Citation: *R. v. Blake,* 2025 YKTC 4

Date: 20250214
Docket: 23-00255
Registry: Whitehorse
Heard: Old Crow

IN THE TERRITORIAL COURT OF YUKON
Before Her Honour Judge Caldwell

REX

v.

DANIEL ROSS BLAKE

Appearances:
Arthur Ferguson — Counsel for the Crown
Jonathan Squires — Counsel for the Defence

RULING ON *CHARTER* APPLICATION
AND REASONS FOR JUDGMENT

[1] Mr. Blake is charged with impaired driving and drive "over 80" stemming from a boating accident in Old Crow, Yukon, on May 20, 2023.

Partial Outline of Uncontested Facts

[2] Mr. Blake took four other individuals out onto the Porcupine River during the May "Caribou Days". The four individuals were Mr. Blake's cousin Clayton, Mr. Blake's three-year-old son Thomas, Ms. Florissa Bain, and Ms. Kaiya Denechezhe.

[3] The group proceeded up the Porcupine River in Mr. Blake's boat with Mr. Blake operating the boat. The river was cold, with chunks of ice still floating in it, as it was shortly after the spring break up.

[4] After a period of time, the group turned to return to Old Crow. Mr. Blake did not slow the boat down as it approached a large island in the middle of the river. Mr. Blake drove the boat into the island with such sufficient force that it travelled up and over the riverbank and landed inland roughly 10 feet from the river's edge. Ms. Bain was thrown from the boat due to the force of the impact. She was swept down river with the current, weighted down by her winter clothing including boots and coat. She was screaming, panicked, and thought she was going to die.

[5] After some period of time, Clayton managed to grab Ms. Bain, pulling her out of the river. They were both soaking wet. They found the rest of the group and quickly built a fire in an attempt to ward off hypothermia. The group did not stay long, however, as they knew they had to get back to Old Crow.

[6] They managed to get the boat back in the water. Ms. Bain and Clayton refused to allow Mr. Blake to operate the boat. Clayton drove it back to Old Crow.

[7] Others summoned the local police once the group returned to the community. Mr. Blake was located in a wall tent (the "tent") on his girlfriend Ms. Sophia Flather's property. The police arrested Mr. Blake for impaired operation shortly after he was located.

Crown Concessions

[8] At the end of the case, Mr. Ferguson, for the Crown, concluded that there was insufficient evidence for a finding of guilt on the impaired operation charge. I defer to that conclusion and therefore dismiss that charge.

[9] The Crown is not contesting Mr. Blake's standing to bring the s. 8 *Charter* claim regarding right to privacy in the wall tent.

[10] The Crown further concedes that a wall tent can be classified as a "dwelling" and that this wall tent meets that definition.

Issues

[11] As I understand it, two issues remained upon completion of the case.

1. Were there exigent circumstances which permitted the police to enter the tent without a warrant? and

2. Did the Crown establish beyond a reasonable doubt that the prerequisites have been established for a finding of guilt under s. 320.14(1)(b) of the Criminal Code?

The Trial Proceedings

[12] I heard from four witnesses. The arresting officer, Constable Tate, testified on the trial and on the *Charter* application. Mr. Daniel Blake testified on the *Charter* only. Finally, Ms. Florissa Bain and Ms. Kaiya Denechezhe testified on the trial.

[13] I will not review the evidence of all of the witnesses as much of the evidence was either background or pertained to issues that ultimately were conceded.

Did Exigent Circumstances Exist?

[14] I find that exigent circumstances did exist to allow Cst. Tate to enter the tent without a warrant.

[15] The Crown has conceded that this wall tent is a dwelling and, as I understand it, that Mr. Blake had some degree of privacy interest in the tent.

[16] I turn first to Cst. Tate's evidence regarding the reason for his entry. Some background is necessary for context.

[17] Cst. Tate had arrived in Old Crow roughly one month prior to this incident. He said that people usually flag officers down or go in person to the detachment to get help as 911 calls are routed through Whitehorse which is roughly 800 km to the south. In his experience, the people in Old Crow often get frustrated with the questions asked by the Whitehorse operators and the operators' lack of knowledge of the community.

[18] A resident, Ms. Jeneen Njootli, came to the detachment around 8:30 p.m. and told them that there had been a boating accident, that Mr. Blake was impaired, and that he was the driver. Cst. Watson was with Cst. Tate in the detachment when Ms. Njootli came by. Cst. Watson was more familiar with the community at that point, so she led the way to the homes that Ms. Njootli named as the locations of those involved. Ms. Njootli was very emotional, and wanted the police to come quickly to make sure everyone was okay.

