CITATION: *Brennan v Benjamin* [2007] NTMC 021

PARTIES:	MICHAEL DAVID BRENNAN
	v
	DEBBIE BENJAMIN
TITLE OF COURT:	Court of Summary Jurisdiction
JURISDICTION:	Criminal
FILE NO(s):	20609482
DELIVERED ON:	16 April 2007
DELIVERED AT:	Darwin
HEARING DATE(s):	9 & 27 February 2007
JUDGMENT OF:	Dr John Lowndes SM

CATCHWORDS:

Traffic Act (NT) – EVIDENCE REQUIRED TO DISPLACE PRIMA FACIE EVIDENCE THAT BREATH ANALYSIS INSTRUMENT WAS IN GOOD WORKING ORDER – JUDICIAL NOTICE THAT A CERTAIN AMOUNT OF ALCOHOL WOULD NOT PRODUCE A READING IN EXCESS OF THE PRESCRIBED CONCENTRATION

Traffic Act (NT), s 29(2)
Wood v Smith (1991) 14 MUR 279 considered
Holland v Jones (1917) 23 CLR 153 applied
Perkins v Pohla-Murray (1983) 1 MUR 165 considered

REPRESENTATION:

Counsel:

Plaintiff:	Mr T Smith
Defendant:	Ms J Truman

Solicitors:

Plaintiff:	Department of Public Prosecutions
Defendant:	Tooheys Chambers

Judgment category classification:	B
Judgment ID number:	[2007] NTMC 021
Number of paragraphs:	54

IN THE COURT OF SUMMARY JURISDICTION
AT DARWIN IN THE NORTHERN
TERRITORY OF AUSTRALIA

No. 20609482

[2007] NTMC 021

BETWEEN:

MICHAEL DAVID BRENNAN
Plaintiff

AND:

DEBBIE BENJAMIN
Defendant

REASONS FOR DECISION

(Delivered 16 April 2007)

Dr JOHN LOWNDES SM:

The issues

1. On the 29th March 2007 I found the defendant guilty of an offence contrary to s 19(2) of the *Traffic Act* (NT). I rejected the defence submission that the charge should be dismissed on the basis that the Court ought to have a reasonable doubt as to the accuracy of the reading which was obtained as a result of the breath analysis performed on the defendant. I indicated that I would give written reasons for my decision. I now furnish those reasons.

2. At the close of the prosecution case the defendant gave evidence, which I summarise as follows.

3. The defendant said that she finished work at about 4.00pm on the day in question. She went to have a drink with her friends at the work bar, which she referred to as "the boozer". The defendant told the Court that she consumed two stubbies of heavy strength "Carlton Cold" beer. She knew that she had only consumed two beers because she had to attend an

appointment at 4.30pm that afternoon at the Palmerston pharmacy. In addition, she said that was mindful of the informal advice that women should only drink one beer every hour in order to stay under the legal limit.

4. The defendant stated that she arrived for her appointment extremely late, that is about 5.30pm. During cross-examination she said that she left for the appointment at about 5.30pm. She told the Court that as she arrived late at the pharmacy she was declined to be seen. She felt "cheesed off" because she was a regular customer at the pharmacy.

5. During cross–examination, the defendant stated that when she was informed of the reading, following the breath analysis conducted at the police station, she inquired as to whether the reading was higher than the legal limit. She said that she did not question the reading. For example, she did not complain that the reading had to be wrong because she had consumed only two beers. However, she told the Court that she would not have expected to be over the limit, after having only drunk two beers. She said that she did not ask the reading to be checked. She added that it was the first time she had been tested on a breath analysis instrument.

6. The defendant also gave evidence that she attempted to undergo the preliminary road side test, but after three attempts failed to produce a result. She said that she was told that she would have to be taken to the police station and tested on the breath analysis instrument.

7. This evidence was at odds with the police evidence that although the defendant had trouble blowing into the instrument a positive reading was produced. The police evidence was considered when determining the admissibility of the certificate; and as stated in my written reasons for decision dated 23 January 2007 I was satisfied beyond reasonable doubt that the roadside test produced a positive result.

The accuracy of the reading

8. I propose to deal, first, with the defendant's evidence as to the amount of alcohol consumed by her prior to her apprehension.

