Citation: *R. v. Taylor*, 2021 YKTC 42

Date: 20211021
Docket: 19-00451
Registry: Whitehorse

IN THE TERRITORIAL COURT OF YUKON
Before His Honour Judge Chisholm

REGINA

v.

ROBERT GORDON TAYLOR

Appearances:
Leo Lane — Counsel for the Crown
Christiana Lavidas — Counsel for the Defence

RULING ON *VOIR DIRE* AND REASONS FOR JUDGMENT

[1] Mr. Robert Taylor is charged with three *Criminal Code* offences: impaired driving (s. 320.14(1)(a)); refusal to provide samples of his breath into an approved instrument (s. 320.15(1)); and driving while prohibited (s. 320.18(1)(a)). These offences allegedly occurred in Whitehorse, Yukon on July 30, 2019.

[2] The Crown proceeded by way of indictment.

[3] The defence has brought an application to exclude evidence based on alleged breaches of s. 10(b) of the *Charter*. The evidence regarding the *Charter* application was adduced in a *voir dire* and the Crown led other evidence in the trial proper. Counsel

agreed to a blended hearing whereby any admissible evidence led in the *voir dire* would become part of the trial proper.

[4] The Crown led evidence from a paramedic; two police officers, and a forensic alcohol specialist. The evidence of the two police officers was called in the *voir dire*. Mr. Johnny Brass and Mr. Robert Faulds testified for the defence in the trial proper.

Summary of the Relevant Evidence

Paul Husband

[5] Mr. Husband is a paramedic with the Department of Community Services. He testified that he responded to a call concerning an all terrain vehicle ("ATV") accident on the Fish Lake Road on the evening in question. Upon arrival, he located Mr. Taylor on the ground laying perpendicular to the roadway. While assessing Mr. Taylor, he did not observe any injuries. Mr. Husband testified that Mr. Taylor was intoxicated, but that he was aware and able to converse. He indicated to Mr. Husband that he had consumed 10 beer. He also stated that he was driving too fast, and fell backwards while attempting to do a wheelie. He also mentioned that his girlfriend had been on the ATV as well, but that she had left the scene.

[6] Mr. Husband testified that Mr. Taylor complained of rib pain. Mr. Taylor was placed on a gurney and transported by ambulance to the Whitehorse General Hospital ("WGH").

Cst. V. Vanasse

[7] Cst. Vanasse testified that he responded to a report of a motor vehicle accident on the Fish Lake Road that had been received at approximately 7:45 p.m. on July 30, 2019.

[8] He arrived at the scene at the same time as the paramedics. The WatchGuard video system from Cst. Vanasse's police vehicle captured the scene, including Mr. Taylor laying perpendicular to the road beside an ATV, and being assisted by two paramedics. The paramedics tended to Mr. Taylor who the officer believed required medical attention. Cst. Vanasse advised another officer, Cst. Conway, that Mr. Taylor would be transported to WGH. Cst. Vanasse identified Cst. Conway as the lead investigator on the file. Cst. Vanasse testified that he neither detained nor arrested the accused.

[9] Cst. Vanasse subsequently took a statement from a witness, Johnny Brass, at the scene. He did not locate the keys to the ATV.

Cst. C. Conway

[10] Cst. Conway testified that on July 30, 2019, at approximately 7:39 p.m., he learned that Emergency Medical Services ("EMS") was attending to an ATV collision on Fish Lake Road. EMS believed that alcohol was involved in the collision. Cst. Conway subsequently received information that the individual located at the scene was being transported to WGH, and that he was displaying indicia of impairment.

[11] Cst. Conway proceeded to the hospital, and arrived there at approximately 8:15 p.m. He testified that upon his arrival, medical personnel were tending to Mr. Taylor, so the officer took a statement from paramedic Paul Husband. Mr. Husband advised the officer about statements that the accused had made while the paramedic tended to him.

[12] The officer testified that when he had the opportunity, he gave Mr. Taylor the police warning, at which time the accused advised him that he did not wish to speak to the police. He subsequently arrested him for impaired operation of a motor vehicle causing bodily harm, and advised him of his right to counsel. The officer explained in his testimony that he had received information that there was a passenger on the ATV with Mr. Taylor. The officer decided to arrest the accused for impaired operation causing bodily harm in the event that the passenger was injured.

