

Citation: *R. v. Reynolds*, 2007 YKTC 4

Date: 20070123
Docket: T.C. 06-00165
Registry: Whitehorse

IN THE TERRITORIAL COURT OF YUKON

Before: His Honour Judge Overend

REGINA

v.

STEVE WILLIAM REYNOLDS

Appearances:
Ludovic Gouaillier
Gordon Coffin

Counsel for Crown
Counsel for Defence

REASONS FOR JUDGMENT

[1] OVEREND T.C.J. (Oral): Mr. Reynolds is charged in an Information with the offence commonly referred to as failing to blow; specifically, charged with failing to provide a sample into an approved screening device. Briefly, the facts are that on the 19th of May of 2006, Constable Manchur, who was on patrol on 2nd Avenue in the City of Whitehorse, observed the defendant's vehicle approaching and saw that vehicle come into his lane for a few seconds. He determined that was a safety issue and activated his emergency equipment, pulling the vehicle over in due course.

[2] He approached Mr. Reynolds' vehicle and asked for his driver's licence and registration.

[3] I should have said at the beginning this is a *voir dire*. This was a *voir dire* at the commencement of the trial to determine a *Charter* issue. All of the evidence has been heard on the *voir dire*.

[4] He asked for the driver's licence and registration and insurance. The accused produced registration and insurance but no driver's licence. Some inquiries were conducted by the police officer, following which, he was satisfied that the accused did not possess a driver's licence. Mr. Reynolds was operating a vehicle without a licence, he was arrested by Constable Manchur, which resulted in a 90-day suspension and the impoundment of his vehicle.

[5] The police officer said he first came into contact with the defendant at 12:50 hours. Coming into contact with the defendant was not explained by the officer as to whether he was referring to first sighting the car or actually coming into contact in person with the defendant. For the purposes of this particular hearing, because it was not adequately explained, I am taking the evidence in the most favourable light to the accused, that it was the contact with the defendant himself at 12:50. Constable Manchur, during the course of dealing with the accused, called a tow truck operator. The tow truck operator arrived at 13:20 hours to remove the vehicle.

[6] At 13:32, after some further dealings with Mr. Reynolds, Mr. Reynolds was essentially released from his detention by the officer, telling him to "Take care," and indicating to Mr. Reynolds that he was free to leave. At that approximate time he noticed a strong odour of alcohol emanating from Mr. Reynolds. He asked Mr. Reynolds to remove his sunglasses, asked him if he had been drinking, to which he

replied that he had a beer. The officer then decided to radio for the provision of an approved screening device, which was in short order delivered to the scene. At 13:37 hours, he read the demand, having reasonable suspicion that Mr. Reynolds had alcohol in his body. Mr. Reynolds provided a sample and the sample read fail.

[7] The accused has raised a *Charter* issue that the demand violated his *Charter* rights because it was not authorized by law. The law, which the Crown says authorized the demand of s. 254(2) of the *Code*, reads:

Where a peace officer reasonably suspects that a person who is operating a motor vehicle or vessel or operating or assisting in the operation of an aircraft or of railway equipment or who has the care or control of a motor vehicle, vessel or aircraft or of railway equipment, whether it is in motion or not, has alcohol in the person's body, the peace officer may, by demand made to that person, require the person to provide forthwith such a sample of breath as in the opinion of the peace officer is necessary to enable a proper analysis of the breath to be made by means of an approved screening device and, where necessary, to accompany the peace officer for the purpose of enabling such a sample of breath to be taken.

[8] The essential ingredients required in making a demand under s. 254(2) to make that demand lawful are, firstly, that the defendant is operating a motor vehicle. "Is operating" has been given judicial interpretation. I will get to that in a moment. The second requirement is that the police officer reasonably suspects that the operator of the vehicle has alcohol in his body.

[9] The first of these requires that the demand be made reasonably and proximately in time to the operation or care and control of the motor vehicle so that while the verb

[14] THE COURT: All right. But first of all, do you consent the evidence on the *voir dire* being evidence on the trial?

[15] MR. GOUAILLIER: Yes.

[16] MR. COFFIN: Yes.

[17] THE COURT: All right, and you do as well?

[18] MR. COFFIN: Yes.

[19] THE COURT: All right. The Information is dismissed.

OVEREND T.C.J.