

Citation: *R. v. Giam*, 2010 YKTC 93

Date: 20100820
Docket: 09-06143
Registry: Whitehorse

IN THE TERRITORIAL COURT OF YUKON

Before: Her Worship Justice of the Peace Morrison-Harvey

THE CITY OF WHITEHORSE

v.

KEN GIAM

Appearances:
Lori Lavoie
Ken Giam

Counsel for the City of Whitehorse
Appearing on his own behalf via
teleconference

REASONS FOR JUDGMENT

[1] MORRISON-HARVEY J.P.T.C. (Oral): Mr. Giam has been charged under s. 19 of the Vehicle for Hire Bylaw, which states:

An operator shall produce his permit forthwith upon demand of a designated officer or passenger.

[2] Can you hear me, Mr. Giam?

[3] THE ACCUSED: Yes, I can.

[4] THE COURT: The evidence of Constable Kelley Hughes. On October 30, 2009, in the City of Whitehorse while on a routine patrol at approximately

10:00 p.m., Constable Hughes stopped Mr. Giam at or near Fourth Avenue and Main Street for an unrelated traffic violation.

[5] Mr. Giam was in a vehicle that had a Premier Cabs logo on the side, and a light situated on top of the cab that was illuminated. Mr. Giam was asked to produce his driver's licence, registration, insurance and vehicle for hire permit. He did not have his driver's licence with him but he was able to produce registration and insurance. Mr. Giam did not produce a permit. Constable Hughes did not observe Mr. Giam picking up or dropping off any fares.

[6] The evidence of Roxanne McCutcheon. Ms. McCutcheon is the Bylaw Services Coordinator and outlined the process relating to the permitting process. The permitting process for a vehicle for hire permit is as follows: Upon application, the City requires that the applicant have a completed RCMP check done, a copy of their driver's abstract and fingerprints are taken if a further in-depth RCMP check is required. A letter of employment is asked for and if there are questions on an RCMP check, there is a further interview with a senior constable. A constable always has to sign off on the application form that is filled out. If the application is complete, a temporary permit is issued for three months pending the receipt of the fingerprints check, which can take anywhere from four to five months. Quite often, after three months, another 90-day permit is issued, pending fingerprint results. Ms. McCutcheon knows Mr. Giam from his dealings with the Bylaw Services and understands that he is the manager of Premier Cabs.

[7] Exhibit 1 was entered. It is a Vehicle for Hire Permit, number 0258, issued to Mr. Giam, with a photograph of Mr. Giam and an expiry date of October 31, 2008. At a later date Mr. Giam was issued a temporary permit on November 19, 2009, for three months, as Mr. Giam's fingerprints were not on file. When the fingerprints results came back to Ms. McCutcheon's office, the temporary permit had expired. Ms. McCutcheon called Mr. Giam to advise him his fingerprints results had come in and he could come in to pick up his annual permit.

[8] Exhibit 2 was entered, a Vehicle for Hire Permit, number 434, issued to Mr. Giam, with a photograph of Mr. Giam and an expiry date of February 19, 2010. There is nothing that would prevent Mr. Giam from getting a Vehicle for Hire Permit at this time.

[9] The evidence of Peter Heim. Mr. Heim is a dispatcher for Premier Cabs. His recollection is that he was on duty from approximately 4:00 or 6:00 p.m. on the evening of October 30th, until approximately 4:00 a.m. on October 31st, that on the evening of October 30, 2009, Mr. Giam was not on rotation. Rotation means that when a car is not working on a trip he is in a line-up with other cars. As a trip comes in the top car is dispatched out, the one that has been waiting longest for a trip. He has no knowledge of what anyone may do or use the taxi for when they book off, that when they book off, it is not up to him to question what they are doing. Mr. Heim also testified that when he owned his own taxis he used them for personal and social reasons and that, to his knowledge, every cab company that he has worked for in this town, every owner/operator has always used his vehicle for his own personal use, such as taking his family to a movie or whatever.

[10] Since working for Mr. Giam for over a period of one year, he has never once dispatched him a trip out in any vehicle. Again, he stated that he has never dispatched Mr. Giam on a trip.

