Citation: *R.* v. *Bone*, 2010 YKTC 25

Date: 20071203
Docket: 06-10032A
Registry: Watson Lake
Heard: Whitehorse

IN THE TERRITORIAL COURT OF YUKON
Before: His Honour Chief Judge Faulkner

REGINA

v.

JEFFERY WAYNE BONE

Appearances:
Kevin Komosky — Counsel for the Crown
James Van Wart — Counsel for the Defence

REASONS FOR JUDGMENT

[1] FAULKNER C.J.T.C. (Oral): Mr. Bone is before the Court for trial on an Information containing three counts: a charge of operating a motor vehicle while impaired by alcohol or a drug and causing bodily harm thereby, a charge of theft of a motor vehicle, and a charge of dangerous driving.

[2] The issue before the Court for decision at this point is the question of the admissibility of the certificate which was obtained following analysis of some blood samples obtained from Mr. Bone after the accident on April 24th of 2006. Such a certificate will be admissible in evidence where it was taken pursuant to a demand made under s. 254(3)(b) of the *Code*. I agree with the cases that say that there are no magic words of art that must be used before a demand will be valid. What is necessary

is that regardless of the exact wording, the proper informational component is conveyed to the person from whom the sample is demanded.

[3] In the case of a blood demand, one of the essential requirements which arise from the case of *R.* v. *Green* in the Supreme Court of Canada, [1992] 1 S.C.R. 614, is that the detainee be told that the samples will only be taken by or under the direction of a qualified medical practitioner, and only if the qualified medical practitioner is satisfied that the taking of the blood will not endanger the detainee's life or health.

[4] In this case, the peace officer who made the demand on Mr. Bone could not recall the words he used. He had read them from a card, and although he had done quite a number of impaired driving investigations, this was only the second that he had done where there was a blood demand. As he indicated in cross-examination, he would have been insufficiently familiar with the wording of the demand to do it otherwise than reading from the card.

[5] When he testified and was asked as to the wording the demand used, the constable produced a card. Unfortunately, the card that he produced was not the card that he used on the date in question. It appears that between the time of the accident back in April of 2006 and the time of testifying, the police had issued a new card. The constable had the new card, but did not have the old one that he had used back in 2006. The constable did read from the new card and said that what he had told Mr. Bone was similar or something to the same effect. He also offered to say that he was not aware of any change in the wording between the earlier card and the later card,

although I suppose that begs the question of why it would have been necessary to issue a new card if it was not changed at all.

[6] In any event, on cross-examination the constable indicated, as I have already said, that he was not overly familiar with the card and did need to refer to it for its wording, and that he had no knowledge of what differences there might be between the earlier card, issued in 2003, and the later card, issued in 2007. That is the state of the evidence.

[7] It seems to me that the onus of establishing that the demand contained and the required information is on the Crown. It further seems to me that on the state of the evidence thus described this onus has not been met and that the consequences that flow from this, of course, is that the Crown cannot rely on the certificate.

[8] Secondly, if the Crown intended to rely on it, which presumably it does not in this case because it called an expert, it would lose the presumption available under s. 258(1)(d). The Crown could still provide proof of blood alcohol content by other means, but it seems to me that they are not able to prove it in this case by means of a certificate since they cannot prove compliance with the requirements of the law.

[9] There could be another consequence, of course, which would prevent the Crown even from providing proof by alternate means, and that would be that since the seizure has not been shown to be in accordance with the law, the seizure would be open to attack contrary to s. 7 and 8 of the *Charter* (see *R.* v. *Knox*, [1996] S.C.J. No. 89). However, I note that *Knox* suggests that it would be unlikely that the result would

be excluded. Anyway, the result for the moment is that the certificate, in my view, is not admissible.

[10] MR. KOMOSKY: Yes, Your Honour. The Crown has no further evidence, and with the Court's ruling, I would suggest the Crown has not proven the offence as charged.

[11] THE COURT: Calling any evidence?

[12] MR. VAN WART: No evidence called.

[13] THE COURT: The three counts are dismissed.

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FAULKNER C.J.T.C.