

Citation: *R. v. Beattie*, 2006 YKTC 97

Date: 20060927
Docket: T.C. 05-00741B
Registry: Whitehorse

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

REGINA

v.

DUKE BODINE BEATTIE

Appearances:
Jennifer Grandy
James Van Wart

Counsel for Crown
Counsel for Defence

REASONS FOR JUDGMENT

[1] FAULKNER C.J.T.C. (Oral): This is the matter of Duke Bodine Beattie. Before me is an allegation that Mr. Beattie breached his conditional sentence order, which, amongst other things, forbad him from operating a motor vehicle.

[2] The evidence from the Crown is of Constable Pollard, who is a member of the Carcross detachment, who says that on the 13th of September of this year at about quarter to ten in the evening, he saw Mr. Beattie operating a motor vehicle on the South Klondike Highway in the village of Carcross. Constable Pollard was not on duty at the time. He was operating his own private vehicle, but he was familiar with Mr. Beattie,

having dealt with him, as I understood it, on a number of occasions in the past over a period of in excess of two years.

[3] He was also familiar with the vehicle that he saw, a red pickup truck, which he knew to be owned by Mr. Beattie's mother, and he also knew it as one which Mr. Beattie himself often operated.

[4] He also knew that Mr. Beattie was disqualified from driving and, for that reason, he took an interest in the vehicle that he saw and made an effort to manoeuvre his own vehicle into a position where his headlights would shine into the truck so that he could see who the operator of the truck was. Constable Pollard says he did so and from about 25 feet away could clearly see that Mr. Beattie was the operator of the vehicle. He indicated that Mr. Beattie slouched down in the seat so that his head would be down behind the steering wheel and also attempted to cover his face and then accelerated away in the direction of Mr. Beattie's residence.

[5] The offender has called a defence and the defence is in the form of Mr. Beattie's common-law wife and a friend, Mr. Kemble. Their evidence, distilled down to the essence of it, is that on the evening in question, it was Mr. Kemble and not Mr. Beattie that was operating the red pickup truck. In fact, Mr. Kemble describes operating the vehicle at exactly the point where Constable Pollard says he saw it, that is near the White Pass compound in Carcross, but does not indicate that he thought anything particular of it or did anything out of the ordinary in response to seeing this other vehicle but simply continued on his way, which was indeed toward Mr. Beattie's house.

[6] The case is to be decided, in these circumstances, on a balance of probabilities. Thus, the question before me is whether I think it more likely or less likely that it was Mr. Beattie that was operating the vehicle, or, put another way, whether I prefer the evidence of Constable Pollard over the evidence of Ms. Whelan and Mr. Kemble.

[7] On balance, I prefer the evidence of Constable Pollard. I have already indicated that he was quite familiar with Mr. Beattie and the vehicle and I think it is significant that he was particularly drawn to the vehicle and made a special effort to observe who was operating it. So that gives me some considerable degree of confidence in the correctness of his identification.

[8] I think if matters only went that far, one might say that there would be no particular reason to prefer his evidence over the evidence of Ms. Whelan and Mr. Kemble that it was Mr. Kemble operating the vehicle, except for one additional thing, and that is the actions of the driver upon being observed by the Constable are, in my view, much more consistent with the driver being Mr. Beattie, because the driver made efforts to conceal himself. There would have been no reason whatsoever for Mr. Kemble to act in a similar fashion.

[9] I take Mr. Van Wart's point that one might attempt to shade one's eyes in response to having headlights shone in your eyes, but the description by Constable Pollard of what the driver did, in my view, is more consistent with an attempt by the driver to conceal his identify. As I have already said, there would have been no reason whatsoever for Mr. Kemble to attempt to prevent the operator of the other vehicle from

identifying him. Indeed, according to Mr. Kemble, he did not even know who it was and consequently had no idea it was a police officer.

[10] In the result, I find the allegation has been proved.

(Submissions by counsel)

[11] THE COURT: Well, subject to you persuading me otherwise, Mr. Van Wart, my inclination would be to declare the conditional sentence collapsed but credit him for the time that he served. Is that your understanding, that that would bring matters to an end?

[12] MR. VAN WART: Yes, that was going to be my submission. So he would be effectively served his sentence, but it would indicate on his record that his sentence was terminated as a result of his breach.

[13] THE COURT: So ordered.

FAULKNER C.J.T.C.