[11] Mr. Giam is the owner of Premier Cabs. His argument is that he was not operating the vehicle as a vehicle for hire that night, that a taxi can at times be a vehicle for hire and at times it is not used as a vehicle for hire, that under s. 19, the operator shall produce his permit forthwith and that operator is defined as someone who operates a vehicle for hire. As there is no evidence that he was picking up fares, the taxi could not have been a vehicle for hire at the time and, further, that if it is not a vehicle for hire then he is not an operator and not required to produce a permit.

[12] Mr. Giam argues that he was using the vehicle for personal reasons. Mr. Giam argues that it is common practice in Whitehorse to use a taxi for personal and social purposes, and when being used for those purposes, again, it is not a vehicle for hire, that the driver is not the operator and no permit required. Mr. Giam argues that if found guilty of this offence, no one can use taxis for any personal or social purposes.

[13] Section 19 of the Vehicle for Hire Bylaw states:

The operator shall produce his permit forthwith upon demand of a designated officer or passenger.

Operator means the person driving and/or having care and control of a vehicle for hire and shall in all cases be the holder of a Vehicle for Hire Permit.

[14] Section 5 of the bylaw states:

All vehicles for hire that are motor vehicles shall be either chartered vehicles or taxi cabs.

[15] On the evidence of Constable Hughes, I find that Mr. Giam was driving a taxi cab, therefore a vehicle for hire as set out in s. 5 of the bylaw.

[16] On the evidence of Constable Hughes, I also find that Mr. Giam was the operator of the vehicle for hire on October 30, 2009.

[17] Permit means the Vehicle for Hire Permit that applies to operators of a vehicle for hire and Vehicle for Hire Permit means the permit issued by the designated officer to an applicant qualified to operate a motor vehicle for hire. On the evidence of Roxanne McCutcheon, I find that Mr. Giam was not a holder of a Vehicle for Hire Permit on the 30th of October 2009. On the evidence of Constable Hughes, I find that he did not produce a permit.

[18] It is Mr. Giam's argument that when using a taxi cab for personal use it is not a vehicle for hire, a defence to the charge. On the evidence, I agree with Mr. Giam that it is common practice to use taxi cabs for personal use and I do not find anything in the bylaw that limits individuals from doing that. I also have no reason to disbelieve that he may very well have been using his cab for personal reasons on October 30, 2009. What the bylaw is clear on is that if you are going to drive or have care and control of a taxi cab, you have to be the holder of a vehicle for hire permit and I find that your argument is not a defence to the charge.

[19] Section 19 required you, as an operator, to produce your permit. No permit was produced and I find you guilty of the offence, contrary to s. 19 of the Vehicle for Hire Bylaw. Mr. Giam, I would further direct your attention to s. 16 of the bylaw which states:

The owner of a vehicle for hire shall not allow any person to operate a vehicle for hire unless that person is the holder of a permit.

[20] Ms. Lavoie, are you seeking anything other than the \$100 fine?

[21] MS. LAVOIE: No, Your Worship, that's what the City is seeking at this point. Thank you.

[22] THE COURT: Mr. Giam?

[23] THE ACCUSED: Yes?

[24] THE COURT: The City is not seeking anything other than the \$100 fine that is on the face of the ticket.

[25] THE ACCUSED: Well, I am intending to appeal this case now, Your Honour.

[26] THE COURT: That is fine. I still need to impose the \$100 fine.

[27] THE ACCUSED: Yes, I will -- I will appeal it and I will check the process regarding the process of appeal and it will be done immediately.

[28] THE COURT: All right. Ms. Lavoie, any objection to six months time to pay? That should allow plenty of time for the appeal process.

[29] MS. LAVOIE: No objection, Your Worship.

[30] THE COURT: Six months time to pay.

[31] THE ACCUSED: Okay.

[32] THE COURT: Thank you.

[33] THE ACCUSED: And I'll be filing an appeal, Your Honour.

[34] THE COURT: Thank you.

MORRISON-HARVEY J.P.T.C.