9. Ms Truman, on behalf of the defendant, submitted that this evidence was relevant in that it went to the accuracy of the reading produced as a result of the breath analysis performed on the defendant. She also submitted that the evidence was relevant as to whether the instrument was in good working order.

10. Although s 29(2) precludes a court from receiving evidence "that a prescribed breath analysis instrument, when it is in good working order and used in accordance with the Regulations relating to its use, does not give a true and correct assessment of the concentration of alcohol in a person's blood", there is no bar to a defendant adducing evidence to show that the breath analysis instrument used on the occasion in question provided an incorrect result and therefore was not in good working order.[1]

11. As I found on 23 January 2006, there is prima facie evidence in the present case that the instrument that was used to assess the defendant's blood/alcohol content was in good working order: see pp 26-28 of my earlier reasons for decision. In particular I refer to the following statement that appears on page 27 of that decision:

> It can be inferred from the matters contained in the certificate that the instrument was in good working order at the material time and such inference provides prima facie evidence of that fact.

12. As previously stated, the Certificate on Performance of Breath Analysis (Ex1) is prima facie evidence of the matters contained therein, in particular the assessment of the concentration of alcohol in the defendant's blood: see p 27 of my earlier reasons for decision.

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[1] Brown *Traffic Offences and Accidents* (3rd ed Butterworths 1996)

13. However, the prima facie evidence that the instrument was in good working order on the occasion in question and that the defendant had a concentration of alcohol in her blood assessed at 0.122% is capable of being displaced by credible evidence to the contrary. Where there is such credible evidence a reasonable doubt may be created as to the accuracy of the reading stated in the certificate – and hence a reasonable doubt as to whether the breath analysis instrument was in good working order.

14. Ms Truman argued that, in light of her evidence of having only consumed two beers, the defendant had not consumed such a quantity of liquor as to cause a breath analysis instrument, which was in good working order, to produce a reading of 0.122%. Accordingly, she submitted that the Court should have a reasonable doubt as to the accuracy of the reading stated in the certificate, and as to whether the instrument was in good working order. Therefore the Court could not be satisfied to the criminal standard of proof that the defendant committed the offence of driving with an excess blood/alcohol level.

15. The question is whether the evidence given by the defendant is sufficient to displace the prima facie evidence upon which the prosecution relies in proof of the charge.

16. It is clear that in order for the evidence to displace the prima facie evidence, the contrary evidence must be credible. However, the defendant's evidence is not credible for the following reasons.

17. The yardstick used by the defendant to prove that she had only consumed two beers was that she had an appointment to attend at 4.30 pm on the afternoon in question. Her evidence in that regard was ambiguous. Did she mean that because she only had a half an hour to get to the appointment after finishing work, she only had time for two beers? Or did she mean that she wanted to keep sober for the appointment, and therefore restrict herself to two beers?

18. In considering each of those alternative interpretations of her evidence, it is important to note that the defendant also attempted to prove the amount of alcohol consumed by her by reference to another yardstick. She said that she only consumed two beers because she was adhering to the guideline that women should only drink one beer each hour to remain under the legal limit. I pause to add that the formula applied by the defendant does not accord with the general advice, which is to the effect that women should not consume more than one standard drink in the first hour and one standard drink each hour after that.[2]

19. If the defendant meant by her evidence that she intended to restrict herself to two beers to ensure that she got to the appointment on time, the fact is that she was inordinately late for that appointment. If that were her intention, how is it that she ended up being about an hour late for the appointment? Possible inferences are that she either abandoned her original intention and consumed more than the planned two beers or simply lost track of time, having consumed more beers than she intended to drink.

20. If the defendant meant by her evidence that she wanted to keep sober for the appointment, then she must have been prepared to be late for the appointment. However, the distinct impression I got from her evidence was that she did not intend to be late: her evidence was to the effect that she was extremely late for the appointment.

21. The defendant's evidence is problematic due to its ambiguous nature.

22. However, the first interpretation of the defendant's evidence appears to be more tenable than the second. But as stated above, that interpretation impinges upon the credibility of the defendant's account of having only consumed two beers.

[2] Brown *Traffic Offences and Accidents* (3rd ed Butterworths 1996), [10.45] p 64.

