

Citation: *R. v. Sawrenko*, 2017 YKTC 67

Date: 20170630
Docket: 15-00355A
Registry: Whitehorse

IN THE TERRITORIAL COURT OF YUKON
Before His Honour Judge Chisholm

REGINA

v.

NICHOLAS PAUL SAWRENKO

Appearances:
Paul Battin
Kelly Labine

Counsel for the Crown
Counsel for the Defence

REASONS FOR JUDGMENT

[1] CHISHOLM J. (Oral): Nicholas Sawrenko is charged with two counts contrary to the *Criminal Code*, namely, that he drove a motor vehicle while impaired by alcohol; and secondly, that he operated the motor vehicle with a blood alcohol level that exceeded the legal limit.

[2] The facts are relatively straightforward. I will set out what I gleaned from the evidence to be the relevant facts.

[3] The police received a call via 911 on July 25, 2015, with respect to a motor home that was driving erratically on the Alaska Highway and subsequently on Two Mile Hill.

The caller, Bradon Lester, was a passenger in his girlfriend's vehicle. They followed the motor home to the downtown area.

[4] At the same time, Cst. Turner was dispatched to the area where the suspect vehicle was driving. The officer ended up on Front Street driving north, while the suspect vehicle proceeded south on Front Street. The suspect vehicle turned right onto Wood Street and pulled in front of the 98 Lounge.

[5] Cst. Turner, soon thereafter, arrived at that location and pulled his police car in behind the motor home.

[6] Cst. Turner testified that he went to the driver's side door and noted Mr. Sawrenko in the driver's seat. There were others in the motor home, including Bobby Netro, who was observed in the passenger seat. Cst. Turner was familiar with both Mr. Sawrenko and Mr. Netro.

[7] Mr. Netro and the other occupants quickly exited the vehicle and left the scene, according to Cst. Turner.

[8] Cst. Turner noted that Mr. Sawrenko exhibited slurred speech, had alcohol on his breath, fumbled with his wallet, and displayed difficulty opening it. Although asked to produce his licence, insurance, and registration, he showed the officer his status card. The officer ultimately arrested him for impaired operation of a motor vehicle.

[9] Mr. Sawrenko provided two samples of his breath which revealed that his blood alcohol level exceeded the legal limit.

[10] Mr. Sawrenko testified that he had received bad news about his health on the day in question. He later picked up a friend, Bobby Netro, and they subsequently drove to Fish Lake in Mr. Sawrenko's motor home. Mr. Sawrenko drank hard liquor and became quite intoxicated, at which time he gave Mr. Netro the keys to his vehicle.

[11] He recalls that they gave a ride to two people, that they stopped at the Kopper King, and subsequently ended up in the downtown area of Whitehorse.

[12] Mr. Sawrenko states that he has little recollection after leaving Fish Lake, due to his consumption of alcohol. He recalls waking up or "coming to", when a door to his vehicle slammed shut, and finding the people who had been in his motor home, including Bobby Netro, gone.

[13] Mr. Sawrenko admits to being somewhat disoriented at the time. He decided to exit the vehicle through the side door, which he normally has trouble opening. He stated that Cst. Turner opened the side door at this time and then arrested him.

[14] Overall, I have difficulty with the evidence of Mr. Sawrenko.

[15] Firstly, Mr. Sawrenko admitted that he was very drunk, due to the consumption of a significant amount of alcohol. He stated that when travelling from Fish Lake to downtown, during which time he identifies Bobby Netro as the driver, he was in a "blackout stage".

[16] Secondly, he admitted that the medication he was taking, when combined with alcohol, impacts his memory.

[17] Based on these admissions, I have significant concerns with respect to the reliability of his evidence.

[18] I am also troubled with the details Mr. Sawrenko professed to have regarding the stop at the Kopper King market on the way back to town. Despite his highly intoxicated state, he recalled stopping for five to 10 minutes, buying tickets and pull tabs. He also described it being quite windy as they pulled out of the Kopper King parking lot. He explained how such conditions negatively impact the ability to operate the large motor home.

[19] I find that this level of detail inconsistent with his self-proclaimed level of extreme intoxication. This negatively impacts his credibility as a witness.

[20] Mr. Sawrenko's description of attempting to exit his motor vehicle home when he awoke in front of the 98 Lounge is also problematic. It was illogical for him to have attempted to do so, based on the difficulty he normally encountered in opening that door.

[21] Additionally, this scenario was never put to Cst. Turner in cross-examination. I find that the failure to cross-examine to be of significance because, in my view, it would have been important to examine the officer about locating the defendant at the side door as opposed to in the driver's seat. In fact, the officer was never cross-examined as to being mistaken about or having fabricated where he located Mr. Sawrenko in the vehicle.

