

SUPREME COURT OF YUKON

Citation: *R. v. Castagner*, 2013 YKSC 110

Date: 20131028
S.C. No. 12-01509
Registry: Whitehorse

BETWEEN:

HER MAJESTY THE QUEEN

AND:

TREVOR LAVERN CASTAGNER

Before: Mr. Justice L.F. Gower

Appearances:
Scott Niblock
Vincent Michaels

Counsel for the Crown
Counsel for the Accused

REASONS FOR SENTENCING DELIVERED FROM THE BENCH

[1] GOWER J. (Oral): This is the sentencing of Trevor Castagner on a charge of dangerous driving under s. 249(1)(a) of the *Criminal Code*. This morning Mr. Castagner indicated a guilty plea to the included offence of dangerous driving under Count 3 of the indictment.

[2] Counsel have made a joint submission that Mr. Castagner receive a one year period of incarceration to be served conditionally in the community on specified conditions, as well as a one year driving prohibition under s. 259(2) of the *Criminal Code*.

[3] The facts have been agreed to in an Agreed Statement of Facts, subject to a couple of interjections which I will make just to make them clear and understandable.

Those facts are:

- “1. On the night of the 31st of December 2010 to the 1st of January 2011, the accused attended a dinner party with friends and then a New Year’s party at another residence;
2. At both locations he consumed alcohol;
3. At the second residence he met with his brother-in-law, Tim Bierlmeier;
4. The accused and Mr. Bierlmeier left the residence together in the early morning hours on the accused’s snow machine. The accused was the driver;
5. The accused and Mr. Bierlmeier travelled on the snow machine to the accused’s residence at 124 Rainbow Road, Whitehorse;
6. While on route to the residence the accused drove, at times, at a higher rate of speed, especially on straighter roads in the Crestview subdivision. He also travelled in and out of the ditch deliberately. On one straight stretch, his speed was excessive;
7. Upon their arrival at 124 Rainbow Road, the accused entered into, and was in the process of making a curving turn to the left;”

I interject here to indicate that both counsel are agreed that there was a stationary parked vehicle on the right-hand side of the roadway at that point in the road.

- “8. During the course of the left curve, and shortly before the snow machine passed the rear of the vehicle, the accused felt a sudden and unexpected weight shift to the right. The weight shift caused the snow machine to roll into the vehicle;
9. When the snow machine rolled into the vehicle, Mr. Bierlmeier’s head struck the vehicle, and he passed away as a result of his injuries.
10. The accused agrees that his speed going into his turn was excessive, and;
11. The accused further agrees that his consumption of alcohol in the night in question contributed to his dangerous operation of the snow machine.”

[4] I will interject again by indicating that this last reference to the consumption of alcohol should not be understood as an admission that Mr. Castagner drove the way he did because of the consumption of alcohol, but rather, as part of the overall pattern of conduct and as a recognition that the mere consumption of alcohol, short of impairment, can be a factor in the mental element of the offence of dangerous driving.

[5] The circumstances of the offender are that Mr. Castagner is 40 years of age, born and raised in Whitehorse. His sister, Richelle Bierlmeier, is the wife of the deceased and I will say more about her in a minute. Both of Mr. Castagner's parents are still alive. He completed Grade 12 in Whitehorse, and then attended college for one year in British Columbia, and for a further two years near Edmonton, Alberta. He then obtained a two year diploma in Wildlife Conservation and continued his education at the Lethbridge Community College, graduating in 1996 at the age of 23 with a degree relating to Wildlife Conservation and Enforcement. He was immediately hired by the Yukon Government as an Environmental Monitoring Officer, which position he held for two years, and then took a position with the same government for eight years as a Conservation Officer. In 2006, Mr. Castagner moved over to the Federal Government, where he has been employed as a Federal Wildlife Enforcement Officer to date. In total, he has 16 years in his environment and wildlife career. His counsel also informs me that since the age of 14, Mr. Castagner has been steadily employed, either on a part-time or a full-time basis, and has never been unemployed.

[6] Mr. Castagner has been in a common-law relationship with Jennifer Rahn for the last six years. There are no children of that relationship. Although I am led to believe there has been some thought to marriage and family planning, that has been put on

hold for the last three years, while Mr. Castagner has been waiting to finally deal with the charges.

[7] Mr. Castagner continued with his employment as a Federal Wildlife Enforcement Officer in Whitehorse until May 2012, and then moved to the Lower Mainland of British Columbia to continue that line of employment at a different office.

[8] I am informed that Mr. Castagner was held in custody for about two days after his initial arrest, and he also initially was subject to a 90-day driver's licence suspension pursuant to Yukon legislation.