[19] The community is very small, so it took only five minutes to get there. Ms. Crystal Linklater was outside her home. She was hysterical, screaming, shouting, and upset. She had not seen the accident. Cst. Tate went into Ms. Linklater's home and spoke with Ms. Bain. She relayed that she had been on the boat, she was thrown into the water, and she thought that she was going to die. Her neck was sore, and she had inhaled water. She also said that Mr. Blake was driving, and that he was drunk.

[20] Cst. Tate learned that Ms. Denechezhe was not injured, but was in the shower as there were concerns about hypothermia. He was unable to speak to Ms. Denechezhe as a result.

[21] He attempted to speak to the third adult that was in the boat, Clayton, but Clayton did not want to speak with police though he did say he was not injured.

[22] Cst. Tate then learned that Mr. Blake was in the tent that had been erected on Ms. Flather's property. The tent had four canvas walls and a doorway that was zippered shut. He testified that he called out to Mr. Blake and identified himself as RCMP. He got no response.

[23] Cst. Tate testified that he made the decision to enter the tent as he did not know if Mr. Blake was injured and thus couldn't answer the officer, or if Mr. Blake was ignoring the officer. Cst. Tate was concerned about injury because he had learned that Mr. Blake was driving a boat while intoxicated and that the boat had just been in a collision. He felt that it was necessary to check on Mr. Blake's well-being.

[24] He saw Mr. Blake lying on top of a foam mattress and sleeping bag. Mr. Blake did not respond when the officer entered and called to him. Upon entry, he was 10 to 15 feet from Mr. Blake.

[25] He went over to Mr. Blake and shook him to wake him. At that point he smelled alcohol on Mr. Blake and noticed other signs of impairment. He arrested him for impaired operation and helped him to leave the tent. He did not see any obvious injuries on Mr. Blake. He concluded that Mr. Blake did not need medical attention in part because Mr. Blake did not ask for it.

[26] In cross-examination it was suggested to the officer that he entered the tent because of the time constraints surrounding an impaired investigation rather than any concern for Mr. Blake's well-being. He responded that he had heard that Mr. Blake was intoxicated but his first priority was individual safety, in this case the safety of Mr. Blake.

Findings of Fact

[27] I find that the officer did have concern for Mr. Blake's health and safety, and that this concern was the primary reason for the officer's entry.

[28] I make this finding having assessed the context of the situation in which the officer found himself at that point in time. It is easy to look back roughly 18 months later, knowing now that Mr. Blake was totally fine, and therefore conclude that there was no reason to enter the tent.

[29] The situation on May 20, 2023, was very different from that on the trial date and the officer had much less information. He had encountered two women who were

extremely upset, crying, and screaming. He learned of an accident and that one person had been thrown into the river such that she thought she was going to die. Another individual possibly was suffering from hypothermia or, at minimum, steps needed to be taken to ward off that risk.

[30] The officer had learned that Mr. Blake was intoxicated though he did not know the degree of intoxication. It is reasonable to infer that a person under the influence of alcohol may be even less capable of preventing injury to himself during a crash given the known impact of intoxication on physical response time, coordination, and judgment.

[31] Finally, Mr. Blake was not responding when the officer called out to him.

[32] The officer is being challenged on the legitimacy of his entry into the tent. If circumstances had unfolded differently, however, and the officer had not entered the tent yet Mr. Blake had been injured during the crash, the officer undoubtedly would have been criticized for not taking steps to ensure Mr. Blake's well-being and safety. It is important not to assess the officer's actions in light of subsequent knowledge that could not have been known to the officer at the time.

The Law

[33] I will not address the authority of the police to enter a dwelling without a warrant in order to effect an arrest as I find as a fact that the officer was not entering the tent in order to arrest but instead to ensure that Mr. Blake was safe. Obviously the officer also had the impaired allegations in mind but, at that point in time, it is clear that the officer had not formed grounds to arrest.

