

Citation: *R. v. Ruth*, 2022 YKTC 48

Date: 20221028
Docket: 21-00623
Registry: Whitehorse

IN THE TERRITORIAL COURT OF YUKON
Before Her Honour Judge Brass

REX

v.

MARK RUTH

Appearances:
Kevin Gillespie
Mark Chandler

Counsel for the Crown
Counsel for the Defence

REASONS FOR JUDGMENT

[1] BRASS T.C.J. (Oral): Mr. Mark Ruth was charged on Information 21-00623, and that read that:

On or about the 12th day of November in the year 2021 at the City of Whitehorse in the Yukon Territory, did without reasonable excuse refuse to comply with a demand made to him Cst. MIRON, a peace officer, under Section 320.27 of the Criminal Code to immediately provide samples of his breath as in the opinion of Cst. MIRON was necessary to enable a proper analysis of his breath to be made by means of an approved screening device contrary to Section 320.15(1) of the Criminal Code.

[2] The Crown proceeded by summary conviction on that Information and Mr. Ruth entered a not guilty plea. The trial on this matter was held on October 27, 2022. The identity of Mr. Ruth and the jurisdiction were admitted at trial. As well, the voluntariness

of Mr. Ruth's statements were also admitted. Cst. Martine Miron testified on behalf of the Crown and Mr. Ruth testified in his own defence. The Crown also presented video evidence from the police cruiser that Cst. Miron drove on the night of the incident.

[3] We see under s. 320.27 provides in sub. (1):

If a peace officer has reasonable grounds to suspect that a person has alcohol or a drug in their body and that the person has, within the preceding three hours, operated a conveyance, the peace officer may, by demand, require the person to comply with the requirements of ...

...

(b) to immediately provide the samples of breath that, in the peace officer's opinion, are necessary to enable a proper analysis to be made by means of an approved screening device and to accompany the peace officer for that purpose;

[4] Under s. 320.15, that section provides that:

Everyone commits an offence who, knowing that a demand has been made, fails or refuses to comply, without reasonable excuse, with a demand made under section 320.27 ...

[5] On the night of the incident, Cst. Miron was responding to a 911 call regarding a vehicle that had wheel problems and a possible driver who was consuming alcohol. At around 10:40 p.m., the constable came upon the scene of a vehicle doing a fast 360-turn on a residential street in the Riverdale neighbourhood of Whitehorse. The 360-turn, also known as a "doughnut" or a "U-turn", was observed on the video played in court. Mr. Ruth acknowledged that he did do a quick U-turn on the street. The constable deemed that the U-turn was unsafe.

[6] She followed the vehicle, which was a red Ford Ranger, and turned on her police cruiser's flashing lights. The constable observed Mr. Ruth exit the driver seat of the vehicle. On the video it could be seen when the flashing lights were engaged, and it was before the vehicle turned into a driveway. Mr. Ruth informed the Court that he lives at [address redacted]. It was at that address that the constable indicated that she stopped at in her police cruiser.

[7] Mr. Ruth admitted he drove the vehicle from just up the street. The constable informed the Court that she asked Mr. Ruth for his driver's licence, registration, and insurance on the driveway to the house. She informed Mr. Ruth that she was responding to a call and that she referenced the 360-turn that she had observed.

[8] Mr. Ruth had to go into his house to retrieve his driver's licence and had trouble finding the registration.

[9] The constable ran the plate, and the name of the vehicle's ownership did not match between what Mr. Ruth indicated and what the constable heard the dispatch to say.

[10] In the meantime, the constable asked Mr. Ruth if he drank anything. He replied he had a couple of beer an hour and half ago. The constable's investigation changed at this point from investigating unsafe driving to suspecting she was now dealing with a driver with alcohol in his blood on hearing that Mr. Ruth had drank alcohol an hour and a half prior. The constable did not observe any other signs of impairment beyond the admission of the consumption of alcohol within an hour and a half ago. On this basis, the constable made an Approved Screening Device ("ASD") demand.

[11] The constable provided evidence that she explained how the ASD was to be done — like blowing into a straw. She indicated that she asked Mr. Ruth to come with her to the police cruiser to give an ASD sample.

[12] The constable then informed the Court that Mr. Ruth said “no” to the request to accompanying her to the police cruiser to give a breath sample into the ASD. On hearing Mr. Ruth say “no”, the constable indicated she read the ASD card to him and that she explained he will be charged by refusing and said that he said he understood. The constable indicated that Mr. Ruth again said “no”. The constable placed Mr. Ruth under arrest at this point for refusing to provide a breath sample into the ASD.

[13] *Charter* rights to counsel were read to Mr. Ruth. The constable indicated that he said he understood and asked to speak to a lawyer.

[14] At the time of the arrest, Mr. Ruth did not give a reason but later said that it was because he had a cough. In court, Mr. Ruth admitted that he was not truthful about the cough and that it was only an excuse.

[15] Also, at the time of the arrest of Mr. Ruth, he was not placed in handcuffs nor placed into the police cruiser. During that time, he continued to look for the registration of the vehicle and the constable filled out paperwork on the charge, which included his court date. She had to wait for her colleagues to bring the form needed for impounding the vehicle related to the charge of refusing to provide a breath sample.