[13] In response to receiving his right to counsel, Mr. Taylor said he would like to call Gord Coffin. The accused advised the officer that he did not have a telephone number for Mr. Coffin. Cst. Conway again read the police warning to him, followed by a blood demand. He made the blood demand as he understood from medical staff that Mr. Taylor possibly had fractured ribs, and in that case would be unable to provide breath samples.

[14] Cst. Conway testified that at 8:46 p.m., after having read the blood demand to him, Mr. Taylor stated, without prompting, “I crashed my quad”.

[15] Cst. Conway unsuccessfully attempted to contact Mr. Coffin. He was unable to find a phone number on the Law Society website. He then located a phone number for Mr. Coffin after searching the internet. The officer tried that number, but it did not work.

[16] Next, Cst. Conway called the Legal Aid answering service in the event that Mr. Taylor wished to speak to the lawyer on duty. He testified that he did so because his previous experience included waiting lengthy periods of time before receiving a call back from the on-call lawyer. After doing so, he returned to advise Mr. Taylor that he had been unable to contact Mr. Coffin. He asked the accused if there was another lawyer with whom he wished to talk. Mr. Taylor advised him that he did not and that he no longer wished to speak to a lawyer.

[17] Cst. Conway testified that, at that point, he read Mr. Taylor a waiver of right to counsel which provided him with information that the police could not collect evidence until he talked to a lawyer, or decided not to talk to a lawyer. Mr. Taylor indicated he understood. When he again asked him if he wished to call a lawyer, Mr. Taylor stated "no, please leave".

[18] Cst. Conway indicated in his testimony that Legal Aid duty counsel phoned at 9:29 p.m., and again at 9:37 p.m. The officer advised her that Mr. Taylor had indicated that he did not wish to speak to a lawyer, but that he would put him on the phone nonetheless. He provided Mr. Taylor with the nursing station cell phone and left the room. When duty counsel called the officer back later, he was advised that Mr. Taylor had not spoken to her. The lawyer provided Cst. Conway with a number in the event the accused changed his mind.

[19] The attending physician then told the officer that Mr. Taylor could provide breath samples safely. As a result, at 9:50 p.m., Cst. Conway read Mr. Taylor the breath demand. He indicated that he understood the demand. When asked if he would

provide a sample of his breath, he indicated by shaking his head that he would not. The officer asked him a second time, and he replied “no, hard no, because I’m not impaired”. The officer then explained to him the consequences of a refusal, including that the penalty was the same as for impaired driving. When asked a third time, he again refused.

[20] Cst. Conway testified that after the third refusal, he arrested Mr. Taylor for refusing to comply with a demand. Approximately 10 minutes later, Mr. Taylor’s mother attended the hospital. At that time, Mr. Taylor requested to speak to a lawyer. The officer called on-call duty counsel. Mr. Taylor reversed course, saying he did not want to speak to her. The officer handed him the phone anyways, and left the room. The accused’s mother subsequently spoke to the officer outside of the accused’s room. Before leaving the hospital, he served paperwork on the accused.

[21] The officer subsequently sought, obtained, and executed a production order for Mr. Taylor’s medical records at the WGH for the day in question.

Amy Minh

[22] Ms. Minh is a Forensic Alcohol Specialist employed by the RCMP National Forensic Laboratory Services in Surrey, B.C. She was qualified to give expert opinion evidence regarding the physiology of alcohol, including the absorption, distribution, and elimination of alcohol from the human body; and, regarding the pharmacology of alcohol including the effects of alcohol on an individual with respect to impairment and intoxication, and how this relates to the operation of a motor vehicle.

[23] Ms. Minh considered a sample of blood that was analyzed by the Yukon Hospital Corporation Laboratory, the results of which were obtained by way of a production order, and introduced into evidence pursuant to s. 30 of the *Canada Evidence Act*, R.S.C., 1985 c. C-5. The defence took no issue with the continuity of the sample, nor with the integrity of the hospital laboratory. The laboratory analyzed Mr. Taylor's plasma/serum blood sample, taken on July 30, 2019, at 9:25 p.m., to have an alcohol concentration of 89 millimoles of alcohol in one litre of specimen. Ms. Minh testified that this is an equivalent to a whole blood alcohol concentration between 328 and 373 mg%.

[24] She extrapolated that reading to the time of the initial accident report and concluded that Mr. Taylor's blood alcohol reading at that time was between 346 and 409 mg%. If the time of the incident was 15 minutes earlier or later, the calculated blood alcohol concentration would vary by no more than 5 mg%.