[9] Although he was kept on with his employment with the Federal Government for the initial 90-day period, while he was not able to drive, he was given desk duties, and for the first seven and a half months his ability to carry firearms or exercise the use of force was suspended. Although those powers have since been returned to him, essentially, since that time, and for the better part of the last three years, he has been essentially assigned to desk duties. Because the charges have been pending, I am also informed by his counsel that in this intervening period Mr. Castagner has had no opportunity for advancement, travel or training.

[10] Mr. Castagner knew the victim for about 15 years, since he and his sister, Richelle, met. The victim and Ms. Bierlmeier gave birth to three children who are currently 13, 11, and seven. Mr. Castagner has been actively involved in the lives of these children since their birth as an uncle, and continues to be so.

[11] I am informed that Mr. Castagner has seen a counsellor in relation to the impact that this has had upon him psychologically, and will continue to do so. I am further informed that Mr. Castagner has been driving since the age of 16, and is generally known to be a very prudent operator of motor vehicles, and, in particular, snow machines and other ATVs, since he has a passionate interest in the outdoors, which includes hunting, fishing, and other outdoor travel.

[12] There were a total of 32 letters of reference filed on Mr. Castagner's behalf from family members, co-workers, colleagues, and friends. Those letters refer to him as an upstanding citizen and one who is passionate about his chosen profession. He is described as a person who is selfless, dependable, generous and honourable, and is generally well-regarded by all of these individuals.

[13] A Victim Impact Statement was filed by Linda Bierlmeier, the victim's mother. Although she does not wish to have that statement read out in court, I can indicate in general terms that this statement describes the various reasons and details of why she was as close as she was with her son, and how much his passing has had an impact on her life. She also alludes to certain difficulties within the immediate family as a result of this death. As well, Ms. Bierlmeier understandably expresses a good degree of frustration with the amount of time that this matter has taken to be resolved through the criminal courts, and the fact that she only had limited access to information about the matter, as she was called as a witness at the preliminary inquiry.

[14] I am very pleased to hear from counsel that Linda Bierlmeier and her son, who has travelled from outside of the Yukon to be present for these proceedings, apparently

are willing to consider some form of restorative justice or family group conferencing as a way of going forward with this matter.

[15] The aggravating circumstances here include the alcohol consumption prior to operating the snow machine and not giving due regard for the safety of Mr. Bierlmeier as a passenger.

[16] However, the mitigating circumstances are several and they begin with the recognition of the guilty plea. Although this came later in the day than when one might otherwise hope, Crown counsel has fairly explained to me that this was a difficult matter for the Crown. I am told it was one which required some significant discussion, both between defence counsel and Crown counsel, as well as within the Crown's office internally. Crown counsel has fairly conceded that there were difficulties with the Crown meeting its onus in several respects with regard to the original three charges on the indictment. In that context, I feel that I can give full credit to Mr. Castagner for his guilty plea.

[17] It is also apparent that Mr. Castagner is genuinely remorseful. As his common-law spouse has indicated in her reference letter:

“Then January 1, 2011 came and went, and life as I knew it changed forever. Trevor, as I knew him, was also changed forever. He went from someone that was a confident, trusting person full of life and waiting in anticipation for the next adventure to cross his path, to a person who is always searching for something, second guessing his every decision and relationship in his life... always trying to find peace. Since the accident, I feel there is a part of Trevor that will be lost forever.”

[18] Mr. Castagner is someone who has been described as a normally careful, prudent, and fastidious person regarding the safety of others, and particularly with respect to outdoor pursuits and marine pursuits. Therefore, this conduct appears to be clearly out of character for him.

[19] Mr. Castagner has already suffered a number of impacts as a result of these charges, both with respect to restrictions on his work duties, and restrictions on his liberty pursuant to the recognizance which he was placed on April 20, 2011. In that regard, I am informed that Mr. Castagner has complied with all of those release conditions without incident and without exception.

[20] Lastly, Mr. Castagner has no criminal record whatsoever, nor does the Crown allege any driving record of any kind.

[21] Counsel have provided two authorities as an indication of the likely range of sentence appropriate for the matter before me. However, those two authorities are for more serious matters than that to which Mr. Castagner has entered his plea. On the *R. v. Tsandaya* matter, 2004 YKCA 3, a conditional sentence of 15 months was imposed for dangerous driving causing bodily harm. In that case, the offender was driving about 30 kilometres per hour in excess of the 50 kilometre per hour speed limit. Approaching a curve in a school zone, she crossed the centre line of the road and collided with an oncoming vehicle, as the result of taking her attention away from her driving in order to attempt to locate a bottle for her two-year-old daughter. The collision had tragic consequences to the woman driving the other vehicle, as she was near the end of a pregnancy and lost the foetus. The woman also had a broken leg and a wrist,

and suffered internal injuries. That matter went to the Court of Appeal and the conditional sentence of 15 months was upheld, subject to some minor variation of conditions.

[22] The other case, *R. v. Foster*, 2004 YKSC 47, involved a charge of dangerous driving causing death for which I sentenced the offender to a conditional sentence of 20 months. However, in that case the offender had a number of previous driving infractions, which was of significance to me in my consideration of the appropriate quantum of sentence.

