

**IN THE DISTRICT COURT
AT HAWERA**

**CRI-2017-021-000554
[2017] NZDC 26092**

NEW ZEALAND POLICE
Prosecutor

v

AARON TIPENE TUTAUHA
Defendant

Hearing: 15 November 2017

Appearances: Sergeant D Morrison for the Prosecutor
No appearance by or for the Defendant

Judgment: 15 November 2017

ORAL JUDGMENT OF JUDGE L HARRISON

[1] On 19 September this year I presided at a case review hearing for the charges laid against Mr Aaron Tutauha of which there are three laid under the Land Transport Act 1988. I indulged the defendant on that occasion and I allowed him to speak to me from the public area in the courtroom. Mr Tutauha is a gentleman who does not recognise the jurisdiction of the New Zealand Courts, and he refuses to enter the body of the Court.

[2] At the case review hearing it was established that Mr Tutauha would be calling five witnesses and the police three. I gave him fair notice and warning that the Court would not tolerate him conducting his case from the public space on the day of the hearing and that it would be expected of him to sit in the body of the Court. Today was the date allocated for the defended hearing. It has gone ahead but without the

defendant, Mr Tutauha, participating. Having said that, he was present at 2.15 pm or thereabouts this afternoon when the case was first called. He refused to enter the body of the Court and sit at counsel's table so that the hearing could get underway. He persistently questioned what jurisdiction the Court was acting under: Was it the Common Law or Admiralty Maritime Law? I explained to him that I was sitting as a District Court Judge in the criminal jurisdiction of the District Court and I invited him on several occasions to come forward. I explained the case would go ahead today, and if he stayed in the public area he would not be heard and that he would not be able to conduct his case from there. He chose to leave the Court and I have proceeded on the basis of a formal proof hearing.

[3] The specific charges are that on or about 7 July 2017 Aaron Tutauha did commit an offence against s 52(1)(aa) Land Transport Act 1988 in that he failed to remain stopped for as long as was necessary for an enforcement officer to complete the exercise of any powers conferred under the Land Transport Act. Under that charge the police must prove that the defendant failed to remain stopped for Police Constable Edwards and that Police Constable Edwards was exercising powers conferred on him under the Land Transport Act.

[4] The next charge is that on or about 17 July 2017 the defendant while exceeding the applicable speed limit failed to comply with a lawful requirement given to him under s 114(2) Land Transport Act 1988 by an enforcement officer and the defendant, being the driver of the vehicle and being followed by a motor vehicle displaying red and blue flashing lights or sounding a siren, failed to stop. The police must prove that the red and blue flashing lights or a siren were activated, that the defendant exceeded the speed limit and that the defendant failed to stop.

[5] The third and final charge is that the defendant failed to permit a blood specimen to be taken after having been required to do so under s 72 Land Transport Act by an enforcement officer.

[6] All charges were being heard together today but, importantly, I need to consider each charge separately and reach a decision on each separate charge. The onus of proof has rested on the police. There is no onus on a defendant to prove his

innocence, and there was no requirement or expectation that he would give evidence. The police must prove all the necessary elements beyond reasonable doubt. I will be satisfied beyond reasonable doubt if I am sure the defendant is guilty. If I am sure of guilt it is my duty to find him guilty. If I am left with as reasonable doubt, a doubt that I consider to be reasonable in all the circumstances, then equally it is my duty to find the charge has not been proved beyond reasonable doubt.

