Citation: *R. v. Mullin,* 2023 YKTC 41

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Docket: 21-00711
Registry: Whitehorse

IN THE TERRITORIAL COURT OF YUKON
Before Her Honour Judge Ruddy

REX

v.

THORIN MCGEE MULLIN

Appearances:
Kathryn Laurie — Counsel for the Crown
Amy Steele — Counsel for the Defence

REASONS FOR JUDGMENT

[1] RUDDY T.C.J. (Oral): Thorin Mullin has entered not guilty pleas to three offences alleged to have occurred on Christmas Eve 2021, including a breach of the abstain condition on a release order contrary to s. 145(5)(a) of the *Criminal Code*, failure to stop after an accident contrary to s. 320.16, and impaired driving contrary to s. 320.14.

[2] Crown relies on the evidence of five witnesses: two civilians, Kelly McGlashan and Chris Chrona, two police officers, Cpl. Manweiller and Cst. Marland, and Criminal Intelligence Analyst, Geoffrey Abbott. Mr. Mullin testified in his own defence.

[3] At issue is whether the Crown has proven each of the offences to the requisite standard of proof beyond a reasonable doubt. This determination requires consideration of both the credibility and sufficiency of the evidence.

Overview of the Facts

[4] On December 24, 2021, Cst. Marland was advised of a report of a single vehicle accident and possible impaired driver made to the RCMP at 6:40 p.m. The report provided a license plate number and described the vehicle as a silver or grey Toyota Tacoma. Cst. Marland made a patrol to the area indicated but was not able to locate the suspect vehicle.

[5] Approximately one hour later, Ms. McGlashan and Mr. Chrona were in their truck returning home from a family gathering in the Copper Ridge Subdivision. Also present in the vehicle were the couple's 15-month-old daughter and Mr. Chrona's mother. As they drove down Hamilton Boulevard, both Ms. McGlashan and Mr. Chrona observed a silver truck that had gone off the roadway onto the centre median. They continued down Hamilton Blvd, stopping for a red light at the intersection of Hamilton Boulevard and the Alaska Highway.

[6] Once stopped, both Ms. McGlashan and Mr. Chrona looked in the rearview mirror and observed an approaching vehicle; both believed that it did not appear the vehicle was going to stop in time; and both indicated that the vehicle bumped into the rear end of their truck. The force was not enough to cause the occupants of Ms. McGlashan's and Mr. Chrona's truck to move forward. Mr. Chrona indicated that

the vehicle struck their receiving hitch. There was no observable damage to either vehicle and no injuries suffered by any of the occupants.

[7] Ms. McGlashan and Mr. Chrona exited their truck and approached the vehicle, which they described to be a silver truck. They believed it to be the same vehicle they had observed in the median on their way down Hamilton Boulevard

[8] In his testimony, Mr. Mullin admitted that he was the driver of the silver truck. Ms. McGlashan had a brief conversation with Mr. Mullin. The exact words are somewhat in dispute, but Ms. McGlashan and Mr. Mullin agree that Ms. McGlashan accused Mr. Mullin of hitting her vehicle and Mr. Mullin denied it. Ms. McGlashan went to the rear of Mr. Mullin's vehicle and took a photograph of the license plate. Mr. Chrona, meanwhile, contacted 911. Ms. McGlashan then went to the passenger side of Mr. Mullin’s vehicle and opened the door. At this point, Mr. Mullin pulled away and left the scene.

[9] At no time did Mr. Mullin exit his vehicle or provide his name, registration, insurance, or any other identifying information to Ms. McGlashan or Mr. Chrona.

[10] Mr. Chrona’s 911 call was made at 7:50 p.m. He and Ms. McGlashan provided the police with the vehicle description and licence plate, and a basic description of the driver as being a Caucasian male in his mid-thirties with blond or gingery hair. The licence plate provided was the same as that in the earlier report made to the RCMP at 6:40 p.m.

[11] The licence plate was registered to Mr. Mullin's father, but the physical description of the driver matched Mr. Mullin who is well known to the police. Accordingly, Officers Marland and Manweiller went in search of Mr. Mullin. Cst. Marland ultimately located the suspect vehicle, with the engine running, in the driveway of Mr. Mullin's home. She advised Cpl. Manweiller that she had located the vehicle.

[12] When Cpl. Manweiller arrived, the two officers approached the residence. Mr. Mullin came out onto the front landing. Cpl. Manweiller noted indicia of consumption and impairment and arrested Mr. Mullin for impaired operation of a conveyance. Mr. Mullin indicated that his young daughters were in the home and agreed to allow Cpl. Manweiller inside to check. She spent approximately one minute searching the home, but no one else was inside.