[25] Both in Ms. Minh's report and in her testimony, she explained the impairing effects of alcohol on the human body. She described the 346 to 409 mg% range as being associated with severe intoxication. Ms. Minh's evidence was that as the blood alcohol concentration rises above 80 mg%, some or all of an individual's skills necessary to operate a motor vehicle will exhibit impairment. She also testified that an individual with a blood alcohol concentration greater than 150 mg% may display impaired memory and mental confusion.

Johnny Brass

[26] Mr. Brass is a cultural counsellor with the Kwanlin Dun First Nation, and the caretaker of the Jackson Lake Healing Camp. On the day in question, Mr. Brass was

on Fish Lake Road checking his mailbox when he noted an ATV, travelling rapidly, go by him. Shortly after this, he departed and travelled in the same direction. A few hundred metres up the road, he noted the ATV upside down. Two people, a man and a woman, were laying on the road. The man was on his back and the female was face down. When Mr. Brass checked on her, she was able to stand up and take off her helmet. He recognized her as a woman named Kerry Nolan.

[27] Although the male attempted to get up, he was unable to do so. When Mr. Brass went to see the male, he could tell that he was in pain. When he attempted to speak to him, Mr. Brass could not make out what he was saying. He smelled alcohol on his breath.

[28] Mr. Brass decided to call 911. After doing so, he spoke to Ms. Nolan. He understood that she was going to be picked up by a friend. Within a few minutes, another individual arrived on an ATV. The ATV came from the opposite direction to which Mr. Brass had arrived. Ms. Nolan departed the scene on the ATV that had just arrived.

[29] Mr. Brass testified that he waited for the ambulance to arrive. The male situated on the ground remained there until the paramedics tended to him, and then placed him in the ambulance.

[30] Mr. Brass testified that the police showed up within 20 minutes of having been called.

Robert Faulds

[31] Mr. Faulds is a friend and next-door neighbour of the accused. He testified that on the day of the accident, he went to Mr. Taylor's residence in the evening after work. Mr. Taylor and his girlfriend, known to Mr. Faulds as Kerry, were sitting outside. Mr. Faulds noted that Mr. Taylor was drinking beer. He described Mr. Taylor slurring his words, obviously intoxicated.

[32] Kerry suggested to Mr. Faulds that the three of them go for a drive on ATVs. There was one in front of Mr. Taylor's residence, and Mr. Faulds had his own. After cleaning up and having something to eat, Mr. Faulds, Kerry and Mr. Taylor departed on ATVs. Mr. Faulds drove his own ATV, while Kerry drove the ATV in front of Mr. Taylor's trailer. Mr. Taylor was seated behind Kerry. According to Mr. Faulds, they travelled west on a trail beside the Alaska Highway, towards Fish Lake Road. At one point, they separated, on the understanding that they would meet up on Fish Lake Road. Mr. Faulds took a trail which crosses a creek. He understood that Kerry and Mr. Taylor would continue to travel on the side of the Alaska Highway before turning, and travelling up Fish Lake Road. Mr. Taylor estimated that they were apart for four to five minutes, although it could have been longer.

[33] When Mr. Faulds reached Fish Lake Road from the trail he had taken, he saw vehicles parked just down the road. He noted that Kerry was laying on the road, and the ATV was laying on its side. Mr. Taylor was walking around.

[34] Mr. Faulds got off his ATV. First, he went to assist Kerry who was conscious. He relied on his first aid training to ensure that she was not injured. Upon her request, he took off her helmet. She stood up and told Mr. Faulds that she would like to leave.

[35] In Mr. Faulds estimation, Mr. Taylor seemed dazed and confused, but otherwise fine. Mr. Faulds talked to Mr. Taylor, and advised him that he would take Kerry back to the trailer court, after which he would return with his truck to pick up Mr. Taylor and the ATV.

[36] When Mr. Faulds initially came upon the accident scene, he spoke to an individual who was already there and standing outside of his truck. This male indicated that he worked at the Jackson Lake Healing Camp. He told Mr. Faulds that he could not transport the ATV involved in the accident, as he was driving a company truck.

