, and that the Appellant could in some way be prejudiced by being told of the blood procedures, I had some difficulty in accepting these views. But his main point, following the Meaclem decision, was that in effect, Mr Tregea had put to him a multiple choice question - to use the expression of Eichelbaum J. in that case.

At first sight the decision appeared to support Mr Stewart, but on a closer reading it became evident to me that the Judge was concerned with the request to undergo the evidential breath test. Under s.58(A)(4) this can be required when a person has accompanied the traffic officer to the appropriate place pursuant to an earlier request to do so and, depending on the reaction or result of that requirement, the further blood test procedures can be carried out. It will therefore be seen that there is certainly a step-by-step procedure - namely, the request to accompany; the request for the evidential breath test and the request for the evidential blood test. The Meaclem case appears to have been dealing with the second of these steps and the Judge referred to the confusion experienced by the constable in trying to remember the terms in which he had asked for it. In the end he is reported as saying - "I requested him to undergo an evidential breath test, or blood test, or both." Quite clearly the decision reached by the Judge was inevitable and this could not be regarded as a proper requirement to undergo an evidential breath test in terms of s.58(A)(4). But to apply this reasoning to the initial request to accompany is inappropriate. Here the traffic officer was not giving the Appellant the option of undergoing one or the other of these tests at that stage. He was simply asking him to accompany him and advising, in the exact terms of the Statute, the various tests to which he could be subject at the place he was asked to go.

These can be genuine alternatives; this was made clear by the Court of Appeal in Daly v. Ministry of Transport (1983) NZLR 736, and I note in that case the traffic officer used precisely the same formula adopted in this case in requesting the Appellant to accompany him to the Lincoln Medical Centre. Mr Stewart makes the point that the Act does not authorise the traffic officer to furnish this information or identify the place by describing the type of tests that might be carried out there. This may be so, but in my view, it is quite appropriate for him at that particular stage to inform the suspect adequately of the reasons why he is being asked to accompany him, and the fact that he choses to do so (and, I repeat, in the precise terms of the Act) does not derogate from the validity of the requirement. I see no conflict in this conclusion with the views expressed by Eichelbaum J. and the result is that the appeal fails and must be dismissed. The period of disqualification will run from midnight on 10th October.

McCarey J.

Solicitors:

Fookes & Clearwater, Takapuna, for Appellant
Crown Solicitors Office, Auckland, for Respondent