[13] While Cpl. Manweiller was inside the home, Mr. Mullin repeatedly asked Cst. Marland what was going on. He also threatened to shoot himself. During this exchange, Cst. Marland could smell liquor on Mr. Mullin's breath.

[14] Cpl. Manweiller ultimately transported Mr. Mullin to the Arrest Processing Unit ("APU"). Throughout his dealings with police, Mr. Mullin was belligerent, combative, and inappropriate. This included yelling and banging on the Silent Patrolman barrier; alternating between aggressively flirting with Cpl. Manweiller and calling her derogatory names; refusing to respond when read his *Charter* rights, police caution, and breath demand; demanding a sandwich when asked if he wanted to call counsel; and

challenging an officer at the APU to a fight. Because of his aggressive behaviour, Cpl. Manweiller determined that it was not safe to take breath samples from Mr. Mullin.

[15] Mr. Mullin was lodged in cells with a direction that he be held until sober so that his mental status could properly be assessed, given his threat to shoot himself. He was released from the APU at 8:35 the following morning.

Issue

[16] As noted, the primary issue is whether the Crown has met its burden of proving each of the three offences beyond a reasonable doubt. This assessment requires consideration of the credibility and reliability of the evidence as well as a determination of whether the evidence that is found to be credible and reliable is sufficient to support a conviction on each count.

Breach of Release Order

[17] The charge of breaching a condition of a release order contrary to s. 145(5)(a) can be dealt with in a summary fashion. Through his counsel, Mr. Mullin admitted that he was subject to the terms of a release order on December 24, 2021, that included a condition that he not possess or consume alcohol. In his testimony, Mr. Mullin admitted to consuming considerable alcohol on December 24, 2021, including two cans of beer and three-quarters of a bottle of Wiser's whisky, though he was adamant that his consumption occurred after he arrived home, but before the police arrived. In other words, he denies having consumed alcohol before or during the time of driving a motor vehicle.

[18] Mr. Mullin's admission of drinking is corroborated by the evidence of Cpl. Manweiller and Cst. Marland, both of whom smelled liquor on Mr. Mullin's breath.

[19] Based on this evidence, I am satisfied, beyond a reasonable doubt, that Mr. Mullin possessed and consumed alcohol contrary to the terms of his release order on December 24, 2021. Accordingly, a conviction will be entered on count 1.

Failure to Remain at the Scene

[20] Turning to count 3 on the Information, the failure to stop after an accident, s. 320.16(1) of the *Criminal Code* reads:

> Everyone commits an offence who operates a conveyance and who at the time of operating the conveyance knows that, or is reckless as to whether, the conveyance has been involved in an accident with a person or another conveyance and who fails, without reasonable excuse, to stop the conveyance, give their name and address and, if any person has been injured or appears to require assistance, offer assistance.

[21] A determination of whether Mr. Mullin failed to stop after an accident requires three questions to be answered:

1. Did Mr. Mullin's truck make contact with Ms. McGlashan's and Mr. Chrona's truck?

2. If so, did the contact amount to an "accident"? and

3. If so, did Mr. Mullin fail to stop his vehicle and comply with the requirements of s. 320.16 of the *Criminal Code*.

[22] The first question is a factual one which turns on an assessment of witness credibility. Both Ms. McGlashan and Mr. Chrona insisted that Mr. Mullin had struck their vehicle. Both indicated the amount of force was minimal, agreeing that it was not enough to cause their bodies to move forward, there was no visible damage to either vehicle, and no injuries were suffered.

[23] In terms of credibility, Mr. Chrona, in particular, was a very fair and objective witness. He readily agreed that Mr. Mullin was not driving fast when he hit them, and that it was entirely possible the accident was a result of the icy conditions. Overall, Mr. Chrona's evidence was very credible and persuasive.

[24] With respect to Ms. McGlashan, there were some issues with her recollection of what exactly was said in her conversation with Mr. Mullin, and she conceded that her level of anger did affect her ability to recollect some details; however, she too was unshaken on the question of whether Mr. Mullin had struck their vehicle, and her evidence was consistent with that of Mr. Chrona.

[25] I would also note that it makes no logical sense for Ms. McGlashan and Mr. Chrona to have exited their vehicle to confront Mr. Mullin, someone not known to them, if there had not been contact between the two vehicles.

