NZLR.

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IN THE HIGH COURT OF NEW ZEALAND
AUCKLAND REGISTRY

M.No.634/84

1173

BETWEEN BRUNTON

Appellant

AND AUCKLAND CITY COUNCIL

Respondent

Hearing: 17 August, 1984.

Counsel: A.G.V. Rogers for Appellant.
R.J. Katz for Respondent.

Judgment: 17 August, 1984.

(ORAL) JUDGMENT OF VAUTIER, J.

The appellant, Brunton, was charged in the District Court at Auckland that having been requested by a registered medical practitioner under subsection (1) of s.58B of the Transport Act 1962 to permit a specimen of blood to be taken he refused to give such specimen forthwith after being so requested and thereby committed an offence in terms of s.58C(1)(b) of the Act.

Two grounds are advanced for the appeal, the first is that the enforcement officer in the course of his evidence stated that he advised the appellant that if he refused to give a blood specimen to the doctor he would be charged with refusing a blood specimen to the doctor and be arrested. The situation on the evidence here was that the appellant was shown to have declined the officer's requirement that he give a specimen of blood and the medical practitioner's request that he do so saying that

he would not be agreeable to furnish a specimen unless he was first given another breath test.

In support of this ground of appeal Mr Rogers relies upon the decision of Prichard, J. in this Court in Dixon v. Auckland City Council (unreported) M.39/84, 23 May, 1984, where it was held that the evidence provided against the suspect by means of a blood specimen which he had furnished could properly be excluded as unfairly obtained because it was given following a threat that if the suspect did not give the specimen he would be arrested and taken to a police station. The situation in this case, of course, is entirely different. I do not need in this case to decide whether I would be prepared to follow the decision referred to; I am informed by Mr Katz that the decision in question is subject to appeal. It is, however, in my view, quite unnecessary for me to give any consideration to the question of whether or not I am in agreement with the decision because that decision related to a question of exclusion of evidence unfairly obtained or allegedly unfairly obtained. In the present case there is no question whatever of excluding any evidence on any such basis. The appellant did not in fact furnish any sample, of course, and is prosecuted for the refusal to furnish the sample. The basis of the decision in Dixon's case can be seen in what was said in one of the earlier cases upon which later decisions have proceeded, that is Stowers v. Auckland City Council where Mahon, J. said:

> "In New Zealand, however, as in the United Kingdom, the courts have taken the position that the statutory requirement of self-incrimination, no matter how justified on social grounds, must carry with it a

> corresponding requirement that the authorised mode of extracting the incriminating evidence is to be strictly performed."

That is an aspect which in my view has no relevance here. The situation here was that what the traffic officer said was simply to inform the appellant as to what would follow if he refused to furnish a specimen and of course this is precisely in accordance with the statutory provision contained in s.58C which specifically refers to the power to arrest without warrant where a suspect having been lawfully required to permit a blood specimen to be taken fails or refuses to do so. There is no question whatever in this case that the request was lawfully made. The appellant had already refused to submit to an evidential breath test and the requirement was accordingly validly made in terms of s.58(1)(a).

The second ground of appeal is that the District Court Judge, it is said, improperly took into account the traffic officer's check list in relation to the matter of the steps taken to assemble and test the device for the purposes of carrying out the evidential breath test. That evidence was in my view completely irrelevant to the present prosecution and accordingly anything that was done in relation to it can have no effect so far as this appeal is concerned. All that the prosecution was here required to prove was that there had been a requirement to undergo an evidential breath test and a failure or refusal to do so and the fact that there was such here is not in dispute.

The appeal must accordingly be dismissed. There will be costs of $75 to the respondent.

SOLICITORS:

A.G.V. Rogers, Auckland, for Appellant.

Butler White & Hanna, Auckland, for Respondent.