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IN THE HIGH COURT OF NEW ZEALAND

M. 86/84

WHANGAREI REGISTRY

1214

BETWEEN

GRIMSHAW

APPELLANT

A N D

MINISTRY OF TRANSPORT

RESPONDENT

Judgment: 7 September 1984

Hearing: 7 September 1984

Counsel: B.M. Kain for Appellant  
C.P. Ramsdale for Respondent

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ORAL JUDGMENT OF CASEY J.

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This is an appeal against conviction and sentence by Mr Grimshaw who was found guilty in the District Court at Whangarei on 6th July on a blood/alcohol charge. The short point taken on appeal is that there was no acceptable evidence that the blood specimen taken by the doctor was divided forthwith. There was a reference to this in the certificate which was the only evidence tendered on this aspect of the case, but Counsel for the Appellant submits that the provisions of the Act enabling proof by certificate under subsection 58B(5)(a) omit any reference to the word "forthwith". Accordingly, even though it is contained in that document, its inclusion is not authorised and is not available for the Court as part of the evidence.

Mr Kain made submissions to this effect to the learned Judge in the Court below who rejected them and said that on the general flow of the traffic officer's evidence (in which he mentioned the taking of the blood) "I would not consider myself justified in dismissing this information

simply because the word 'forthwith' was not precisely uttered."

At that stage Counsel was not aware of a decision of Eichelbaum J. in Greer v. Ministry of Transport given in Palmerston North, M. 15/84 on 19th March 1984, in which precisely the same point had arisen, and after a detailed consideration he came to the conclusion that the certificate could not be relied on to establish the specimen had been forthwith divided. Mr Kain points out that the facts of that case were rather stronger in support of the respondent than they were here because the traffic officer in this appeal gave no evidence at all about the actual circumstances surrounding the taking of the blood specimen, whereas there was a more detailed reference in the Greer case. Nevertheless, His Honour felt that no inference could be drawn there that the specimen had been divided forthwith. Less evidence was available here, so it is even more difficult to draw such an inference. Eichelbaum J. went on to consider whether the reasonable compliance provisions of s.58E could be invoked and held that they could not.

I find myself persuaded by the reasoning in his judgment and Mr Ramsdale, for the Respondent, felt that there was no submission he could make in answer to the appeal. In the light of Greer, there is no option but for the appeal to be allowed and for the conviction and sentence to be quashed. I make orders accordingly. I am not prepared to allow costs.

*Mr. Casey*

Solicitors:

Webb Ross & Co., Whangarei, for Appellant  
Crown Solicitors Office, Whangarei, for Respondent