[26] For the most part, Mr. Mullin maintained that his vehicle had not actually made contact with Ms. McGlashan's and Mr. Chrona's vehicle. However, as conceded by Mr. Mullin's counsel, his evidence can only be described as extremely problematic. He was frequently non-responsive and argumentative. Furthermore, he displayed a marked lack of respect for the law, agreeing that he does not respect rules, and seemed

to suggest that committing an offence is not a problem so long as he only breaks one law at a time. This attitude is certainly suggestive of someone who would have no difficulty lying or misleading the Court to escape liability.

[27] Furthermore, Crown was able to provide copies of Facebook posts, filed as exhibit 5, that Mr. Mullin concedes were written by him and which include an admission in relation to the accident. Specifically, he wrote "I bumped into their tow hitch no damage but she is telling the courts I must have. Been drunk. Man hating bitch is what I call it." (emphasis added). While he explained in his evidence that he was only writing about what he had been charged with in layman's terms and was not admitting there had been actual contact, this is not how the post reads.

[28] In addition, Mr. Mullin seemed to concede that there had been actual contact on a couple of occasions in cross-examination, before reverting back to his story that there had been no contact. When it was put to him that he had bumped into the tow hitch of Ms. McGlashan and Mr. Chrona's vehicle, he first responded, "Apparently" before quickly following up with, "I don't think I did". Later, when speaking about Ms. McGlashan's evidence that she had felt a bump, Mr. Mullin said, "you know what, it was her tow hitch; get over it".

[29] Based on Ms. McGlashan and Mr. Chrona's evidence, I am satisfied beyond a reasonable doubt that Mr. Mullin did indeed bump into their vehicle. I do not find Mr. Mullin's denial about contact between the vehicles to be at all believable. At the very least, he was reckless as to whether there had been contact.

[30] Question 2 is whether the contact between the two vehicles amounted to an accident, particularly in light of the fact that the force of impact was minimal, there was no damage, and there were no injuries. In my view, this question is readily answered in the British Columbia Court of Appeal decision in *R. v. Chase*, 2006 BCCA 275. The facts in that case involved the accused pulling up behind a cyclist. When the cyclist refused to move, the accused bumped the bicycle with his vehicle before driving away. As in the case at bar, the impact was minimal and there was no damage or injury caused. On appeal, the Court addressed whether these facts gave rise to a finding of accident necessitating the accused to stop and provide the requisite information under a previous iteration of the *Criminal Code* section requiring someone to stop after an accident. At para. 40 the Court held:

> 40 There is no reference in s. 252(1) to damage. To make "damage" an external element of an offence charged under s. 252(1) could only be justified if the meaning of "accident" were limited so as to include only those incidents where damage results. The commonly understood meaning of "accident" is not so limited and nothing in the wording of the section suggests to me that such a meaning was intended. Instead, the obligation of a person having charge, care or control of a vehicle to stop the vehicle, give his or her name and address, and, where any person has been injured or appears to require assistance, offer assistance, is triggered by the involvement of the vehicle in an accident, not by the existence of damage or injury.

[31] In my view, these comments are equally applicable to the current *Criminal Code* section. Based on this statement of the law, I am satisfied that the contact between the two vehicles in this instance amounted to an accident, triggering obligations under s. 320.16.

[32] In answer to question 3, Mr. Mullin concedes that he did not comply with his obligations in this regard. Specifically, he failed to give his name and address as required. Mr. Mullin suggested that he did not remain to provide this information for several reasons. Firstly, he was driving a vehicle that belonged to his father and knew his father would be angry if the vehicle was towed; secondly, he was driving without a valid driver's license; and thirdly, because he felt Ms. McGlashan was acting crazy and he did not know if she was on drugs or was going to shoot him.

[33] I do not find the last of these explanations to be particularly credible. Mr. Mullin did not provide any facts to support a conclusion that he was in any physical danger from Ms. McGlashan. Further, Mr. Mullin is someone who thinks nothing of routinely challenging the police, both verbally and physically. I am hard pressed to believe that he was truly afraid of Ms. McGlashan. Instead, I am satisfied that Mr. Mullin actually left the scene of the accident for the first two reasons he stated: concerns about his father's reaction and the lack of a valid driver's licence.

[34] However, neither of these reasons amount to a reasonable excuse for failing to comply with the provisions of s. 320.16. I find Mr. Mullin guilty of count 3.

