

HIGH COURT. 1960. 15, 22, December. MARSACK C.J.

Drunken driving - "state of intoxication" - conflicting evidence - statement obtained from person considered by Police to be drunk - Road Traffic Amendment Order 1949.

A statement in writing ought not to be obtained from a person suspected of an offence in circumstances where, although that person had been declared by a medical practitioner not drunk, the Police officer obtaining the statement rejects the medical findings and himself believes that person to be drunk.

Semble: The term "state of intoxication" used in the Road Traffic Amendment Order 1949 is not synonymous with the word "drunk" in the usual meaning of that word, but indicates a state when as a result of the consumption of alcohol a person's mental and bodily faculties, and in particular his ability to drive with safety, are impaired to a material degree.

R v. Ormsby /1945/ N.Z.L.R. 109 referred to.

PROSECUTION under the Road Traffic Amendment Order 1949 for negligent driving and being in charge of a motor vehicle while in a state of intoxication.

Sergeant Fagatele, for Police.
Metcalf, for defendant.

Cur. adv. vult.

MARSACK C.J.: There are two charges against the defendant, one of negligent driving and the other of being in charge of a motor vehicle while in a state of intoxication. No difficulty is presented in the matter of the negligent driving charge. I am satisfied on the evidence that the defendant had, for some time before the collision from which the charge resulted, been driving in an erratic manner and at times unnecessarily fast, so that his passengers protested. Then as he was overtaking the vehicle of Vincent Ah Kiau on the main road to the west just past the Moamoia turn-off, he so drove his own vehicle that it collided with the rear of the vehicle ahead. I do not accept defendant's explanation that Ah Kiau's vehicle stopped abruptly and that defendant was unable to avoid the collision. The collision was entirely due to the negligence of the defendant. On this charge therefore he must be convicted.

The charge of driving while in a state of intoxication presents more difficulty. On the one hand there is the detailed and straightforward evidence of an experienced police officer, Senior Sergeant Schuster, that the defendant was in a state of intoxication when he arrived at the Police Station after the collision. On the other hand we have the evidence of the Samoan Medical Practitioner, Fatupaito, who had examined the defendant at the request of the Police, that in his opinion, defendant was not in a state of intoxication.

The evidence of the Samoan Medical Practitioner was of very little assistance to the Court. It was clear that he had not conducted any very thorough tests. In the presence of the policeman he asked him a question about his children and had him sign his name. The Samoan Medical Practitioner deposed that he then took the defendant into another room, away from the policeman, where he made him walk along a line on the floor. These tests were performed to the Samoan Medical Practitioner's satisfaction, and he thereupon expressed the opinion that defendant was not in a state of intoxication. In his evidence, however, he admitted that he did not know

what the phrase "state of intoxication" meant or implied. Under examination in the Court Fatupaito said that he had noticed that defendant's face was flushed and also that the pupil of the eye was dilated; in the ordinary person the dilating of the pupil would, he said, indicate the consumption of alcohol, but in the present case he did not draw any conclusion from it that defendant was drunk. Furthermore the Samoan Medical Practitioner stated that defendant's breath smelled of liquor.

It is a little difficult to understand by what chain of reasoning the Samoan Medical Practitioner reached the conclusion that defendant was not in a "state of intoxication" within the meaning of that term as used in the Road Traffic Amendment Ordinance 1949. Without attempting a detailed definition of "state of intoxication" such as that given by Fair J. in R v. Ormsby /1945/ N.Z.L.R. 109, I would express the opinion that this phrase is not synonymous with the word "drunk" in the usual meaning of that word, but indicates a state when as a result of the consumption of alcohol a person's mental and bodily faculties, and in particular his ability to drive with safety, are impaired to a material degree.

It is not of course for the Court to say what tests should be applied by a doctor or Samoan Medical Practitioner conducting an examination of this nature. That is entirely a medical question, provided that the examining doctor or Samoan Medical Practitioner thoroughly understands the purpose of the examination and the standard of sobriety which the person examined should attain in order to pass those tests. The Court, however, is unable to follow just how the Samoan Medical Practitioner arrived at his finding that the defendant was not in a state of intoxication.

If the matter had rested there I should have had no hesitation in accepting the evidence of Senior Sergeant Schuster, confirmed to some extent by Corporal Tai, in preference to that given by the Samoan Medical Practitioner. But the matter does not rest there. Almost immediately upon the return to the Police Station of Corporal Tai and the defendant after the medical examination, Corporal Tai proceeded to take a statement in writing from the defendant who read it over, stated that it was the truth, and signed it. This course of action might have been proper if Corporal Tai had unhesitatingly accepted the finding of the Samoan Medical Practitioner and had changed his own opinion on the subject of defendant's intoxication. In evidence, however, he stated that he did not accept the finding, but supported the evidence of Senior Sergeant Schuster to the effect that the defendant was drunk. I cannot credit that a responsible Police Officer would take a statement from an accused person if he was satisfied that at the time that person was in a state of intoxication. So Corporal Tai's evidence places the Court in this dilemma: either defendant was drunk, in which case the Corporal would not have taken the statement from, or he was not in a state of intoxication, in which case the Samoan Medical Practitioner's report must be accepted.

In these circumstances, though I have a grave suspicion that defendant was in a state of intoxication within the section, the evidence is too conflicting to establish that beyond reasonable doubt. For these reasons the charge of intoxication will be dismissed.

On the charge of negligent driving defendant will be convicted and fined £7.10.0 and his driver's licence will be suspended for a period of six months from this date.