[34] The police do have the authority to enter a dwelling in order to determine health and safety of the occupants provided certain parameters are met. The Supreme Court of Canada in *R. v. Godoy*, [1999] 1 S.C.R. 311, at para. 22, outlined this power as follows:

> …[T]he importance of the police duty to protect life warrants and justifies a forced entry into a dwelling in order to ascertain the health and safety of a 911 caller. The public interest in maintaining an effective emergency response system is obvious and significant enough to merit some intrusion on a resident's privacy interest. However, I emphasize that the intrusion must be limited to the protection of life and safety. The police have authority to investigate the 911 call and, in particular, to locate the caller and determine his or her reasons for making the call and provide such assistance as may be required. The police authority for being on private property in response to a 911 call ends there. They do not have further permission to search premises or otherwise intrude on a resident's privacy or property. In Dedman, supra, at p. 35, Le Dain J. stated that the interference with liberty must be necessary for carrying out the police duty and it must be reasonable. A reasonable interference in circumstances such as an unknown trouble call would be to locate the 911 caller in the home. If this can be done without entering the home with force, obviously such a course of action is mandated. Each case will be considered in its own context, keeping in mind all of the surrounding circumstances. …

[35] Obviously, the subject of concern need not be the 911 caller. The point is that the police have the duty to protect life and safety. A legitimate intrusion for that purpose is warranted. The intrusion must be reasonable and other courses of action should be considered.

Application of the Facts in this Case to the Law

[36] I have found as a fact that the officer had subjective concerns regarding Mr. Blake's health and safety. The bases for those concerns, as outlined above, were also objectively reasonable.

[37] It was suggested to the officer that he could have asked Mr. Blake's partner, Ms. Sophia Flather, to check on Mr. Blake's well-being. The officer responded that he learned that Ms. Flather wanted Mr. Blake off her property. I do note that the boat crash involved her three-year-old son, Thomas. I find it reasonable that the officer did not turn to Ms. Flather for assistance.

[38] Further, I find that the officer was reasonable in not waiting for Emergency Services ("EMS") to attend.

[39] For these reasons, I find that the officer's warrantless entry was justified, and I therefore dismiss the s. 8 *Charter* application.

The Over 80 Charge

[40] Mr. Blake provided breath samples pursuant to the demand made by Cst. Tate. No s. 8 *Charter* application was brought to challenge the grounds for the demand thus *R. v. Rilling*, [1975] 2 S.C.R. 183 still applies.

[41] Even if such a challenge had been brought, however, I would find that the grounds existed.

[42] Cst. Tate testified that Ms. Njootli said that there had been a boating accident, Mr. Blake was the driver, and Mr. Blake was impaired. Ms. Bain told him that the accident had occurred 90 to105 minutes prior to the boating group's arrival at the Flather/Linklater homes. The fact that these statements were made to the officer was not challenged in cross-examination. I accept that both statements were made.

[43] Further, the officer smelled an alcoholic beverage on Mr. Blake's breath once he entered the tent.

[44] I find that the statements combined with his own observations in the tent provided Cst. Tate with the subjective basis to believe that offences under both s. 320.14(1)(a) and (b) of the *Criminal Code* had been committed. I also find that this belief was objectively reasonable. Proof of the actual time of the accident is not required.

[45] Further, I find there is no air of reality that has been raised regarding the provisions in s. 320.14(7), most specifically s. 320.14(7)(c). [1]

[46] There is evidence regarding post-driving consumption. Ms. Kaiya Denechezhe testified that Mr. Blake pulled out a mickey which appeared to contain vodka and then took "a pretty decent swig". This occurred after the accident, once the boat was back on the water and Clayton had taken over the wheel.

[47] I find, however, that there is no air of reality to the provisions in s. 320.14(7)(b) and (c).

[48] An accident has just occurred. The adult occupants of the boat refused to allow Mr. Blake to operate it once it was back on the water. I find that there is no air of reality to the submission that Mr. Blake would have had no reasonable expectation that a breath sample would be required of him once the group returned to Old Crow.

[1] See "air of reality" requirement in *R. v. Deshpande*, 2021 ONCJ 699, at para. 89; *R. v. Herring*, 2022 SKPC 31, at para. 59; R. v. Tucker-Merry, 2022 NLPC 1322PA00114 at para. 15; *R. v. Madadi-Farsijani*, 2021 ONCJ 196, at para. 27; *R. v. Zachar*, 2023 ONCJ 135, at para. 9

[49] Finally, I turn to s. 320.14(7)(c) of the *Criminal Code*. I have no evidence before me regarding post-operation consumption other than “a pretty decent swig” of vodka. Certainly, there is no evidence before me to give any air of reality to the technical requirements of s. 320.14(7)(c).

Conclusion

[50] I admit the breath sample readings given the dismissal of the s. 8 *Charter* application.

[51] I make no findings regarding the impairment charge given the Crown’s undertaking to invite a dismissal.

[52] I find that the Crown has proven beyond a reasonable doubt the elements of s. 320.14(b) of the *Criminal Code*. The readings were truncated to 190 mg of alcohol per 100 ml of blood. I find Mr. Blake guilty of the “over 80” charge.

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CALDWELL T.C.J.