Impaired Driving

[35] This then leaves the question of whether the evidence is sufficient to prove the remaining count of impaired driving. The law with respect to impaired driving has been well established since the mid-1990s. In *R. v. Stellato* (1993), 12 O.R. (3d) 90 (C.A.), the Supreme Court of Canada adopted the following passage from the lower Court decision of the Ontario Court of Appeal:

> …[B]efore convicting an accused of impaired driving, the trial judge must be satisfied that the accused's ability to operate a motor vehicle was impaired by alcohol or a drug. If the evidence of impairment is so frail as to leave the trial judge with a reasonable doubt as to impairment, the accused must be acquitted. If the evidence of impairment establishes any degree of impairment ranging from slight to great, the offence has been made out.

[36] This statement of the law was elaborated on in the oft-quoted decision of the Alberta Court of Appeal in *R. v. Andrews*, 1996 ABCA 23. In para. 29, the Court set out the following guiding principles:

> …
>
> (1) the onus of proof that the ability to drive is impaired to some degree by alcohol or a drug is proof beyond a reasonable doubt;
>
> (2) there must be impairment of the ability to drive of the individual;
>
> (3) that the impairment of the ability to drive must be caused by the consumption of alcohol or a drug;
>
> (4) that the impairment of the ability to drive by alcohol or drugs need not be to a marked degree; and
>
> (5) proof can take many forms. Where it is necessary to prove impairment of ability to drive by observation of the accused and his conduct, those observations must indicate behaviour that deviates from normal behaviour to a degree that the required onus of proof be met. To that extent the degree of deviation from normal conduct is a useful tool in the appropriate circumstances to utilize in assessing the evidence and arriving at the required standard of proof that the ability to drive is actually impaired.

[37] The Court in *Andrews* went on to state at para. 31:

> …It is not deviation from normal conduct, slight or otherwise, that is in issue. What is in issue is the ability to drive. Where circumstantial evidence alone or equivocal evidence is relied on to prove impairment of that ability, and the totality of that evidence indicates only a slight deviation from normal conduct, it would be dangerous to find proof beyond a reasonable doubt of impairment of the ability to drive, slight or otherwise.

[38] An assessment of whether the evidence establishes impairment by alcohol at the time of driving requires consideration of the following factors:

- The previous report of a possible impaired driver and accident involving the same vehicle Mr. Mullin was driving at the time of the accident;
- The silver truck observed in the median;
- The accident in which Mr. Mullin bumped into Ms. McGlashan's and Mr. Chrona's vehicle;
- Ms. McGlashan's and Mr. Chrona's opinion evidence as to impairment;
- Mr. Mullin's failure to remain at the scene;
- Mr. Mullin's evidence of consumption; and
- Cpl. Manweiller's and Cst. Marland's evidence with respect to indicia of impairment.

[39] In considering these factors, I am mindful of the fact that each is not viewed in isolation, but rather it is the totality of the evidence that must be considered. That being

said, the credibility and reliability of each piece of evidence is relevant to the question of relative weight to be accorded to each factor.

[40] With respect to the report made at 6:40 p.m. of an accident and possible impaired driver, the evidence does satisfy me that a report was indeed made, and, as the licence plate was provided in the report, that the report involved the same vehicle Mr. Mullin was driving. Based on Mr. Mullin's testimony that he was the only one driving the vehicle that day, I am also satisfied that he would have been the driver at the time the report was made. However, beyond the fact of the report being made, I was provided with no evidence regarding what the caller had actually observed with respect to driving pattern or indicia of impairment that prompted them to make the report; therefore, there was no ability to assess the credibility or reliability of the information provided to the police. In my view, this untested, non-specific information must be given minimal weight.

[41] With respect to the silver truck in the median, there are two questions relevant to the use that can be made of this factor in assessing impairment to operate a motor vehicle: was it the same vehicle Mr. Mullin was driving and how did the vehicle come to be in the median?

[42] With respect to the former question, whether it was indeed Mr. Mullin and his vehicle located in the median, Ms. McGlashan testified that Mr. Mullin's truck looked like the vehicle in the median. Mr. Chrona was somewhat more certain that it was the same vehicle, but also said that he did not think much of it when they passed the vehicle in the median. Given the relative lack of traffic on the evening and the evidence of

Ms. McGlashan and Mr. Chrona, I find that there is circumstantial evidence indicating that there is a high likelihood that the vehicle seen in the median was the same vehicle being operated by Mr. Mullin.

