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IN THE HIGH COURT OF NEW ZEALAND
AUCKLAND REGISTRY

AP.225/91

BETWEEN DAVID JOHN MCDONALD

Appellant

AND MINISTRY OF TRANSPORT

Respondent

Hearing: 17 October 1991

Judgment: 17 October 1991

Counsel: Zahir Mohamed for appellant
Catherine Evans for respondent

ORAL JUDGMENT OF THOMAS J

On 4 June 1991 the appellant was convicted in the District Court at Otahuhu by Her Honour, Judge Simpson, of driving a motor vehicle while the proportion of alcohol in his blood exceeded 80 milligrams of alcohol per 100 millilitres of blood. It was alleged that the proportion was 243 milligrams of alcohol per 100 millilitres of blood.

Mr Mohamed raised two points on appeal.

The first point relates to the certificate of a medical practitioner which was produced pursuant to s 58G(1)(b)(iii) of the Transport Act 1962. In short the relevant part of the section provides:

> **"Certificates and presumptions in blood-alcohol proceedings** - (1) Except as provided in section 58H of this Act, production of any of the following certficiates in proceedings for an offence against this Act shall be sufficient evidence, until the

contrary is proved, of such of the matters as are certified and of the sufficiency of the authority and qualifications of the person by whom the certificate is made and, in the case of a certificate referred to in paragraph (d) of this subsection, of the peson who carried out the analysis, namely, -

(a) ...

(b) A certificate purporting to be signed by a registered medical practitioner and certifying that -

(i) ...
(ii) ...
(iii) At the time the blood specimen was taken from the person, the practitioner believed that the person was in the hospital or doctor's surgery as a result of an accident involving a motor vehicle;
..."

The doctor in this case completed and signed the standard form of certificate. Part A of the standard form consists of three paragraphs. These read as follows:

"1. I, Bruce Anderson, a Registered Medical Practitioner, certify that: David John McDonald being the person named in the schedule to this certificate was in a hospital; and

2. I, being the Registered Medical Practitioner in immediate charge of the examination, care, or treatment of that person believed that the person was in:
(a) Middlemore Hospital, or
(b) ...
as a result of an accident involving a motor vehicle and after examining the person I was satisfied that taking of a blood specimen from him would not be prejudicial to his proper care or treatment.

3. I took a blood specimen pursuant to subsection (1) of section 58D of the Transport Act 1962."

A further paragraph 4 was added by means of a stamp. It reads:

"At the time the blood specimen was taken I believed that the person was in hospital as the result of an accident involving a motor vehicle."

In the course of giving evidence the Traffic Officer involved was cross-examined in respect of the added paragraph 4. He was asked whether it was an addition to the document and he agreed. In response to a further question he said that the addition had been pointed out to the doctor. In re-examination it was clarified that the paragraph had been affixed to the form before the doctor began to fill it out. The Traffic Officer confirmed that he had done this himself.

Mr Mohamed, in advancing his argument, first pointed out that the learned District Court Judge had not made any finding to the effect that the paragraph had been added prior to the doctor's examination. What she had to say was this (at p.11):

> "Paragraph four has been added to the hospital blood specimen medical certificate by way of a stamp which, according to the Traffic Officer's evidence, was added by him prior to the Doctors commencing to fill out the form. In my view, the wording shown on the stamp as paragraph four is in fact superfluous to the wording of the certificate as printed."

The learned Judge then referred to Part A of the printed certificate and quoted paragraphs 1 and 2. She added:

> "... Part A of that certificate sets out the requirements that the defendant was the person named in the schedule. The defendant was in a hospital, namely Middlemore Hospital, as set out in paragraph two of Part A of the certificate and he was there as a result of an accident involving a motor vehicle. ... The addition of the stamp, being paragraph four, "at the time the blood specimen was taken I believe the person was in hospital as a result of an accident involving a motor vehicle", appears to have been added ex abundanti cautela and is superfluous to the wording of the section. The submission that this Court should find in accordance with the decision in Teretai v Ministry of Transport fails."

Teretai v Ministry of Transport (Unreported, Auckland, AP.83/86, 19 August 1986) is a decison of Thorp J. The

learned Judge held that the form of certificate provided did not certify that the person examined was "at the time the blood specimen was taken" in the hospital. He held that it certified only that the doctor was in charge of the person concerned, believed that the person was in hospital as a result of an accident involving a motor vehicle, and was satisfied that the taking of a blood specimen from him would not be prejudicial to his proper care or treatment, but did not take the further step of certifying that the blood specimen was taken "at a time when the patient was in the hospital and in the immediate charge and care of the doctor". (pp.5-6)

For my part, the learned Judge's reasoning has no appeal and, if it were necessary to do so, I would decline to follow the decision on this point.

In this case the evidence is quite clear that the accident occurred at 2.48 am on 21 June 1991. At 3.30 am the Traffic Officer made inquiries at Middlemore Hospital and spoke to the doctor. He identified himself as a Traffic Officer and told the doctor that the appellant was in hospital as a result of a motor vehicle accident. He asked if a blood sample could be taken for the purposes of blood analysis. He observed the doctor take the blood sample at 3.58 am.

