

IN THE HIGH COURT OF NEW ZEALAND  
AUCKLAND REGISTRY

AP 191/87

Set 2

BETWEEN     JOSEPH LOPESI ✓  
                  Appellant  
A N D         AUCKLAND CITY COUNCIL  
                  Respondent

Hearing       17th November 1987

Counsel       M. E. Bowen for appellant  
                  Sharon McAuslan for respondent

Judgment     15 JAN 1988

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JUDGMENT OF TOMPKINS J

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The appellant has appealed against his conviction in the District Court at Auckland on 22nd July 1987 on a charge of driving a motor vehicle on 12th March 1987 with excess blood alcohol. Two grounds were advanced in support of the appeal.

The first relates to the care and delivery of the blood sample by the enforcement officer to the DSIR. The evidence on this point was given by Traffic Officer Horne. After describing how the appellant was taken into the blood alcohol suite and the specimen taken by the doctor, his evidence was

"If the specimen was taken what did the doctor do with that? The doctor divided the specimen into two bottles, sealed the bottles into the blood specimen collecting kit with a signature on each and every part and at the end of that I enclosed the box into the refrigerator being used, in the presence of Mr Lopesi.

What did the doctor do with the specimens after he sealed them? He surrounded the bottle in the blood specimen medical certificate bottom portion, it is torn off from the medical certificate, wrapped that around the bottle and then signed, or wrapped in fibre, from the blood specimen collecting kit around the bottle and sealed in sellotape and put in the blood specimen."

The traffic officer then produced the DSIR certificate. It refers to the blood specimen being delivered on 16th March 1987 to the Dominion analyst by registered post from Traffic Officer D. Robertson. No registered post acknowledgment record was produced.

Section 58B(6) of the Transport Act 1962 provides

"(6). An enforcement officer shall, within 7 days after the date on which they were taken pursuant to this section, deliver or cause to be delivered personally or post or cause to be posted by registered post, both parts of a blood specimen taken pursuant to this section or both those specimens, as the case may be, to the Dominion Analyst (or to a person employed in the Department of Scientific and Industrial Research, on his behalf) for the analysis of one of those parts or one of those specimens, as the case may be, and the custody of the other."

It was submitted by Mr Bowen that there was no evidence from Traffic Officer Horne or any other traffic officer that he delivered or caused to be delivered by registered post the blood specimen to the DSIR. He points to the reference to a different traffic officer in the DSIR certificate and the absence of any written evidence of it being sent by registered post.

The DSIR certificate records that what was delivered was  
"a blood specimen in a sealed bottle, taken from  
LOPESI, Joseph  
Bus driver  
Three Mile Place  
Henderson"

Pursuant to s 58B(9) and subject to the second ground raised on this appeal, that certificate is sufficient evidence until the contrary is proved, that a blood specimen in a sealed bottle so marked, was delivered to the DSIR. The certificate is not required to prove the chain of delivery of the package and the names of all persons through whose hands it passed en route from the post office to the analyst who carried out the analysis: Spencer v Ministry of Transport [1982] 1 NZLR 222, 223.

A similar issue arose in Aualiitia v Ministry of Transport [1983] NZLR 727. There the sample had been placed in a locker from which an authorised person uplifted it and posted it by registered post to the Dominion Analyst. In the High Court it was found that there was a gap in the prosecution but that there had been reasonable compliance applying s 58E. In the Court of Appeal it was held that the application of s 58E was appropriate but in any event, the Court did not consider that reliance on that section was necessary. Cook J, delivering the judgment of the Court of Appeal, said at 730

"An enforcement officer may cause parts of a specimen to be posted by registered post within the meaning of subs(6) if he makes use of an office system designed to bring about that result. Placing in a locker bottles containing the parts sealed and correctly addressed which locker is intended for specimens to be uplifted

and sent by registered post to the Dominion analyst is a way of causing them to be so posted."

In this case the evidence relating to the sealing and storing of the bottles may not be quite as detailed as it was in Aualiitia. But in my view, having regard to the traffic officer's evidence and the evidence of the matters certified in the certificate, it is a reasonable inference that the blood specimen was caused to be posted by registered post to the Dominion Analyst as required by the subsection. This inference can be more readily drawn where, as here, this point was not raised in the Court below, with the result that the traffic officer was not cross-examined on the storage of the sample and its posting to the Dominion analyst. This ground of appeal therefore fails.