[43] With respect to the second question, how the vehicle came to be in the median, there is no evidence of the driving that led up to the vehicle going off the road into the median. Furthermore, the evidence at trial was universally clear that the roads were icy that evening. While suspicious, I cannot conclude that the driver of the vehicle in the median was necessarily impaired.

[44] In terms of the accident, Ms. McGlashan testified that she did not believe that Mr. Mullin had bumped into them because of the slippery conditions because she suspected it was the same vehicle as the one in the median. Mr. Chrona, however, agreed that the roads were icy, and that sliding would not have been unusual for the average driver in the conditions. Given the icy road conditions, while impairment by alcohol is certainly a possible explanation for the accident, it is by no means the only reasonable explanation. I cannot conclude, therefore, that Mr. Mullin bumping into the McGlashan/Chrona vehicle was necessarily indicative of impairment by alcohol.

[45] Turning to the evidence from Mr. Chrona and Ms. McGlashan on the question of impairment, while Mr. Chrona believed Mr. Mullin to be intoxicated, he agreed, on cross-examination, that it was possible that he was not. Mr. Chrona did not note any smell of alcohol, slurred speech, fine or gross motor coordination issues. He had, rather, made the assumption of intoxication based on the fact that Mr. Mullin did not get out of his

vehicle as one would expect in the circumstances, and the fact that Mr. Mullin drove away.

[46] Ms. McGlashan was more adamant in her belief that Mr. Mullin was intoxicated. However, when asked about the basis for her belief, she said that it was hard to explain, but that it was the fact he was not willing to engage in conversation or get out of his vehicle and exchange information which led her to feel that he was guilty of doing something he was not supposed to be doing. This makes it clear that, like Mr. Chrona, Ms. McGlashan's opinion with respect to impairment was largely because Mr. Mullin did not respond in the way she believed the average person would in the circumstances.

[47] Again like Mr. Chrona, Ms. McGlashan did not note any smell of alcohol, or any fine or gross motor coordination issues. The only real indicia Ms. McGlashan did articulate was "a little slurring of words" in the brief conversation she had with Mr. Mullin. However, as previously alluded to, the evidence with respect to the conversation between Ms. McGlashan and Mr. Mullin was the only real area of her evidence in which there was some concern about reSliability of her recollection. Not surprisingly, she had some difficulty recalling specifics of what was said, but she also contradicted her statement to police in relation to the conversation. Most notably, she testified she was certain that Mr. Mullin had said "are you calling the police". When it was put to her that she had not told the police this, she insisted that she had. The 911 call was put to her and she did agree that she did not tell the operator, but insisted she had told the police in the statement she provided later. In that statement, she said "he was like, what are you doing, like what is going on". When put to her, she maintained that "are you calling

the cops" was somehow relayed to the police as it was implicit in Mr. Mullin saying, "what are you doing".

[48] Reliability concerns with respect to Ms. McGlashan's evidence on the nature and extent of the conversation between her and Mr. Mullin do make it difficult to assess the reliability of her assessment of his speech as a little slurred.

[49] Next, Mr. Mullin's failure to remain at the scene was something both Ms. McGlashan and Mr. Chrona factored into their belief that Mr. Mullin was intoxicated. Mr. Mullin offered three explanations for his departure unrelated to intoxication: his concern about his father's reaction, particularly if his father's vehicle was towed; his lack of a driver's license; and his fear of what Ms. McGlashan might do. For reasons already stated, I do not accept his evidence that fear prompted his departure. Nonetheless, his other two explanations are not implausible, and are indicative of the fact that an accused person's decision to flee the scene could well relate to reasons other than impairment, such that impairment is not the only reasonable inference than can be drawn.

[50] Based on the foregoing, I conclude that the cumulative evidence up to and including Mr. Mullin fleeing the scene of the accident falls well short of proving beyond a reasonable doubt that Mr. Mullin's ability to operate a motor vehicle was impaired by alcohol.

[51] This leaves what is really the central question on the issue of impaired driving in this case, namely what use can be made of the after-the-fact police observations of

impairment in assessing whether the Crown has proven that Mr. Mullin was impaired at the time of driving.

[52] Cpl. Manweiller described Mr. Mullin as quite intoxicated when she arrested him. She noted the odour of liquor on his breath, slurred speech, flushed face, and red, bloodshot eyes. She further described inappropriate behaviour one would not expect of someone sober, even one who harbours the degree of animosity for the police that Mr. Mullin does. This behaviour included alternating between belligerent, combative behaviour and sexually harassing behaviour, and providing entirely inappropriate responses such as demanding a sandwich when asked if he wanted to call a lawyer.