23. Another troublesome aspect of the defendant's account is that she appears to have misunderstood the guidelines formulated in relation to the consumption of alcohol by females. The defendant was operating on the incorrect premise that women should only consume one beer during the first hour and one beer each hour thereafter. However the guidelines refer to one standard drink and not one beer, which appears to have been treated by the defendant as a stubbie of full strength beer. There is a difference between a standard drink and a stubbie of full strength beer; and the difference incrementally increases over a period of time. This apparent misunderstanding on the part of the defendant assumes particular importance in the present case because, on her own account she had consumed two stubbies of full strength beer between 4.00pm and the time she arrived late for her appointment. It is not possible to precisely calculate the period of time over which she consumed the alleged two stubbies of beer. However, on the defendant's account it is most likely that the period would have been less than 90 minutes. The defendant may well have miscalculated the effect of her intake of alcohol on the afternoon in question.

24. The account given by the defendant suffers from a more fundamental problem, namely one of omission in relation to the narrative of events. Sometimes what counts is not what a person says, but what they do not say. Although the defendant testified that she had only consumed two beers, she does not eliminate the possibility that she consumed alcohol earlier in the day, say at lunchtime. I accept that she says that she worked until about 4.00pm, but that does not mean that she did not consume alcohol over lunch. Furthermore, she gave no evidence to the effect that she had not consumed alcohol the previous evening, or if she had consumed alcohol it was not of sufficient quantity to "top up" her blood/alcohol level. In my opinion, the absence of such evidence undermines the credibility of the defendant's account.

25. Although the prosecution might normally raise such matters during cross-examination, the defendant cannot benefit from the absence of such cross-examination. In my opinion, the evidential or tactical burden cast upon the defendant requires her to adduce evidence which goes towards eliminating the possibility that previous consumption of alcohol may have "topped up" her blood/alcohol, such as to cause the breath analysis instrument to produce the reading relied upon by the prosecution.

26. There is yet another unsettling aspect to the defendant's evidence. Despite asserting in the witness box that she had only drunk two beers prior to her apprehension, she did not express surprise to the police officers that she was substantially over the limit, having a reading of 0.122%. When she was cross-examined about that she did not proffer any explanation for her silence, and apparent acquiescence in registering such a reading. The only explanation that was proffered was made from the bar table during submissions. That explanation was to the effect that the defendant, by nature and as demonstrated by her demeanour in the witness box, was a compliant individual who accepted things without question. It was submitted that being a member of the Defence Forces, she was accustomed to deferring to persons in authority; and she simply resigned herself to the fact that she had an excess blood/alcohol level of 0.122%. The Court was asked to infer that state of mind from the evidence given by the defendant and from her general demeanour in the witness box. In my opinion, the explanation - given the context in which it was proffered - was far from satisfactory.

27. The defendant's acquiescence in registering a reading of 0.122% is difficult to reconcile with other aspects of her evidence. She told the Court that she followed the usual guidelines as to the amount of alcohol women should consume in order to remain below the limit. According to her, she adhered to those guidelines on the occasion in question. Furthermore, it was her evidence that she would not have expected to be over the limit after having

consumed only two beers. In my view, I find it extraordinary that having followed those guidelines she did not express some disbelief or dissatisfaction with the reading that was registered – even if she were a person who was accustomed to deferring to persons in authority. Moreover, the defendant gave evidence that she was "a bit cheesed off" on account of being late for an appointment on the afternoon in question. Again, it is hard to reconcile that state of mind with an unquestioning acceptance of a reading of 0.122%. Registering a reading above the legal limit would have only added to her woes. In my opinion, the defendant's acquiescence in the reading is consistent with her having consumed more than the claimed two stubbies of "Carlton Cold".

28. It is not uncommon in cases like the present for there to be evidence from other persons testifying as to the amount of alcohol consumed by the person, thereby giving credence to the person's account. In the present case, the defendant's evidence is without the benefit of such collateral evidence. The Court is simply being asked to find that the account given by her is credible.

29. Ms Truman submitted that the absence of any evidence of the usual indicia of being under the influence of alcohol – breath smelling strongly of alcohol, unsteady gait, bloodshot eyes and slurred speech – in itself, and in combination with the other evidence, created a reasonable doubt as to the accuracy of the reading. The submission presupposes that a person with a reading of 0.122% would be likely to display some of the indicia of the effects of alcohol. However, whether or not a person with such a blood/alcohol level would display any of those indicia surely depends on the personal characteristics of the person, including his or her tolerance to alcohol. That is really a matter for expert evidence. No such evidence was adduced in the present case.

