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## SUPREME COURT OF VICTORIA

**LORD v JOHNSON****Anderson J****27 October 1982****MOTOR TRAFFIC – BLOOD SAMPLE – S80DA(6) – WHETHER REFUSAL IS HINDERING – WHETHER CONSENT REQUIRED: MOTOR CAR ACT 1958, S80DA(6).**

J, who had been involved in a motor car accident and taken to hospital, was asked by a doctor if he was prepared to allow a sample of his blood to be taken. J indicated a refusal, and was subsequently charged under s80DA(6) of the *Motor Car Act 1958* with hindering the doctor attempting to take a sample of blood. It was submitted that as the doctor was not attempting to take a blood sample, then the indication of the refusal was not a "hindering" within the section.

**HELD: Consent is an irrelevant element in the operation of taking a blood sample. As there was no evidence that the doctor was attempting to take the sample when consent was refused, the defendant was not guilty of hindering.**

**ANDERSON J:** *[After setting out the facts and the provisions of s80DA(6) of the Motor Car Act 1958, His Honour continued]:* There were two points which have been debated before me. One was; was the doctor attempting to take a blood sample? Secondly; if he was, did the defendant hinder him in that attempt? I think the matter is determined by the first point. In my view, on the evidence which was before the Magistrate, he was, entitled to reach the conclusion that at the stage of the refusal, there was no evidence that the doctor was attempting to take a sample.

I have heard much argument as to what may have been the whole of the circumstances relating to the incident, but so far as the material before me is concerned, it seems to me that the Magistrate was entitled not to be satisfied that the doctor was attempting to take a sample of blood, when the defendant indicated that either he refused to consent, or said he was not prepared to allow a sample to be taken. Nothing more appears than that the defendant was asked a question and answered it, indicating his attitude to what was asked of him. Upon receiving the answer the doctor desisted from proceeding any further in the matter. It may be suggested, I suppose, that the inquiry was a preliminary step in the taking of a blood sample, because, although the sample may be taken without the consent of the person, the courtesy of inquiring; "Will you allow me to take a sample" or words to that effect may well be the usual preliminary step to the ultimate taking of the sample.

Consent of the person, however, is not an integral part of the taking of the sample and is an irrelevant or neutral element in the operation. There was no evidence that the doctor was then ready to take the sample, or had yet to prepare instruments or how much further he was advanced when he got the negative answer. I think the Magistrate was justified in saying that the occasion had not yet arisen for him to be satisfied that the doctor was attempting to take the blood sample at the time when he desisted from pursuing the matter further. I am deciding this matter solely on the basis that the Magistrate was entitled not to be satisfied that at the time the defendant refused consent, the doctor was attempting to take a sample.

The Magistrate also said there was no evidence of a hindering, as there had been a mere refusal. I am not to be taken as either agreeing or disagreeing with that opinion, as such an aspect, in conjunction with facts different or additional to the facts of this case, might have a relevance which it does not have in this case.

The conclusion of what I have said is that the order nisi will be discharged and the informant is ordered to pay the defendants taxed costs.

**APPEARANCES:** Mr PR Gray, counsel for plaintiff Lord. Mr T Danos, counsel for defendant Johnson.