[53] Cst. Marland noted that Mr. Mullin had left the vehicle with the engine running in the driveway, and she confirmed the smell of alcohol on Mr. Mullin's breath, the slurred speech, and the combative and sexually inappropriate behaviour. She also noted that Mr. Mullin asked her the same questions repeatedly, in the brief period when Cpl. Manweiller was inside the home, with no apparent recognition of the repetition.

[54] It is also notable that Mr. Mullin was well known to both officers, who have dealt with him both while sober and intoxicated. In their opinion, and based on their experience, he was intoxicated when they were dealing with him on this evening.

[55] In assessing the strength of the officers' evidence with respect to the question of impaired ability to operate a motor vehicle, it must be remembered that the smell of alcohol, flushed face, and bloodshot eyes observed are all indicative of consumption, but not necessarily of impairment. The officers did not note any issues with fine or gross motor coordination, nor, for reasons already stated, is there any driving pattern

necessarily indicative of impairment. However, I am of the view that the slurred speech plus the bizarre and inappropriate behaviour combined with the officers' knowledge of Mr. Mullin both intoxicated and sober is sufficient to establish beyond a reasonable doubt that Mr. Mullin was impaired at the time he dealt with the police, and that the degree of impairment was sufficient to find that his ability to operate a motor vehicle was impaired by alcohol at that point in time.

[56] Indeed, Mr. Mullin admitted as much, but he maintained that his state of intoxication when dealing with the police was a result of consumption of alcohol after he arrived home and not before or while driving. He says immediately upon getting home he shot-gunned two cans of beer and consumed three-quarters of a 26 oz bottle of straight Wiser's whisky with the express purpose of getting drunk as quickly as he could, as he expected the police to come to arrest him and he did not want to spend time confined in a cell while sober.

[57] It must be remembered that a conviction for impaired driving requires that I be satisfied that Mr. Mullin's ability to operate a motor vehicle was impaired by alcohol at the time of driving, not at the time he dealt with the police some 26 minutes later. Unlike breath readings, there is no statutory presumption that the state of impairment later observed by the police was the state of impairment at the time of driving. Having already concluded that the evidence up to Mr. Mullin fleeing the scene is insufficient to support a conviction, if I am satisfied that Mr. Mullin either consumed alcohol in the intervening period or I have a doubt as to whether he did, the officer's after-the-fact evidence as to impairment could not, in my view, support a finding that Mr. Mullin's ability to operate a motor vehicle was impaired by alcohol at the time of driving.

[58] As noted, Mr. Mullin's evidence was highly problematic and his credibility suspect.

[59] On the one hand, evidence that would tend to contradict Mr. Mullin's assertion includes the fact that Cpl. Manweiller did not observe any liquor containers readily visible in Mr. Mullin's home, though it must be recognized that she was in the home for less than one minute looking only for Mr. Mullin's shoes and children, and not in cupboards or the garbage for liquor containers. In addition, I have a very real question about whether reaching the state of intoxication observed by the police, even with the amount of alcohol Mr. Mullin indicates he consumed, would even have been physically possible in the brief intervening period without there having been earlier consumption given the fact that intoxication does not immediately follow consumption as it requires a certain amount of time for the alcohol to be absorbed into the system; however, I note that any finding that Mr. Mullin's version is impossible or improbable on this basis would require expert evidence on absorption rates that I simply do not have before me.

[60] On the other hand, there is some support for Mr. Mullin's assertion of intervening consumption in the fact that Cpl. Manweiller located a Wiser's whisky cap in his pocket, though the evidence is silent on when it was put there. In addition, and more importantly, I note that there was a marked difference between Mr. Mullin's demeanour as observed by Ms. McGlashan and Mr. Chrona and that later observed by the police. This lends some credence to the possibility that there was consumption of alcohol in the 26-minute period between the observations of Ms. McGlashan and Mr. Chrona and those of Cpl. Manweiller and Cst. Marland.

[61] Ultimately, I find that I have a great deal of difficulty accepting Mr. Mullin's assertion that he had consumed absolutely no alcohol prior to arriving home after the accident, but I also find that I cannot discount the possibility of alcohol consumption between Mr. Mullin's arrival home and his involvement with the police. Because of this, I cannot conclude that the state of impairment observed by the police was the state of impairment at the time of driving. Accordingly, I am not satisfied that the Crown has proven the offence of impaired driving beyond a reasonable doubt and an acquittal must be entered on count 2.

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RUDDY T.C.J.