42/83

SUPREME COURT OF VICTORIA

DWYER v RICKHUSS

Gray J

11 August 1983

MOTOR TRAFFIC DRINK/DRIVING – BLOOD ALCOHOL EXCEEDING .05% – MEDICAL PRACTITIONER'S CERTIFICATE – DATES THEREIN ALTERED AND INITIALLED BY DOCTOR – WHETHER CERTIFICATE ADMISSIBLE: *MOTOR CAR ACT* 1958, S80D.

A doctor collected a sample of blood from R. at midnight on 16 September. R. was later charged with driving a motor car whilst exceeding .05%. When the prosecutor sought to tender the doctor's certificate at the hearing, its tender was objected to by R.'s solicitor on the basis that, as the date had been altered from the 17th to the 16th and initialled by the doctor who completed the certificate, there was an internal contradiction of facts and therefore the document was not admissible as *prima facie* evidence. The magistrate agreed and dismissed the information. Upon order nisi to review—

HELD: Order nisi absolute.
By virtue of the provisions of s80D(3) of the *Motor Car Act* 1958, the magistrate was obliged to admit the certificate into evidence, despite any reservations he may have had about the terms in which the document was expressed.
***Houston v Harwood* [1975] VicRp 69; (1975) VR 698; MC 25/1975, applied.**

GRAY J: *[After setting out the facts, His Honour continued]:* … **[3]** I have the certificate before me as an exhibit in these proceedings, and although I have given the matter careful consideration I am unable to detect any contradiction appearing on the face of the document. It can be conceded that the doctor obviously wrote the date 17th September in each of the three places where the date appears. It is equally apparent that he corrected the date from the 17th to the 16th and initialled each alteration. In those circumstances it can hardly be that there is any contradiction in the terms of the document. Furthermore, it is quite understandable that in certifying to an event which takes place at midnight some uncertainty may be encountered when deciding upon the correct date. Quite apart from the lack of any contradiction appearing on the face of the document, the learned magistrate had evidence that the respondent had been taken to hospital on the evening of 16th September after having been arrested some time after 10 o'clock. In all those circumstances it is surprising that he felt that any difficulty arose from an examination of the document.

Apart from all that, the document was clearly admissible by virtue of the provisions of the *Motor Car Act*. Section 80D(3) of the Act provides as follows:-

> "A certificate purporting to be signed by a person who purports to be a legally qualified medical practitioner in or to the effect of Schedule 6 shall be admitted in evidence in any proceedings referred to in subsection (1) as *prima facie* proof of the facts and matters therein contained."

An examination of the 6th Schedule shows that the certificate in this case faithfully followed the form set out in the 6th Schedule. In fact, the doctor merely filled in a printed form issued in conformity with the Act. In my opinion the magistrate had an obligation to admit the certificate into evidence by virtue of those statutory provisions, despite any reservations he may have felt about the terms in which the document was expressed. In this connection I refer to *Houston v Harwood* [1975] VicRp 69; (1975) VR 698.

However, as I have already said, I consider that the reservations felt by the magistrate which led him to reject the certificate were not based on reasonable grounds. I have no doubt that the certificate should have been admitted in evidence and that the magistrate was in error in rejecting the document.

APPEARANCE: For the applicant Dwyer: Mr P Golombek, counsel. D Yeaman, Crown Solicitor. No appearance for the respondent Rickhuss.