

IN THE SUPREME COURT OF NEW ZEALAND

SC 133/2013
[2014] NZSC 16

BETWEEN STEPHEN ROSS TEBBS
 Applicant

AND THE QUEEN
 Respondent

Court: McGrath, William Young and Arnold JJ

Counsel: N P S Winkler for Applicant
 G H Vear for Respondent

Judgment: 5 March 2014

JUDGMENT OF THE COURT

The application for leave to appeal is dismissed.

REASONS

[1] The applicant seeks leave to appeal against a Court of Appeal judgment upholding his conviction for driving a motor vehicle with excess blood alcohol.¹ He wishes to argue that his blood sample was not “taken in accordance with normal medical procedures” with the result that the samples taken were not “blood specimen[s]” within the meaning of the Land Transport Act 1998.²

[2] The argument concerns the procedure of closing glass bottles, forming part of the Police specimen collecting kit, with plastic screw caps and then sealing them. The applicant’s case is that the medical community now favours vacutainers ahead of using bottles for samples. The submission requires a Court to accept that “taking”

¹ *Tebbs v R* [2013] NZCA 523.

² Land Transport Act 1998, s 2.

includes not only the process of extracting the blood sample but subsequent storage of it.

[3] In the present case, one blood sample was analysed within a week of being taken resulting in an unlawful blood alcohol level. After the applicant was summonsed he had the second blood specimen analysed privately. The independent analyst deducted 6mg from the level of 85mg in accordance with the laboratory's standard practice producing a blood alcohol level that was legal under s 56(2) of the Land Transport Act.

[4] The District Court Judge held that the requirement that the blood specimen be "taken" in accordance with normal medical procedures applies to actual extraction rather than subsequent steps taken including storage in bottles.³ Different provisions in the Land Transport Act control that process. Both the High Court and the Court of Appeal agreed.⁴

[5] The argument runs counter to the ordinary meaning of the words of the definition of a blood test. It is not apparent that the context points strongly to a meaning that would cover the subsequent storage. Furthermore, legislative definitions and procedures have been amended since the time of the offending decreasing the generality of the importance of the issue. The law that would be considered on appeal now has only lingering transitional application. The point accordingly lacks public importance.

[6] Overall we are satisfied a further appeal is not necessary in the interests of justice.

[7] The application for leave to appeal is accordingly dismissed.

Solicitors:
Crown Law Office, Wellington for Respondent.

³ *New Zealand Police v Tebbs* DC North Shore CRN-10044008523, 16 April 2012.

⁴ *Tebbs New Zealand Police* [2012] NZHC 3468; and *Tebbs v R*, above n 1.