30. When one considers all of the aspects of the defendant's evidence, her account of only having consumed two stubbies is simply not credible.

31. However, even if I had found the defendant's account to be credible, then that account by itself would not have been sufficient to create a reasonable doubt as to the accuracy of the reading stated in the certificate, and a corresponding reasonable doubt that the instrument was in good working order. In order to displace the prima facie evidence in relation to the reading, the defendant would have to adduce, or point to, evidence tending to show that the consumption of two beers as claimed by the defendant would not have been sufficient to cause a breath analysis instrument, in good working order, to register a reading of 0.122%. In other words, the defendant would carry the evidential burden of adducing, or pointing to, evidence causing the Court to have a reasonable doubt that a person who had only consumed two beers would register such a reading and therefore a reasonable doubt that the instrument was in good working order at the material time. To that end, the defendant sought to rely upon an inference that the consumption of two beers would not have been sufficient to result in a blood /alcohol level of 0.122%.

32. In attempting to rely upon such an inference, Ms Truman was, in effect, urging the Court to take judicial notice of the fact that the amount of alcohol claimed to have been consumed by the defendant would have been most unlikely to have resulted in a reading of 0.122%. Although Ms Truman did not cite any authority in support of that submission, I note that it was held in *Wood v Smith* (1991) 14 MVR 279 that it is sufficiently well known in today's society to justify the taking of judicial notice that the consumption of a stubby of beer would be most unlikely to result in a concentration exceeding 0.05%. The matter was not required to be the subject of expert evidence.

33. As pointed out by *Cross on Evidence* (sixth Australian edition, Butterworths 2000) [3001], p 121 "the general rule is that all the facts in issue or relevant to the issue in a given case must be proved by evidence". The doctrine of judicial notice forms an exception to that general rule: see *Cross on*

Evidence (supra). As also pointed out by *Cross on Evidence* (supra) [3005], p 121 "when a court takes judicial notice of a fact…it declares that it will find that the facts exist…although the existence of the facts has not been established by evidence".

34. As stated by Isaacs J in *Holland v Jones* (1917) 23 CLR at 153:

> The only guiding principle – apart from statute – as to judicial notice which emerges from various recorded cases, appears to be that wherever a fact is so generally known that every reasonable person may be reasonably presumed to be aware of it the court 'notices' it, either *simplicter* if it is at once satisfied of the fact without more, or after such information or investigation as it considers reliable and necessary to eliminate any reasonable doubt.

35. Doubtless, Ms Truman relies upon the first category of judicial notice – that is, notorious facts judicially noticed without inquiry – to raise a reasonable doubt as to the accuracy of the reading. That was the category of judicial notice of notorious facts relied upon in *Wood v Smith* (supra).

36. However, I do not consider that it is proper to take judicial notice of the fact that the consumption of two stubbies, as claimed by the defendant, would not, or would be most unlikely to, result in a reading of 0.122%.

37. The first is that *Wood v Smith* (supra) dealt with a very different statutory regime to that established under the *Traffic Act* (NT). Section 24(2) of the *Road Safety (Alcohol and Drugs) Act* 1970 (Tas) provided that the concentration of alcohol as determined by the analysis is deemed to be the actual concentration of alcohol in the blood of the motorist at the time he or she submitted to the analysis, unless it is shown on the balance of probabilities that the concentration of alcohol in his or her blood at the time was not greater than the prescribed concentration, being 0.05%. There is no such provision or comparable provision under the *Traffic Act* (NT). The only line of defence open to a defendant under that legislation is to displace

the prima facie evidence that the breath analysis instrument was in good working order and produced a particular reading.

38. Secondly, the conclusion in *Wood v Samuel* (supra) that the Court could, in the absence of expert evidence, take judicial notice of the fact that the consumption of one stubby of beer would not give a reading in excess of 0.05% was based on credible evidence from the defendant that she had not consumed alcohol during the few days prior to the day of the relevant offence. As observed above, the evidence in the present case was silent as to whether the defendant had consumed alcohol earlier on the day of the offence or during the preceding day or evening.

39. Thirdly, the evidence in the present case differed from the evidence presented in *Wood v Smith* (supra) in a fundamental respect. The defendant in that case claimed that she had consumed less than one stubby of beer during the two hours prior to driving. In the present case the defendant claimed that she consumed two stubbies during a lesser period of time prior to driving.

