

Citation: *R. v. Beebe*, 2018 YKTC 14

Date: 20180306
Docket: 17-00170
Registry: Whitehorse

IN THE TERRITORIAL COURT OF YUKON
Before His Honour Judge Chisholm

REGINA

v.

TRAVIS ROBERT BEEBE

Appearances:

Leo Lane

Richard S. Fowler (by telephone)

Counsel for the Crown
Counsel for the Defence

RULING ON *CHARTER* APPLICATION

[1] CHISHOLM J. (Oral): I am in the position to give the ruling with respect to the *voir dire*.

[2] Travis Beebe is charged with offences contrary to ss. 253(1)(a) and 253(1)(b) of the *Criminal Code*. These offences are alleged to have occurred at or near Teslin, Yukon, on May 28, 2017.

[3] The defence argues that Mr. Beebe's *Charter* rights, namely, section 8, were breached by the investigating officer. The defence seeks the exclusion of the evidence obtained as a result of the alleged unlawful seizure.

[4] The Crown called one witness in the *voir dire*, Cst. Draper. The defence did not call any evidence. Cst. Draper testified that he was travelling southbound on the Alaska Highway on the evening in question. He observed a truck making a left-hand turn onto the Alaska Highway some distance in front of him. After making this turn, the truck was travelling in the same direction as the officer.

[5] As the truck was part way across the Teslin River Bridge, the officer noted that its driver side tires were over the centre line of the highway. The officer activated the video equipment in his vehicle, which includes a forward-facing camera that records the view through the front windshield of a police car. The video captured by this camera was played during the *voir dire* and has been made an exhibit in this proceeding.

[6] Cst. Draper followed the truck for approximately eight minutes before pulling it over to execute a traffic stop in order to verify the driver's sobriety. The officer testified that he pulled the vehicle over because of its speed, which he estimated at between 115 and 125 km/h in a 100 km/h zone, and because of its driving pattern. The officer indicated that the truck was drifting or weaving within its lane and that it crossed the centre line on more than one occasion.

[7] After a short discussion with the driver and only occupant of the vehicle, Mr. Beebe, the officer advised him that he smelled alcohol on his breath. Cst. Draper testified that he formed the grounds to make an approved screening device demand, based on Mr. Beebe's driving pattern, including his rate of speed, the odour of alcohol on his breath, and his glassy and bloodshot eyes.

[8] Subsequently, based on a fail result from the approved screening device, Cst. Draper reached the opinion that Mr. Beebe's ability to operate a motor vehicle was impaired by alcohol. He transported him to the Teslin RCMP Detachment in order to take breath samples.

[9] The defence contends that the credibility and reliability of the investigating police officer are questionable and, as a result, I should be concerned with respect to the basis with which he formed a reasonable suspicion that Mr. Beebe had alcohol in his body at the time of driving.

[10] The defence submits that the video evidence taken by the onboard video equipment in the officer's vehicle contradicts the officer's description of the vehicle weaving within its own lane.

[11] Based on the distance that the officer says he followed Mr. Beebe during the eight minutes prior to pulling him over, the defence highlights that the average speed could not have been more than 90 km/h, as opposed to the 115 to 125 km/h reported by the police officer.

[12] In essence, the defence contends that the rate of speed and Mr. Beebe's ability to control the movements of the vehicle are exaggerated.

[13] As a result, the defence argues that the officer's evidence that he smelled alcohol from the breath of Mr. Beebe and that Mr. Beebe displayed glassy and bloodshot eyes should be treated with caution, as this evidence is not corroborated in any fashion.

[14] The defence asserts that I should be concerned regarding this evidence, as there is an objective basis to conclude that other parts of the officer's evidence are unreliable. Based on this unreliability, I should find that the officer did not have a reasonable suspicion that Mr. Beebe was driving with alcohol in his body.

[15] If an officer has reasonable grounds to suspect that a person has alcohol in their body and has operated a motor vehicle in the preceding three hours, the officer may require the person to comply with an approved screening device demand, pursuant to s. 254(2)(b) of the *Criminal Code*.

[16] The decision of this Court in *R. v. Loewen*, 2009 YKTC 116, considered the requirements for making a demand. At para. 6, the decision reads:

The test, obviously, is not a demanding or high level one. There must only be a reasonable suspicion that there is alcohol in the accused's body. A mere suspicion without a reasonable evidentiary basis or a hunch that the driver has had something to drink is insufficient to justify a demand to provide a screening sample.

[17] As stated in *R. v. Chehil*, 2013 SCC 49, at para. 26:

Reasonable suspicion derives its rigour from the requirement that it be based on objectively discernible facts, which can then be subjected to independent judicial scrutiny. This scrutiny is exacting, and must account for the totality of the circumstances. In *Kang-Brown*, Binnie J. provided the following definition of reasonable suspicion, at para. 75:

The "reasonable suspicion" standard is not a new juridical standard called into existence for the purposes of this case. "Suspicion" is an expectation that the targeted individual is possibly engaged in some criminal activity. A "reasonable" suspicion means something more

than a mere suspicion and something less than a belief based upon reasonable and probable grounds.