[37] Mr. Faulds testified that prior to departing on ATVs with Kerry and Mr. Taylor, he had drank one beer while eating dinner. He explained that Mr. Taylor is an alcoholic who drinks significant amounts of alcohol daily. According to Mr. Faulds, because of Mr. Taylor's heavy alcohol consumption, he has trouble remembering what happened on previous days.

Positions of the Parties

[38] The defence contends that the police breached Mr. Taylor's s. 10(b) *Charter* right by not providing him his right to counsel without delay. The defence submits that the investigating officer should have given Mr. Taylor his right to counsel when he read him the police warning.

[39] Second, the defence submits that the police restricted Mr. Taylor's options to counsel, and steered Mr. Taylor towards duty counsel after being provided with his right to counsel.

[40] As a remedy, the defence seeks exclusion of the evidence obtained by the police after these breaches, including the alleged refusal.

[41] In the trial proper, although it was conceded that Mr. Taylor's ability to operate a motor vehicle was impaired by alcohol, the defence argues that based on the lack of precision in the investigating officer's notes, there is a reasonable doubt that Mr. Taylor refused the breath demand.

[42] The defence also submits that the Crown has not proved beyond a reasonable doubt that Mr. Taylor was the driver of the ATV.

[43] The Crown asserts that Mr. Taylor was not detained until the moment of his arrest because, before that time, there was no psychological detention. Even if there was a detention, the delay in providing Mr. Taylor with his right to counsel was inconsequential, as he was still being cared for by medical personnel.

[44] The Crown submits that he was properly provided his right to counsel, and all reasonable efforts were made to locate Mr. Coffin. There was no indication that the police were trying to direct him to duty counsel. However, if I were to find that the police fell short of their duty and breached Mr. Taylor's right to counsel, the Crown concedes that the evidence should be excluded.

[45] The Crown argues that there is ample evidence that Mr. Taylor was the driver of the ATV involved in the accident, including his own words to both the paramedic, and Cst. Conway. The only evidence to the contrary comes from Mr. Faulds, but he lost sight of the ATV for at least four or five minutes. Also, some of his evidence is contradicted by Mr. Brass.

[46] Finally, the Crown submits that there were three separate occasions where Mr. Taylor refused to provide samples of his breath.

Analysis

[47] First, the defence argues that the police delayed providing Mr. Taylor with his right to counsel contrary to s. 10(b). The first issue to determine is whether Mr. Taylor was detained when Cst. Conway entered his hospital room at 8:32 p.m., and provided him with the police warning. The Crown argues that although the police prudently cautioned Mr. Taylor, there was no psychological detention.

[48] The Supreme Court of Canada found in *R. v. Suberu*, 2009 SCC 33, at para. 2, that an individual's section 10(b) *Charter* right is triggered at the outset of an investigative detention. The police's obligation to inform a detainee of this right without delay is only subject to concerns for officer or public safety, or reasonable limitations prescribed by law that are justified under s. 1 of the *Charter.*

[49] As the Supreme Court of Canada outlined in *R. v. Le*, 2019 SCC 34, at para. 27, in determining whether a police-citizen interaction is a detention, "…it is essential to consider all of the circumstances of the police encounter. …". In the matter before me,

the officer agreed with defence counsel that when he entered Mr. Taylor's room, he had grounds to arrest the accused based on the information that he had received from the attending paramedic and from Cst. Vanasse. Accordingly, Mr. Taylor was not simply a person of interest; he was an individual who the police officer had reasonable grounds to arrest.

[50] The Supreme Court of Canada in *R. v. Grant*, 2009 SCC 32 considered the question of detention. At para. 32, the Court stated:

> …While the test is objective, the individual's particular circumstances and perceptions at the time may be relevant in assessing the reasonableness of any perceived power imbalance between the individual and the police, and thus the reasonableness of any perception that he or she had no choice but to comply with the police directive. To answer the question whether there is a detention involves a realistic appraisal of the entire interaction as it developed, not a minute parsing of words and movements. In those situations where the police may be uncertain whether their conduct is having a coercive effect on the individual, it is open to them to inform the subject in unambiguous terms that he or she is under no obligation to answer questions and is free to go. …

[51] In the matter before me, the police officer advised Mr. Taylor that he was not obligated to say anything to him. However, the officer certainly did not tell him that he was free to go. That is because he was not at liberty to leave. The police intended to further the investigation by demanding that Mr. Taylor provide samples of his blood for analysis. He would have to remain in the hospital for this procedure.

