



Supreme Court of New Zealand

30 August 2010

MEDIA RELEASE – FOR IMMEDIATE PUBLICATION

Matthew John Birchler v New Zealand Police
(SC 116/09)
[2010] NZSC 109

PRESS SUMMARY

This summary is provided to assist in the understanding of the Court’s judgment. It does not comprise part of the reasons for that judgment. The full judgment with reasons is the only authoritative document. The full text of the judgment and reasons can be found at www.courtsofnz.govt.nz.

Mr Birchler was the driver of a vehicle involved in an accident. The police constable who attended the scene had failed to bring with her any breath screening testing equipment. She took Mr Birchler to a police station where he failed evidential breath and blood tests. At the District Court hearing of a charge of driving with excess blood alcohol, the Judge found that because a breath screening device was readily available to be brought to the accident scene, the constable had lacked power under s 69(1)(d) of the Land Transport Act 1998 to require Mr Birchler to accompany her to the police station for testing and that he had not accompanied her voluntarily. The charge was therefore dismissed because the blood test had not been lawfully obtained. However, on the application of the police, the District Court Judge stated a case under s 107 of the Summary Proceedings Act 1957 for consideration by

the High Court of questions relating to the admissibility of the evidence of the blood test under s 30 of the Evidence Act 2006.

The High Court was of the view that the District Court should have considered whether that evidence was admissible under s 30 notwithstanding the non-compliance with s 69(1). It remitted the case to the District Court for further consideration.

The Supreme Court has unanimously allowed an appeal by Mr Birchler. It has held that the case stated was not appropriately framed; that where a step in the process prescribed by Part 6 of the Land Transport Act has not been strictly complied with, then, unless there was reasonable compliance in terms of s 64(2) of that Act, there was no lawful basis for any evidential breath or blood test and it would be quite inconsistent with s 64(2) for that evidence nevertheless to be admitted under s 30 of the Evidence Act. Accordingly s 30 had no application in the case.

As the police did not seek to have the matter proceed further in the District Court in these circumstances, the Supreme Court has set aside the order made in the High Court.

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