Paragraph 1 of Part A of the standard form which is set out above first identifies the doctor and certifies that the appellant "was in hospital". Paragraph 2 certifies that the doctor was in "immediate charge of the examination, care, or treatment" of the appellant and that he believed that the appellant was in Middlemore Hospital "as a result of an accident involving a motor vehicle". The same paragraph further confirms that, after examining the appellant, the doctor was satisfied that the taking of a blood specimen from him would not be prejudicial to his proper, care or treatment.

In my respectful view, the only sensible interpretation to place upon this wording is that the specimen was taken at a time when the doctor believed that the appellant was in hospital as a result of an accident involving a motor vehicle. To hold otherwise is to indulge in semantic exercises which are as unreal as they are unnecessary. The meaning of the certificate, as it stood, is plain.

Even if I am in error in holding that, paragraph 4, which was no doubt included in the certficiate because of Thorp J's decision in Teretai's case, is superfluous. I consider that the finding of fact Mr Mohamed seeks is implicit in the learned Judge's conclusions relating to the certificate as a whole. And if that is not right, there is more than enough evidence for me to find, as a matter of fact, that the doctor took the blood specimen at a time when he believed that the person was in hospital as a result of an accident involving a motor vehicle. I so find.

Mr Mohamed then pointed out that the stamped paragraph had not been initialled by the doctor. But there is no statutory requirement to that effect. It is true that the doctor has initialled the other paragraphs in the standard form but, as Ms Evans explained, the doctor's initials have been added wherever he has been required to indicate which of the stated alternatives he is certifying. No such alternatives existed in paragraph 4. In any event, the doctor's signature is immediately opposite that paragraph, and I accept the Traffic Officer's evidence that the stamped paragraph was included on the form prior to the doctor's examination and the taking of the test. The point is spurious.

I turn now to the second submission advanced by Mr Mohamed. This ground of appeal is based on the proposition that the certificate, to be admissible, must

contain the name, occupation and address of the appellant. Mr Mohamed contends that the certificate was faulty in that there was no evidence to support the address or occupation.

Both counsel referred to Coltman v Ministry of Transport [1979] 1 NZLR 330. At page 336 Cooke J, as he then was, said:

> "As to s 58B(9)(c), I agree that in requiring the certificate to refer to the specimen of blood analysed as being a specimen that had been taken from a person having the same name, address, and occupation as the defendant, Parliament must have meant the same as the defendant's true name, occupation and address."

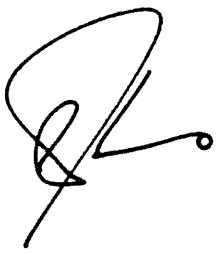
The errors which Mr Mohamed has drawn to my attention are hardly momentous. First, the address is stated on the certificate as being "2/8 Orangewood Rd, Howick". However, when cross-examined by Mr Mohamed the Traffic Officer gave as the address he had taken down, "2/8 Orangewood Drive, Howick". The difference then is between the word "road" and the word "drive". I do not consider that Parliament ever intended a discrepancy of this kind to invalidate a certificate. The words "street", "road", "avenue", "crescent", "terrace" and "drive" are at times used interchangeably, even by the owners or occupants at a particular address. To my mind the address given as "2/8 Orangewood Rd, Howick", is a sufficient compliance with the requirement that the appellant's true address be given.

In the second place, Mr Mohamed referred to the designation of the appellant's occupation as "spray painter". No evidence had been given that this was in fact the appellant's occupation. Ms Evans pointed to a reference to the fact that the Traffic Officer had confirmed that the appellant held a driver's licence, and invited me to imply that the information would have come

from that source. I am not certain that this would have been the case. For myself, I would have been more inclined to draw the implication that the Traffic Officer had been told by the appellant that his occupation was that of spray painter. Nevertheless, I accept that there is no direct evidence by the Traffic Officer confirming that this is what he was told. Clearly, it would have been preferable if such evidence had been given.

In the circumstances, however, I entertain no doubt that this is an appropriate case to apply s 58I of the Transport Act 1962. The section should be construed in a way which gives some latitude in relation to errors in certificates of this kind. See Coltman's case per Richmond P at p.334. As in that case the errors in the certificate are minor ones and do not create any real doubt as to whether the appellant is the person referred to in it. (Ibid) I am also influenced by the fact that the error does not relate to the name of the appellant. Obviously, as held by Gallen J in Naio v Ministry of Transport (Unreported, Rotorua, M.144/84, 10 September 1984), a person's name is the prime means of identification in documentary form. (at p.4) In my view, therefore, there has been reasonable compliance with the statutory requirements and, in the result, the failure of the Traffic Officer to give evidence as to the occupation of the appellant is not fatal to the admissibility of the certificate. It was open to the learned Judge to admit it as evidence in support of the prosecution's case.

The appeal is therefore dismissed.



Solicitors:

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