[52] Interestingly, no reason was provided by Cst. Conway as to why he waited eight minutes to provide Mr. Taylor with his right to counsel. It is also unclear, due to a lack of notes, as to all that happened during that period of time. There is evidence that part way through the eight minutes, Mr. Taylor told the officer that he did not wish to speak

to police. Also, it is clear that during this time period, the officer observed the accused's speech to be slurred.

[53] Having considered all of the circumstances, I find that the police conduct was such that a reasonable person in this situation would conclude that they were not free to leave. As such, I am of the view that Mr. Taylor was detained by the police at 8:32 p.m. He should have been given his right to counsel at that time. The resulting delay is a breach of s. 10(b).

[54] Second, the defence submits that the police violated Mr. Taylor's s. 10(b) right to counsel by failing to provide him with a meaningful opportunity to consult with counsel of choice by restricting the options available to him. The defence relies on *R. v. Bartle*, [1994] 3 S.C.R. 173; *R. v. Fisk*, 2019 ONSC 7111, and *R. v. Kowalchuk*, 2018 ONCJ 688.

[55] In this vein, the defence also takes issue with the note-keeping of the lead investigating officer, which, it is argued, leads to uncertainty as to what actually transpired between the officer and the accused, and thus calls into question whether the police complied with the implementational duties placed on them (*Bartle* at p. 192; *R. v. Willier*, 2010 SCC 37, at paras. 29-33).

[56] The defence points to the fact that Cst. Conway did not make a note of asking Mr. Taylor whether he had another lawyer whom he wished to contact, after the officer determined that Mr. Coffin, the accused's first choice, could not be contacted. The Crown responds that although the officer did not make a note of this part of their discussion, the officer subsequently put this information in a general report.

[57] The police cannot be expected to immediately make notes of every detail of an investigation as it unfolds. At the same time, courts have recognized the duty of police to make, in a timely fashion, accurate, detailed, and comprehensive notes in criminal investigations (*Wood v. Shaeffer*, 2013 SCC 71, at para. 67).

[58] Although an omission of information in an officer's notes does not, on its own, amount to a *Charter* breach, it is open to a court to consider the absence of timely note-taking in its assessment of the credibility and reliability of an officer's testimony (*R. v. Skookum*, 2019 YKSC 8).

[59] One of the difficulties in the case at bar is that Cst. Conway did not commence his detailed report until September 9, 2019, almost six weeks after the incident occurred. He included a number of details in this report that had not been included in his notes. Some of these details were important parts of the investigation. The problematic issue is not that the officer included information in this detailed report for the first time, it is that he only wrote the report approximately six weeks after the incident.

[60] When Cst. Conway tried to contact Mr. Taylor's counsel of choice, Mr. Coffin, he testified that he was unable to do so. However, he had no memory as to the reason he was unable to contact this lawyer. He could not say definitively whether the number was out of service or if the call went unanswered. When the officer decided that he could not reach Mr. Coffin, he returned to speak to Mr. Taylor in his hospital room. In his testimony, although not in his initial notes, the officer stated he would have told the accused that he had difficulty contacting Mr. Coffin. He also testified that Mr. Taylor told

him that he did not have another lawyer he wished to contact. Again, this piece of information was not written in his initial notes.

[61] There is no indication that the officer suggested that he could continue attempts to contact Mr. Coffin, for example, by calling the number again later, or by asking duty counsel if they had a way to contact Mr. Coffin. It must be remembered that before advising Mr. Taylor that he had been unable to contact Mr. Coffin, the officer had called the answering service for Legal Aid. The on-call duty counsel subsequently called the officer back. At that point, the officer may have determined, in consultation with duty counsel, whether Mr. Coffin was reachable.

[62] In *Willier*, at para. 35, the Court reiterated that a detainee who chooses to speak to a specific lawyer should be afforded a reasonable opportunity to speak to counsel of choice:

> …If the chosen lawyer is not immediately available, detainees have the right to refuse to speak with other counsel and wait a reasonable amount of time for their lawyer of choice to respond. What amounts to a reasonable period of time depends on the circumstances as a whole, and may include factors such as the seriousness of the charge and the urgency of the investigation: *Black.* …

[63] Mr. Taylor was in the hospital and the taking of blood samples from him was not pressing. Indeed, over an hour after reading Mr. Taylor his right to counsel and the blood demand, the officer learned from the attending doctor that there was no medical reason that would prevent Mr. Taylor from providing breath samples. As such, at 9:50 p.m., the officer read the accused the breath demand. By this time, the officer had

already spoken to duty counsel, yet no effort had been made to determine whether duty counsel could assist in reaching Mr. Coffin.