40. If the Court were able to take judicial notice that the consumption of two stubbies over such a period of time would not, or would be most unlikely to, result in a blood/alcohol level of 0.05%, then provided the defendant's account were credible, the Court would have to have a reasonable doubt as to the accuracy of the reading, and hence a reasonable doubt that the instrument was in good working order. Under those circumstances, the Court could not be satisfied beyond reasonable doubt that the defendant had committed an offence of driving with an excess blood/alcohol level.

41. However, in my view it is not open to the Court to take judicial notice of that fact for two reasons.

42. The first is that it is not sufficiently well known in today's society to justify the taking of judicial notice that the consumption of two full strength

stubbies of beer over a period apparently less than 2 hours prior to driving would not – or would be most unlikely to – result in a reading in excess of 0.05%. The matter is not so notorious as not to be the subject of dispute among reasonable men: see Morgan *Some Problems of Proof under the Anglo-American System of Litigation*, p 36. But even if that were a notorious fact of which the Court could take judicial notice, that would not assist the defendant in the present case, as she had not given evidence that eliminated the possibility that she had consumed alcohol earlier on the day in question or during the preceding day or evening. The taking of judicial notice of the subject fact would, of course, be contingent upon the person having only consumed that number of beers over the stipulated period, and no other alcohol at any other relevant time.

43. There are similar difficulties with the Court taking judicial notice of the fact that the consumption of two full strength stubbies of beer over a period of apparently less than 90 minutes prior to driving would not – or would be most unlikely to – to produce a blood/alcohol reading of 0.122%. In my opinion, the disparity between the reading and the defendant's account of the quantity of alcohol consumed by her is not great enough to excite such a level of surprise that the reading must clearly be wrong, thereby indicating that the breath analysis was not in good working order at the time the analysis was conducted. Who is to say that a person who had consumed two stubbies of beer over the said period could not cause a breath analysis instrument to register a reading of 0.122%. The guidelines for consumption of alcohol by women are one standard drink during the first hour and one standard drink each hour thereafter. On the defendant's account she had consumed more than two standard drinks during the same period. As indicated above, there can be a difference between two stubbies of full strength beer and two standards drinks. Furthermore, if the defendant had consumed alcohol earlier that day or the preceding day or evening – depending on the amount consumed – that may well have contributed to the

obtained reading of 0.122%. The possibility of an earlier consumption of alcohol was not ruled out by the evidence given by the defendant. Finally, given the relatively moderate reading obtained, this strikes me as a case where the personal characteristics of the defendant and the effect of those characteristics on her rate of absorption and elimination of alcohol may well have been relevant and could have contributed to the reading of 0.122%.

44. In my opinion, this is a case which required the sort of evidence that was adduced in *Perkins v Pohla-Murray* (1983) 1 MVR 165 – a case upon which Ms Truman sought to rely. In that case, the defendant had consumed a relatively small amount of alcohol two hours before driving and had registered a reading of 0.130%. However, unlike in the present case, the Court was not invited to take judicial notice that the consumption of such a small amount of alcohol would not – or would be most unlikely - to produce a reading of 0.130%. Indeed, the Court had the benefit of expert evidence, which was to the effect that a motorist having the defendant's personal characteristics could not have had a blood/alcohol level of 0.130%. That evidence appears to have been influential in the Court, at first instance, entertaining a reasonable doubt as to the accuracy of the reading.

45. In the present case, there was no evidence before the Court in relation to the amount of alcohol that a person with the defendant's characteristics would have had to consume over a period of time to achieve a reading of 0.122%; nor was there any evidence as to the absorption and elimination rate of alcohol within the female human body.

46. This is not a case where the defendant can call in aid the evidential tool of judicial notice. The doctrine of judicial notice is predicated upon the inherent likelihood of the existence or correctness of the fact that a court is requested to take judicial notice of. However, in the present case, it is simply not possible to form a view as to the probabilities - or possibilities - of a person registering a reading of 0.122% after consuming two full

strength stubbies of beer over a period apparently less than two hours prior to driving, without the assistance of expert evidence.

47. The present case is complicated by a possible additional factor, namely, the possibility that the defendant had consumed alcohol at an earlier relevant time – a circumstance that might significantly affect the probability of the defendant registering a blood/alcohol concentration of 0.122%.