The second ground relates to the certificate. It is on the letterhead of the Chemistry Division of the DSIR at Lower Hutt. The contents of the certificate read

"ANALYST'S CERTIFICATE UNDER SECTION 58B(9)(a)  
TRANSPORT ACT 1962

This is to certify that -

A blood specimen in a sealed bottle, taken from  
LOPESI, Joseph  
Bus Driver  
3 Mile Place  
Henderson

was delivered on 16 March 1987 to the Dominion Analyst by Registered Post No. 147 from Traffic Officer D Robertson for analysis, and

Upon analysis of the blood specimen by J A Sibley, analyst, a proportion of 166 milligrams of alcohol per 100 millilitres of blood was found in the specimen; and

No such deterioration or congealing was found as would prevent a proper analysis.

(indecipherable signature)  
Government analyst (being a person employed by the Department of Scientific and Industrial Research and authorised by the Dominion Analyst to act generally as a Government analyst)"

Mr Bowen submits that a certificate purporting to be signed with a signature that is illegible so that the person signing it cannot be identified, does not comply with the requirements of s 58B(9) and is therefore inadmissible.

Mr Bowen relied on Pilcher v Auckland City Council (AP 77/87 Auckland Registry 30th July 1987). In that case there had been produced a doctor's certificate and a DSIR certificate. On both the signature of the person signing was illegible. In each case it would have been difficult to determine on the face of the certificates who the doctor or the analyst concerned might have been. McGechan J, in an oral judgment, concluded that the doctor's certificate did not meet the statutory requirements. He considered, having regard to the relevant statutory provisions, that the legislature envisaged that the medical practitioner would be identified. This conclusion meant that it was not necessary for him to decide the issue relating to the analyst's certificate although he ventured to say that the policy and interpretation considerations which moved him to the view that the doctor's certificate must clearly reveal the name of the doctor, might well apply likewise to the situation of the analyst.

The relevant parts of s 58B(9) are

"For the purposes of any proceedings for an offence against this Act -  
(a) A certificate purporting to be signed by a Government analyst and certifying that - (i)...  
(ii) ...  
(iii)...  
shall be sufficient evidence until the contrary is proved of the matters so certified and of the qualification and authority of the person by whom the analysis was carried out.  
(d) Every Government analyst signing any such certificate shall, until the contrary is proved, be presumed to be duly authorised to sign it."

Mr Bowen accepted that what was produced in this case, was a certificate purporting to be signed by a Government analyst. But he contended that the need for the analyst to be identifiable from the certificate is reinforced by paragraph (d). A defendant cannot set out to prove that the person signing was not duly authorised if he cannot identify that person.

Mrs McAuslan submitted that there were no defects in the certificate and that the Act does not prescribe how a document is to be signed. More particularly, there is no requirement that the signature must be legible or that the person signing should print his or her name so that the identity of the person signing is clear on the face of the certificate.

Despite the observations of McGechan J in Pilcher, I consider there are two significant differences between a medical certificate sought to be admitted under subs(5) and an analyst's

certificate sought to be admitted under subs(9). In the case of the latter the defendant is able to challenge the analysis by having the second blood specimen analysed by an independent analyst. Such a check is not available to a defendant in respect of any of the matters certified in a doctor's certificate. Secondly and perhaps more importantly, the medical certificate is submitted as evidence of what the person signing it did, but that is not the case with an analyst's certificate. It does identify the person who analysed the blood described as "J. A. Sibley analyst", so the identity of the person providing the crucial evidence, that is the person who actually analysed the blood, is apparent on the face of the certificate. The policy consideration that influenced McGechan J when dealing with the medical certificate, does not apply to the same degree to the certificate involved in the present case.

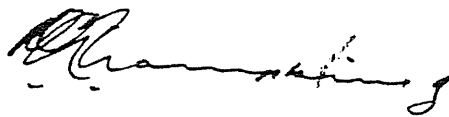
Nor do I consider that this conclusion is affected by Mr Bowen's submission relating to subs(9)(d). "Government analyst" is defined in s 57(A) as

"A Dominion analyst or government analyst; and includes any person who is employed in the Department of Scientific and Industrial Research and who is authorised to act as a Government analyst by the Dominion analyst or a Government analyst, either generally or in any particular case."

As Holland J observed in Wallace v Ministry of Transport (M 297/85 Christchurch Registry 11 July 1985) it would have been a serious crime for any unqualified person to have signed such a certificate intending it to be used in evidence and representing that he had the qualifications of a Government analyst which he

did not possess. The practical reality is that the person whose signature, illegible though it may be, appears in the certificate, could, having regard to the relatively limited number of persons who would come within the definition, no doubt be able to be identified from that signature.

For these reasons I conclude that the second ground raised by Mr Bowen has not been established. The appeal is accordingly dismissed.

A handwritten signature in cursive script, appearing to read "Chambers".

Solicitors

Messrs Bowen Roche & Hill, Auckland for appellant  
Messrs Simpson Grierson Butler White, Auckland for respondent