[23] With those two cases in mind, it seems that the proposed sentence of one year is appropriately within the range for this type of offence. I note, again, that causation of death is not alleged here or admitted by Mr. Castagner.

[24] When considering the appropriateness of a conditional sentence, I must have due regard to the Supreme Court of Canada case of *R. v. Proulx*, 2000 SCC 5. That case directs that I must consider four criteria before deciding whether to impose a conditional sentence:

- (1) the offence of which the offender is convicted must not be punishable by a minimum term of imprisonment;

That is the case here.

- (2) the court must consider a term of imprisonment of less than two years;

I am prepared to consider such a term.

- (3) the safety of the community would not be endangered by the offender serving the sentence in the community;

In that regard, the Crown points, again, fairly, to the lack of any criminal record for Mr. Castagner, as well as his impeccable compliance with the recognizance.

- (4) a conditional sentence must be consistent with the fundamental purpose and principles of sentencing set out in ss. 718 to 718.2 of the *Criminal Code*.

[25] I am satisfied that appropriate conditions can meet the objectives of the third and fourth criteria that I have just mentioned.

[26] Taking all of these circumstances into account, I impose a sentence of incarceration under s. 742.1 of the *Criminal Code* for a period of one year. However, I will allow the offender to serve that sentence in the community, subject to the following conditions. The initial conditions are statutory and required by the *Criminal Code*.

1. To keep the peace and be of good behaviour; to appear before the Court when required to do so by the Court;
2. To report to a Conditional Sentence Supervisor within 24 hours, and thereafter when required by the Conditional Sentence Supervisor and in the manner directed by the Conditional Sentence Supervisor;
3. To remain within the Yukon Territory or British Columbia, as the case may be, unless you have written permission from your Conditional Sentence Supervisor;
4. To notify the Conditional Sentence Supervisor in advance of any change of name, address, or employment;

I interject here to indicate that it is anticipated that Mr. Castagner, immediately following these proceedings, will make an immediate application to his Conditional Sentence Supervisor to have the Conditional Sentence transferred to the jurisdiction of British Columbia for enforcement there.

5. You are to reside as directed by the Conditional Sentence Supervisor and not change that residence without the prior written permission of the Conditional Sentence Supervisor;
6. For the first six months of the Conditional Sentence, Mr. Castagner will abide by a curfew by remaining within his place of residence between the hours of 10:00 p.m. and 6:00 a.m. daily, except with the prior written permission of his Conditional Sentence Supervisor in relation to his work or in the event of a medical or other emergency. In relation to that condition, Mr. Castagner must present himself at the door or answer the telephone during reasonable hours for curfew checks. Any failure to do so will be a presumptive breach of this condition;
7. You are to abstain absolutely from the possession or consumption of alcohol. In relation to this condition, you are to provide a sample of your urine for the purpose of analysis upon demand by a Peace Officer who has reason to believe that you may have failed to comply with this condition;
8. You are to take such alcohol assessment as directed by your Conditional Sentence Supervisor, and if directed, such additional counselling or programming. You are to provide proof to your Conditional Sentence

Supervisor of such assessment, counselling or programming, as the case may be;

9. You are to perform 75 hours of community service as directed by your Conditional Sentence Supervisor or such other person as your Conditional Sentence Supervisor may designate. This community service is to be completed within the first ten months of the Conditional Sentence Order;

I would add in relation to this Condition that these hours may be satisfied by participation in victim-offender mediation, should that take place.

10. You are to provide your Conditional Sentence Supervisor with consents to release information with regard to your participation in any assessment, programming or counselling that you have been directed to do pursuant to this Conditional Sentence Order.

[27] In addition, I prohibit you, pursuant to s. 259(2) of the *Criminal Code*, from driving a motor vehicle anywhere in Canada for a period of one year.

[28] Lastly, although this was not specifically addressed by counsel, it would appear that a Victim Fine Surcharge under s. 737(2) would be appropriate. As I understand it, counsel, that would result in a payment of \$100, since this matter went by indictment.

[29] Do you have any questions or comments, or perhaps, Mr. Michaels, you could indicate how much time will be required to pay the surcharge?

[30] MR. MICHAELS: I wonder if we could have one month, Your Honour, just to make sure everything clears.

[31] THE COURT: So ordered. Any other questions or comments?

[32] MR. NIBLOCK: No, sir, thank you. I suppose the remaining counts ought to be stayed, and I will do that at this point.

[33] THE COURT: The remaining counts are stayed?

[34] MR. NIBLOCK: Yes, sir.

[35] THE COURT: So noted. Anything else from you, Mr. Michaels?

[36] MR. MICHAELS: No, thank you, My Lord.

[37] THE COURT: Okay. Thank you both, counsel.

GOWER J.