48. In order for the defendant to create a reasonable that the breath analysis instrument was in good working order, she would not only have to give a credible account of the amount of alcohol that she had consumed prior to driving, but also adduce credible expert evidence, based on that amount of alcohol and her personal characteristics, sufficient to create a reasonable doubt as to the accuracy of the reading. For the reasons given above, the defendant failed to discharge that evidential burden.

The preliminary breath test

49. As stated earlier the defendant gave evidence that she attempted to blow into the breath analysis instrument three times at the roadside, but failed to produce a result.

50. As indicated during the course of submissions the defendant ought to have given this evidence during a voir dire in relation to the admissibility of the certificate. I ventured the view that it was too late for the defendant to have the issue of the admissibility reopened. I invited submissions from both the prosecution and defence as to how the Court should deal with the unusual situation which had arisen.

51. Ms Truman submitted that having regard to the Court's reasons for decision delivered on 23 January 2007 the issue was somewhat academic. In those reasons the Court concluded that, on the strength of Constable Watts, it was satisfied beyond reasonable doubt that although the defendant had difficulty in blowing into the hand held apparatus she eventually managed to cause

that device to produce what the constable described as a "positive result". However, the Court also concluded that, in the event that that primary conclusion was found to be wrong, and the Court should have had a reasonable doubt about the roadside test having produced a result, the certificate should nonetheless be received into evidence.[3] Ms Truman submitted that because of those circumstances it did not really matter if the Court did not re-visit the admissibility of the certificate, in light of the belated evidence given by the defendant.

52. However, it is important to note carefully the nature of the Court's decision on 23 January 2007. The Court held that in the event of there having been a failure to comply with the provisions of s 23(7)(a) of the *Traffic Act*, the Court would have, nonetheless, admitted the certificate into evidence, in the exercise of its discretion. The Court did not, on that occasion, consider whether it would have admitted the certificate into evidence if the evidence was found to be insufficient to satisfy the Court beyond reasonable doubt that the roadside test produced a result. For example, the Court did not venture the opinion that, if the Court had erred in its conclusion that the roadside test had produced a result and ought to have found that the defendant blew into the apparatus three times without success, the certificate would still have been admitted into evidence. That is an entirely separate issue, and one which was not necessarily or explicitly dealt with in the Court's reasons for decision dated 23 January 2007. For that reason, I consider that it is necessary to say that even if the Court had revisited the admissibility of the certificate, the defendant's evidence would not have altered the primary conclusion reached by the Court. In other words, the Court would have continued to accept the evidence given by Constable Watts, and been satisfied beyond reasonable doubt that the roadside test produced a positive result. Accordingly the certificate would have remained admissible and probative of the defendant's guilt.

[3] See pp 16-17 of the Court's reasons for decision delivered 23 January 2007.

53. Constable Watts gave her evidence in a straightforward manner and impressed me as a witness of truth. As to the accuracy of her recall of the incident, Constable Watts had good reason to remember this apprehension because of its unusual nature. The apprehension involved a member of the Defence Forces who was dressed in army uniform. That stuck in the witness's memory. She also gave detailed evidence as to the steps she took to get the defendant to blow correctly into the apparatus. I do not believe that she was mistaken about the outcome of the roadside test.

54. By way of contrast, the evidence given by the defendant was unsatisfactory and inherently unreliable in much the same way as was her evidence with respect to the quantity of alcohol that she had consumed prior to driving. In my opinion she was plainly mistaken about the outcome of the roadside test.

55. Finally, assuming that I have erred in forming that opinion and again ought to have found that the defendant blew into the apparatus three times without success, then I would not have considered the failure of the roadside test to produce a result to be a ground for refusing to admit the certificate into evidence. Any such failure could in no way be attributed to any improper conduct on the part of the police officers. The evidence shows that the police officers took great pains to assist the defendant in blowing into the apparatus. Any such failure could only be levelled at the feet of the defendant. In my opinion, the *Traffic Act* implicitly empowers members of the police force to proceed to conduct a breath analysis in circumstances where a motorist has failed to blow into a hand held apparatus. To construe the Act otherwise would result in an absurdity.

Dated this 16th day of April 2007.

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Dr John Lowndes
STIPENDIARY MAGISTRATE