[64] Accordingly, I find that the police breached s. 10(b) of the *Charter* by not making reasonable efforts, in the circumstances, to reach counsel of choice. Additionally, although not argued by counsel, I should point out that the officer did not provide Mr. Taylor with any resources which may have assisted him in finding another lawyer to call.

[65] As indicated, Mr. Lane fairly conceded that based on the circumstances of this case, including the nature of the offence alleged in Count 2, that if I were to find that the police officer fell short in the implementational component of the right to counsel, the Crown would not be arguing for inclusion of the evidence, subsequent to the breach, under s. 24(2) of the *Charter*. I agree with this concession and exclude the evidence outlined by the defence.

[66] Based on these findings, I need not address the defence argument that breath demand refusal has not been proved beyond a reasonable doubt.

[67] As a result of these findings, I acquit Mr. Taylor of Count 2.

[68] I turn to the issue of whether the Crown has proved beyond a reasonable doubt that Mr. Taylor was the driver of the ATV involved in the accident. There are admissions by Mr. Taylor to paramedic Paul Husband in this regard. As indicated, he advised Mr. Husband that he had drank a significant amount of beer, that he was driving

too fast, that he fell backwards while attempting to do a wheelie, and that his girlfriend had been on the ATV, but that she had left the scene of the accident.

[69] The defence questions the reliability of these statements based on the fact that Mr. Taylor was heavily intoxicated and had recently been in an accident. Ms. Lavidas also points to the fact that the forensic alcohol specialist testified to the possibility of mental confusion and memory issues in individuals who have a high blood alcohol concentration. However, paramedic Husband testified that although Mr. Taylor was intoxicated, he was aware of his surroundings and responded appropriately to questions. In fact, he specifically stated that Mr. Taylor was not confused, and that on the Glasgow coma scale he rated Mr. Taylor as a 14 out of 15 in terms of mentation, or awareness.

[70] I must also consider the evidence of Mr. Faulds that Mr. Taylor was a passenger on the second ATV when the two ATVs separated on their way to Fish Lake Road. In assessing Mr. Faulds' evidence generally, I have concerns with respect to its reliability. For example, his testimony that Mr. Taylor was walking around and not in any apparent discomfort conflicts with the evidence of Mr. Brass, who was at the scene before Mr. Faulds, that Mr. Taylor was unable to stand up. It is also inconsistent with the video evidence before the Court, which shows Mr. Taylor laying on his back when police and EMS arrived, and with the evidence of Mr. Husband and Cst. Conway, that Mr. Taylor complained of rib pain.

[71] I accept Mr. Brass' evidence that Mr. Taylor was laying on the ground upon his arrival soon after the accident, and that he remained there until paramedics placed him

in the ambulance. Mr. Brass was an objective third party who had not consumed any alcohol.

[72] Also, Mr. Faulds lost sight of the other ATV for a number of minutes. Even if Kerry Nolan was driving the ATV initially, Mr. Faulds did not have any personal knowledge of what occurred after he parted company with her and Mr. Taylor.

[73] The evidence of Mr. Faulds does not raise a reasonable doubt as to whether Mr. Taylor was operating the ATV. The accused's statement to Mr. Husband that he was driving too fast is corroborated, in part, by Mr. Brass' observation of the vehicle travelling rapidly up Fish Lake Road. Mr. Taylor's statement that he had tried to do a wheelie is consistent with Mr. Brass finding Mr. Taylor laying on the ground on his back beside an overturned ATV. Mr. Taylor's statement that he had consumed a lot of beer is consistent with his state of intoxication, and his statement that his girlfriend was on the quad, but had left the accident scene is consistent with the evidence of Mr. Brass.

[74] On the evidence that I accept, I find that the Crown has proved beyond a reasonable doubt that Mr. Taylor was operating the ATV at the time of the accident.

[75] The Crown has led evidence that the accused was prohibited from driving a motor vehicle at the time of this incident.

[76] In the result, I find Mr. Taylor guilty of both the impaired driving and driving while prohibited charges.

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CHISHOLM T.C.J.