IN THE HIGH COURT OF NEW ZEALAND
CHRISTCHURCH REGISTRY

2/5

(3)

No. AP58/86

BETWEEN JACKSON

Appellant

A N D MINISTRY OF TRANSPORT

Respondent

LOW PRIORITY

581

Hearing: 8 May 1986

Counsel: P.H.B. Hall for Appellant
Miss Draper for Respondent

Judgment: 8 May 1986

ORAL JUDGMENT OF HOLLAND, J.

The appellant appeals against his conviction on a charge of driving a motor vehicle with an excess proportion of alcohol in his blood. He gave evidence before the District Court. Essentially the issue before the Court was his allegation that prior to consenting to the taking of blood from him he was led to believe that his failure to consent would lead to him being arrested or imprisoned. It is common ground between counsel that within the decision of the Court of Appeal in Auckland City Council v Dickson given on 10 July 1986 (CA234/84) that evidence could not be permitted to be given leading to a conviction on a blood alcohol charge if consent has been obtained as a result of such a threat.

The issue before the District Court was one of credibility. The traffic officer maintained that he did not give any threat or occasion for the appellant to believe that he was

liable immediately to be arrested or imprisoned and that he had not departed from the formal advice contained in the blood specimen form both read to and submitted to the appellant which does no more than correctly convey to him that the refusal to permit a specimen of blood to be taken rendered him liable on conviction to imprisonment for a term not exceeding three months or a fine not exceeding $1500.

The District Court Judge said:-

> "I am satisfied, having heard the evidence, that the words used were those as set out in the form and the defendant was not threatened with arrest and being held in custody over night; that the words used were those set out 'that you are liable on conviction to imprisonment for a term not exceeding 3 months'. I do not accept the defendant's evidence that a threat was made."

Counsel for the appellant has submitted that the conflict in evidence has not been rationally resolved and that the appellant's evidence has been rejected without reasons. It is unfortunate that the District Court Judge did not give reasons or more persuasive reasons to why he preferred one account to the other. I do not subscribe to the view that on an issue of credibility a judical tribunal is bound to give reasons when that tribunal rejects the testimony of a witness. There are occasions, although they may be rare, when a Judge who is appointed to be the fact finding tribunal has to determine which version he finds to be true and can do so only on the basis that he simply does not believe a witness in respect of a certain matter or matters. It is not usually helpful in my view to describe that that conclusion has been

reached by the witness standing on one foot or putting his hand in and out of his pockets or looking sideways or any other personal characteristic which may be due to nervousness or all sorts of explanations. Obviously the demeanour of the witness is usually a very helpful quality to consider in determining the truth of the evidence. There are occasions, however, when there is nothing of that kind to distinguish between two completely conflicting factual accounts. The Court will then always look at other facts and surrounding circumstances to endeavour to find a justification for preferring one version to the other. It is useful to have that reasoning process recorded for the purposes of an appeal. There sometimes are occasions where there are no surrounding circumstances or facts to refer to. I am quite satisfied that the failure to give reasons does not of itself automatically invalidate a judicial determination of credibility. It renders it considerably easier for an appellant to persuade an appeal tribunal to differ on an issue of fact and there may be some absence of the advantage usually awarded to the fact finding tribunal of seeing and hearing the witnesses when no reasons are given. On a criminal appeal if no reason is given and the Court cannot be satisfied on the evidence that the conviction is properly entered then the Court will much more easily say that as a matter of fact the conviction should not have been entered.

In this case I am helped by the Judge's remarks on sentence, but I was also helped in his conclusion as to credibility by the denial of the appellant that he had consumed more than three 12 ounce beers coupled with a jug of beer four hours previously. His conduct as described by the traffic officer rendered that to be

unlikely but more importantly the proportion of alcohol in his blood was registered as 217 mg per 100 ml. The District Court Judge in sentencing said:-

> "Mr Jackson it is clear from the result of the blood test taken that you had had a very considerable amount to drink on that particular day, probably more than you disclosed in court."

That was a view that the District Court Judge was entitled to take. It is not a pleasant taks when deciding to convict a person to make that decision and in addition to call him a liar to boot. There is no doubt a natural reluctance to emphasise the matter by giving reasons. Nevertheless, that may well be the function of a Judge when such is necessary.

Counsel for the appellant has endeavoured to persuade me that I should be influenced by the statement of the appellant that he was led to believe that he would be in custody and the word custody "stuck in my head". This apparently did not impress the District Court Judge, nor does it me. The appellant in his next sentence said that he thought he was going to be locked up. When he was cross-examined he referred to the word "arrested". That is not consistent with the word "custody" having stuck in his head. It may well be that the word "custody" is more likely to have been used by an enforcement officer than an offender. But in considering the evidence as a whole I am satisfied that the District Court Judge was justified in disbelieving the evidence produced by the appellant. It follows that the appeal must be dismissed.

A D Holland J