

Citation: *R. v. Craft*, 2006 YKTC 70

Date: 20060630
Docket: 05-00006
05-00007
Registry: Whitehorse

IN THE TERRITORIAL COURT OF YUKON
Before: His Honour Judge Lilles

R e g i n a

v.

Raymond Sidney Craft

Appearances:

Samantha Oruski
James Van Wart

Counsel for Crown
Counsel for Defence

REASONS FOR JUDGMENT

[1] Mr. Raymond Craft is before the Court on an allegation that he breached his conditional sentence. On April 27, 2006, the Court imposed a conditional sentence of imprisonment on Mr. Craft for impaired driving causing bodily harm. One term of that order was that he not operate a motor vehicle on any road, highway or public place anywhere in Canada.

[2] On Sunday, May 21, 2006, Mr. Otterbein and his wife were driving down Annie Lake Road, glassing the hillsides to watch sheep and their lambs. Mr. Otterbein is a retired RCMP officer and is currently a Firearms Officer for the Yukon Territory. He made certain observations, which were recorded in a written statement provided to the police:

We proceeded east along the road, stopped once more to glass some sheep. As we proceeded along the east end of Annie Lake, I noticed the burgundy/red jeep sitting along side the road, approximately 300 yds away. As we

approached, the jeep started to proceed west along the Annie Lake Road. I noticed that the driver was Ray Craft. There were other people in the vehicle, however I did not pay any attention to them and could not describe them. I waved at the driver and he waved back, The individual driving was Ray Craft, dark black moustache and wearing dark colored (sic) glasses and a light colored shirt. I discussed this with my wife informing her that I believed that Craft was "prohibited" from driving. I proceeded east along the Annie Lake Road and the vehicle Craft was driving was heading west. It was 14:45 Hr. when I seen (sic) him driving.

[3] Mr. Otterbein had had previous dealings with Mr. Craft in his capacity as a Firearms Officer. He recounted five instances when he met with him since May 21, 2002.

[4] He was traveling in a slow moving vehicle and the Craft vehicle, a red jeep, was also traveling slowly as they passed each other. He waved at Mr. Craft, and Mr. Craft waved back. At that instant, Mr. Craft turned his head and looked right at Mr. Otterbein. Mr. Otterbein was able to view the driver from the shoulders up. In particular, he noted Mr. Craft's black moustache and black hair and his dark glasses. At a later date, he checked a photo he had taken of Mr. Craft four years earlier. He said he was 100% certain that the driver was Mr. Raymond Craft.

[5] Mr. Raymond Craft testified that in fact he was at his cabin on Annie Lake Road on the weekend Mr. Otterbein said he observed Mr. Craft driving. He also testified that the red jeep vehicle described by Mr. Otterbein belonged to his mother. He said that he and his mother were there along with several other individuals. He also stated that his brother, Richard, was at the cabin that weekend.

[6] Raymond Craft described his activities on Annie Lake Road on the weekend of May 21st. He denied driving his mother's vehicle. He denied seeing or waving at Mr. Otterbein. He testified that his brother, Richard, had been

driving the vehicle in question during the afternoon Mr. Otterbein said he saw Raymond Craft driving.

[7] Richard Craft, Raymond's brother, testified that he was at the Annie Lake cabin on the weekend in question. He was apparently dropped off there by a friend, as Richard did not have his own vehicle at that time. He described some of his activities that weekend, including driving his mother's jeep on several occasions.

[8] It is noteworthy that Richard Craft bears a striking similarity to Raymond Craft. They are of similar size and build, although Richard is older. Their facial features are similar including dark aboriginal complexions. Both wear similar large prescription glasses that progressively darken in light conditions. I note that Mr. Otterbein made note of the dark glasses as a distinctive feature in his observations. From my own observations of both brothers, it is apparent that they appear very similar, although not identical. Side by side, Richard appears older than Raymond. Their hair is approximately the same length. In addition, Richard has a bit of a wave in his hair, while Raymond's is straight, although both comb their hair in the same style.

[9] For the reasons set out below, I am not satisfied on a balance of probabilities, that Mr. Raymond Craft was driving his mother's jeep on the afternoon of May 21, 2006.

- a. Mr. Otterbein was acquainted with Raymond Craft, having met him in a professional capacity four times over the past four years. However, he did not know Raymond's brother, Richard, and was therefore not in a position to distinguish them.
- b. Raymond Craft and Richard Craft, as noted earlier, are very similar in appearance. The driver observed by Mr. Otterbein was wearing large dark glasses, which would have attracted his attention and

covered the driver's face somewhat. Both Raymond and Richard wear similar glasses that darken in the light.

- c. Although both vehicles were moving slowly when they passed going in opposite directions, Mr. Otterbein was only able to observe the driver for a few seconds.
- d. Although the evidence of Raymond and Richard Craft as to what transpired on the weekend of May 21st was similar, it was not identical. Clearly, their evidence was not carefully rehearsed.
- e. Mr. Otterbein's observations of the driver were limited to the shoulders and up. He was not able to observe any distinctive mannerisms of Raymond Craft.
- f. Mr. Otterbein could not recall whether the windows of the jeep were tinted. The Court took a view of the vehicle in question. Indeed, the windshield and front side windows were lightly yet significantly tinted. Moreover, the back side and back windows were tinted quite dark and this limits the light getting into the vehicle and thus reduces the illumination of the driver. Mr. Richard Craft was seated in the vehicle when the Court took a view. Although parked in the open, the tinting noticeably reduced the visibility inside the vehicle.
- g. The Court also observed that due to the size (small) of the jeep and the size of the Richard Craft and Raymond Craft (large), the view of the top of Mr. Craft's head was cut off. In other words, one noticeable difference between the two brothers, the slight wave in Richard's hair, could not be observed from outside the vehicle.
- h. I note that both Richard and Raymond Craft are obviously First Nations while Mr. Otterbein is Caucasian. I know Mr. Otterbein has had many dealings with aboriginal peoples during his employment.

Nevertheless, I take judicial notice of the fact that cross cultural identifications can be more susceptible to error.

[10] Finally, I caution myself as to the frailties of eye-witness identification generally. Although most people believe that eye witness evidence very reliable, it can be dangerously unreliable. Honest mistakes caused by eye witness evidence have been a major, if not the greatest, cause of miscarriages of justice in this country. These concerns were reviewed in some detail by this Court in *R. v. Parsons*, 1999 Y.J. No. 3.

[11] In the result, I am unable to find that Mr. Raymond Craft breached his conditional sentence order by driving a motor vehicle on April 27, 2006.

Lilles T.C.J.