

IN THE SUPREME COURT OF NEW ZEALAND

SC 129/2014
[2015] NZSC 30

BETWEEN ISSAC JOHN CHADDERTON
Applicant
AND NEW ZEALAND POLICE
Respondent

Court: William Young, Arnold and O'Regan JJ
Counsel: A G Speed and D H P Schellenberg for Applicant
P D Marshall for Respondent
Judgment: 31 March 2015

JUDGMENT OF THE COURT

The application for leave to appeal is dismissed.

REASONS

[1] The applicant seeks leave to appeal against a judgment of the Court of Appeal,¹ rejecting his appeal from a decision of the High Court² upholding a conviction entered against him in the District Court³ for driving with an excess proportion of alcohol in his blood.

[2] In issue are two periods of delay which occurred between the applicant failing a breath screening test and him arriving at the police station where the evidential breath test was administered. The first delay was of five to 10 minutes while one of the two attending police officers completed the taking of a statement from a witness. The second, of approximately 30 minutes, was when the two police

¹ *Chadderton v R* [2014] NZCA 528.

² *Chadderton v Police* [2013] NZHC 2672.

³ *Police v Chadderton* DC Auckland CRI-2011-044-1152, 3 April 2013.

officers stopped to attend to a van which had broken down just before an on-ramp to a motorway creating a situation which they considered to be a risk to road safety.

[3] The Court of Appeal held that there was no breach of s 69 of the Land Transport Act 1998 and, as well, that on the facts of the case, the applicant was not unreasonably detained in breach of s 22 of the New Zealand Bill of Rights Act.

[4] The proposed grounds of appeal are that (a) the Court of Appeal did not follow *Birchler v Police*⁴ and (b) that the Court of Appeal's conclusion as to the lawfulness of the applicant's detention was wrong.

[5] The facts of the present case differ substantially from those of *Birchler* (in which a required procedural step had not occurred at all). And in any event, on the findings of the Court of Appeal on the lawfulness of the detention, there was no deviation from the process required under the statute. The issue whether the delays rendered the detention of the applicant unlawful is very factual and does not raise a question of law of public or general importance. As well, there is no appearance of a miscarriage of justice.

Solicitors:
Crown Law Office, Wellington for Respondent

⁴ *Birchler v Police* [2010] NZSC 109, [2011] 1 NZLR 169.