[22] The main issue in this trial is whether the defendant was driving the motor vehicle. Mr. Sawrenko's version of events is completely contradictory to that of the officer.

[23] As a result of the lack of cross-examination in these areas, I find that the rule in *Browne v. Dunn* (1893), 6 R. 67 (H.L.) has been breached. This diminishes the weight of the contradictory evidence led by the defence and negatively affects Mr. Sawrenko's credibility.

[24] Another issue with the evidence of Mr. Sawrenko is that if his version of events were to be believed, the other occupants of the motor home had exited the vehicle and “taken off”, as he said. If this were accurate, Cst. Turner would not have had any reason to know that Bobby Netro had been present in the motor home.

[25] In all the circumstances, I reject Mr. Sawrenko's evidence. It does not raise a reasonable doubt in my mind.

[26] I next consider, based on the whole of the evidence I accept, whether the Crown has proved its case beyond a reasonable doubt.

[27] The defence takes issue with respect to certain aspects of the investigation. For example, it is suggested that the officer's notes were not detailed and it was only a month after the incident that the officer prepared his more detailed general occurrence report.

[28] However, this was a relatively straightforward investigation. The fact, for example, that Cst. Turner did not write Mr. Netro's name in his notes but only in his

general occurrence report is not of concern. The officer explained that he knew Mr. Netro from previous interactions, so whether he wrote Mr. Netro's name immediately in his notes or later in his more detailed report is of little consequence. In any event, Mr. Sawrenko confirmed the officer's evidence that Mr. Netro was in the motor home that evening.

[29] Another issue that the defence raised is that the officer did not indicate in his notes that there was music coming from within the motor home. This, as I understand it, was later included in his more detailed report. However, this seems to be a minor point.

[30] The officer testified that after approaching the vehicle, he had trouble getting Mr. Sawrenko's attention because of the noise, which I understood included the loud music. The fact that he did not include the detail of loud music in his initial notes is not of concern.

[31] It is true the officer did not mention in his notes where the keys were located or whether the vehicle was running. However, there was no suggestion that such detail was not in his general occurrence report composed on August 24, 2015. In other words, I did not understand that this detail was something the officer provided for the first time while testifying in court.

[32] Although it is preferable that officers complete detailed reports as quickly as practicable, I cannot say, in this case, that the interval between the incident and the preparation of the detailed report is in any way detrimental to the officer's evidence.

[33] The defence also argues that the officer should have investigated this matter further upon receiving an affidavit of Mr. Netro indicating that he had been the driver. In my view, it is difficult to understand what further investigation would have accomplished.

[34] I do not see a difference between this situation and that of a complainant in a domestic assault charge, for example, providing a second statement to the Crown denying that an assault occurred. Is the Crown obligated to request the police to do further investigation? I think not because further investigation may not in the circumstances shed any further light on the matter.

[35] In the matter before me, I do not see the necessity of the police taking a statement from Mr. Netro after he had already produced an affidavit.

[36] It is clear, in this case, that Cst. Turner did not believe, based on what he had observed that Mr. Netro was the driver of the vehicle. Based on the unfolding of the incident in question, I have come to the same conclusion.

[37] From the time the officer saw Mr. Sawrenko's vehicle travelling on Front Street, events proceeded very quickly. Cst. Turner was unable to identify the driver of the motor home as it approached his vehicle on Front Street, but he did observe it turn west onto Wood Street.

[38] As I understand the officer's evidence, within five or 10 seconds of this occurrence he was able to turn left onto Wood Street himself. It took another five to 10 seconds for him to stop his vehicle behind the motor home. In this latter period of time, he observed Mr. Sawrenko's vehicle being parked in front of the 98 Lounge.

[39] On a full review of Cst. Turner's evidence, I do not find that he contradicted himself, as has been suggested. If his articulation of events was deemed to be confusing, he should have been questioned about it.

[40] The timing of events as described by Cst. Turner is consistent with the evidence of Mr. Lester, who was in the vehicle following Mr. Sawrenko's vehicle. By the time the vehicle in which Mr. Lester was a passenger was fully turned onto Wood Street, the police vehicle had reached the motor home.

[41] Cst. Turner's description of approaching the driver's side door and interacting with Mr. Sawrenko was quite detailed. He explained, for example, that Mr. Sawrenko did not notice him initially, either because of the music or because he had not seen him. Cst. Turner was obligated to identify himself a number of times before getting Mr. Sawrenko's attention.

[42] Cst. Turner struck me as a forthright witness who was quick to admit when he did not recall something. I accept his evidence.

[43] In all of the circumstances, there is no other conclusion than that Mr. Sawrenko was the driver of the motor home while impaired and while his blood alcohol level exceeded the legal limit. Therefore, I find him guilty of both counts.

[44] I conditionally stay Count 1.

CHISHOLM, T.C.J.