[7] In respect of the first charge of failing to stop, the facts are that the defendant was driving a red motor vehicle on 7 July 2017. Around 10.35 pm he was seen by Constable Edwards who was in uniform, in a marked patrol car on duty. He observed the defendant to swerve a little in the defendant's lane. The police officer decided to pull the defendant over to request the defendant to do a breath test. Constable Edwards put on the red and blue flashing lights and sounded his siren and the defendant duly pulled over. The defendant is observed to be in the driver's seat. His identity is established by the police officer and the defendant confirms that he is the registered owner of the vehicle. Police Officer Edwards asks the defendant to undergo a passive breath test and he refuses. He tells the police officer that he does not recognise New Zealand law. The police officer tells the defendant that he is requested to do a passive test; but that is declined. At this point the defendant's demeanour has changed from that of a good mood to being more irritable and tense. As their conversation continues the defendant increases his volume and the police officer can smell alcohol. He challenges the defendant about drinking to which the defendant says, "Yes, I know." The defendant is given a further opportunity to comply with the rules and undertake now a breath screening test and is warned that he will be placed under arrest for non-compliance. The evidence of Police Constable Edwards was that the defendant was given at least six opportunities to comply. Eventually Police Constable Edwards places the defendant under arrest for failing to undergo the breath screening test. The defendant refuses to acknowledge that he was under arrest, telling the police constable, no, that he was not arrested.

[8] Present for this exchange is Police Constable Patterson who had come to Police Constable Edwards' call for assistance. The defendant repeats again that, no, he is not under arrest, winds up his window and accelerates off in his vehicle. The evidence from Police Constable Patterson confirms that he sees the defendant drive off at speed

having been told that he was under arrest and the defendant saying, “No, I'm not,” in response.

[9] I find the charge under s 52(1)(aa) to be proved beyond reasonable doubt. I find the defendant guilty of failing to remain stopped.

[10] The evidence is that the defendant speeds off and a police pursuit follows which involves three patrol cars which include a patrol car driven by Police Constable Taiaroa in the lead car, a patrol car driven by Constable Edwards with Constable Longworth in the next car and the third car driven by Police Constable Patterson.

[11] I accept the evidence to be credible and reliable of both Police Officer Edwards and Patterson that speeds of between 120 and 130 kilometres per hour were reached by their cars; that the red and blue flashing lights were activated on their patrol cars; that sirens were activated. That the defendant did not pull over for the police during the time he was followed and that the police pursuit was ultimately abandoned (at the request of Comms) because the defendant was likely to be under the influence of alcohol therefore posing a risk of danger to other road users, and that at that point the patrol cars pull over, come to a complete stop and their lights and sirens are turned off.

[12] The evidence before me, therefore, establishes that the defendant failed to stop for red and blue flashing lights and sirens that were sounded. I find the charge proved beyond reasonable doubt.

[13] The police officers then request permission through Comms to activate the search phase which means they were asking for permission to look for and locate the vehicle and the driver within the surrounding area. Permission was granted. The defendant was ultimately apprehended and arrested on the Meremere Marae sometime later and he was taken back to the police station for processing.

[14] I am satisfied on the evidence given by Police Constable Edwards that the defendant was arrested and that proper procedures were followed in that he was given his Bill of Rights prior to being transported to the Hawera Police Station. Then, back

at the Hawera Police Station, Police Officer Edwards is in charge of processing the defendant and this evidence is corroborated by Sergeant Shaw.

[15] In evidence exhibit A is the breath and blood alcohol procedure sheet which has been completed by Constable Edwards, and I am satisfied that the various steps in the procedure have been followed and I am satisfied that the defendant has refused to permit a blood specimen to be taken having been required to do so. Therefore, I am satisfied that charge is proved beyond reasonable doubt.

[16] These proceedings are now adjourned for a sentencing date. Sentencing will occur in the Hawera District Court on 15 January 2018 at 2.15 pm. The defendant is required to be present for sentencing.

ADDENDUM:

[17] My minute of 19 September 2017 arising from the case review hearing on that day was not before me on 30 October 2017. I am now aware the defendant was to enter a plea to the charge of failing to remain stopped for an enforcement officer. I have proceeded on the basis that a not guilty plea had been entered and the evidence has been heard.

[18] I subsequently directed the registrar to ensure the defendant is served by the police of notice of the hearing date; this will include a copy of this judgment.

L Harrison
District Court Judge