[18] In *Schroeder v. British Columbia (Superintendent of Motor Vehicles)*, 2016 BCSC 2366, the Court stated at para. 14:

It is the consumption of alcohol alone that provides grounds for the demand, not its amount or behavioural consequence... All that the officer requires is a reasonable suspicion that the person operating the vehicle had alcohol in his body. The officer does not have to believe that the accused has committed any offence. [citations omitted]

[19] Considering, firstly, the evidence of Mr. Beebe's driving pattern as it relates to his control of the truck, it is clear from the video that Mr. Beebe's driver side tires cross the centre line of the highway for a period of time as he proceeds across the Teslin River Bridge. Subsequently, on a number of occasions during the course of the recording, the driver side tires touch the centre line before the truck moves away from that line and towards the centre of the southbound lane. At one point, the truck moves or drifts to the right side of the lane.

[20] The officer was of the view that the truck crossed the centre line of the highway more than one time. In fact, at approximately three minutes into the video, Cst. Draper described in his testimony that the vehicle was straddling the centre line before it drifted back to the right.

[21] Although, in my view, the driver side tires of the truck at this point clearly make contact with the centre line before the truck moves back to the right as opposed to actually straddling the centre line, at the end of the day, I do not find that the officer was

wilfully misstating what he observed. In fact, after the checkstop was initiated and Cst. Draper approached Mr. Beebe to speak to him, the officer advised him that he had observed the truck drift in its own lane and cross the centre line a couple of times.

[22] The fact that he may have only crossed the centre line once as opposed to twice is, in my view, of little import. I say that because the driver side tires definitely made contact with the centre line on multiple occasions in addition to the initial instant of the tires crossing the centre line on the bridge.

[23] I am not of the view that the officer was intentionally exaggerating the number of times that the vehicle crossed the centre line of the highway.

[24] The defence also takes issue with Cst. Draper's use of the term "weave". The defence suggests that the driving pattern observed in the video is not what one would consider to be weaving.

[25] It is true that Mr. Beebe's driving pattern cannot be described as a continual winding or zigzagging on the road. However, Cst. Draper described his meaning of the word "weave" as leaving the travelled portion of the lane by drifting to another area of the lane and then moving back to the travelled portion.

[26] Again, I note that Cst. Draper initially advised Mr. Beebe that he had observed him drifting within his own lane. He also used this description in his handwritten notes. In my view, the term "drifting" might best describe the periods of driving where Mr. Beebe moved from the travelled portion of the lane to the centre line and back, for

example. However, I do not conclude that the officer's use of the term "weave", as defined by him, was an attempt to make the driving pattern appear more erratic.

[27] Turning to the issue of speed, I agree with the defence that if the officer had only followed the vehicle 10 or 12 kilometres during the eight-minute period of the video, the vehicle's average rate of speed would be significantly less than the 115 to 125 km/h range noted by Cst. Draper. Either the officer was mistaken with respect to the speeds he observed on his radar or with respect to the number of kilometres he actually followed the truck. As a result, I will not consider this point in terms of Cst. Draper's grounds to suspect that Mr. Beebe had alcohol in his system while driving the truck.

[28] However, the officer's carelessness in noting the rate of speed of the truck or the number of kilometres it had travelled while he observed it does not, in my view, undermine his evidence with respect to the smell of alcohol and the description of glassy eyes.

[29] Cst. Draper did not act precipitously in stopping Mr. Beebe. He observed his vehicle for a significant period of time before making the decision to check Mr. Beebe's state of sobriety. He did not, for example, jump to the conclusion that there was a potential problem based on his initial observation of the vehicle's area of travel when it was part way across the Teslin River Bridge. It was only after a number of occasions where the vehicle drifted within its own lane that the officer made the traffic stop.

[30] I find that Cst. Draper testified in a straightforward and reasonable manner. He was not argumentative and readily agreed, for example, when it was suggested that in certain areas of the highway the worn tracks of travel in the southbound lane were

relatively close to the centre line. This point permitted defence counsel to highlight that the normal path of travel and the centre line were not a great distance apart in some areas, thus, arguably diminishing the amount and significance of the vehicle's drifting.

[31] Additionally, the officer, of his own accord, noted that Mr. Beebe pulled off the road in a safe area.

[32] I conclude that the officer was measured and fair in the manner in which he testified.

[33] Finally, I should point out that although the officer did not incorporate this point into his grounds for making the approved screening device demand, when the officer advised Mr. Beebe that he smelled an odour of alcohol on his breath, Mr. Beebe replied that he had consumed two beer. Although this information does not go to the officer's grounds, it supports the conclusion of the officer that Mr. Beebe had alcohol in his body while driving.

[34] On balance, I find that Cst. Draper had a reasonably held suspicion that justified making the approved screening device demand to Mr. Beebe.

[35] In the result, I find that there was no breach of Mr. Beebe's *Charter* rights and his application is therefore dismissed.

CHISHOLM T.C.J.