[16] The Court accepts that the constable had reasonable grounds to suspect that Mr. Ruth had alcohol in his body, based on his admission of consuming beer an hour

and a half prior and that he drove a conveyance within the preceding three hours and based on just seeing him do a fast U-turn on the street and drive up to his driveway. These elements establish that Cst. Miron had reasonable grounds for her suspicion in order to make an ASD demand and require Mr. Ruth to comply with that demand. The Court also accepts that Mr. Ruth refused to comply with that demand.

[17] The question then becomes whether Mr. Ruth had a reasonable excuse to refuse to comply with that demand.

[18] Mr. Ruth indicated that he suffered from Post-Traumatic Stress Disorder (“PTSD”) from his employment with the Whitehorse Correctional Centre as a Corrections Officer. He indicated that he experienced nightmares and had trouble sleeping. He further informed the Court that he was starting counselling at the time of the incident. No evidence was provided to the Court to understand his PTSD or to confirm his condition or counselling sessions.

[19] On the night of the incident, Mr. Ruth indicated that the sight of the police cruiser and being placed in the back seat of that vehicle caused him to freeze and to forget things about that night. Specifically, he indicated that anything to do with the request to do the ASD, the instructions that described how to do the ASD, and the explanation of the consequences of not doing the ASD could not be recalled; nor did he apparently remember that he was arrested that night. He indicated that he knew some request was being made.

[20] Mr. Ruth recalls that a request for his licence, registration, and insurance was made. He indicated that he became focused on the registration when he could not find

it and the name the constable had was not the same one that he had given. He said he was concerned and confused.

[21] During Mr. Ruth's interaction with Cst. Miron, he answered questions when asked, such as retrieving his driver's licence and looking for the registration and insurance that the constable requested. When asked if he had anything to drink, he responded that he had a couple of beer an hour and a half ago.

[22] Mr. Ruth reconfirmed his answer to that question at trial. When asked if he would do the ASD test after being explained how to do it, he gave a definitive answer of "no". When his *Charter* rights to counsel were read to him, he was said to have understood. When asked if he wished to speak to a lawyer, he indicated that he did want to do so and allegedly called a lawyer, and later told the constable that he was satisfied with his call. Mr. Ruth was on his phone in the yard but admitted at trial that he lied about calling a lawyer. With the consequences of being charged with a criminal offence for refusing to do an ASD test, Mr. Ruth still confirmed that he would not do it.

[23] When Mr. Ruth was arrested and *Charter* rights to counsel were read to him, he was said to say that he understood. Mr. Ruth told the constable that he could not blow because he had a cough. At trial, Mr. Ruth admitted that he, in fact, lied about the cough and that it was actually an excuse he gave that night. He admitted at trial that he could have given a breath sample.

[24] From this evidence of the interactions between Mr. Ruth and the constable, the Court observed that Mr. Ruth could coherently answer and respond to questions being asked of him; that Mr. Ruth could give definitive answers to direct questions; that

Mr. Ruth could remember the details, such as those listed above; that Mr. Ruth was capable of lying when he chose to do. Based on these observations, the Court does not accept Mr. Ruth's evidence that he was not able to give a breath sample in the ASD due to an unexplained condition of PTSD.

[25] The question remains whether, on the basis of the evidence that the Court accepts, this Court is convinced beyond a reasonable doubt that the evidence of guilt of the accused has been made.

[26] The Court accepts that the ASD demand was made on reasonable suspicion, and that Mr. Ruth flat out said "no". No inference needs to be made about his answer to the ASD demand.

[27] The Court accepts that Mr. Ruth was read his *Charter* rights and given the opportunity to call a lawyer. The Court heard that Mr. Ruth did not actually call a lawyer but spoke to someone else. The Court was left wondering why he did not just call his friend John Dixon to ask where the vehicle's registration was since, at trial, defence placed a lot of emphasis on Mr. Ruth's confusion and concern about the registration document. He certainly was provided the opportunity to make that call as the constable was completing the paperwork in the police cruiser.

[28] The Court accepts that the constable did not have an obligation to show Mr. Ruth the readily available ASD when he flat out said "no" to the request to take the ASD test,

nor did she have an obligation to make a second demand or go over his *Charter* rights again, nor explain the consequences of saying “no” when he expressed he understood and again said “no”.

[29] The Court also accepts that the constable did not have an obligation to turn on the video camera or put on the microphone, although accepts that it would have been helpful had she done so.

[30] The Court also accepts that the constable did not have an obligation to put handcuffs and place Mr. Ruth into the police cruiser when it was her intention to only serve him his documents at that moment. The Court did note that the constable was alone at first when dealing with Mr. Ruth, who was also with his partner, Ms. Reynolds, who was also present. The Court acknowledges the constable for not making this night more difficult for Mr. Ruth than she could have by putting handcuffs on him and putting him into the police cruiser.

[31] Proof of *mens rea* is met by the application of the general principle that the person usually intends to cause consequences which are predictable. Here, Mr. Ruth flat out said “no” and the only predictable consequence was that he fully intended to refuse to do the ASD test. His claimed medical condition is distinguishable from Mr. DeCaire (*R. v. DeCaire*, 2020 ONSC 2033), who was in extreme physical pain and his “no” was not a conditional answer as it was in Mr. Turner’s case (*R. v. Turner*, 2017 YKTC 31).

[32] Based on the considerations of all the evidence cited above, the Court was convinced beyond a reasonable doubt that Mr. Ruth is guilty as charged on Information 21-00623.

BRASS T.C.J.