

Citation: *R. v. Sevigny*, 2004 YKTC 83

Date: 20041102
Docket: T.C. 03-11438
Registry: Dawson City

IN THE TERRITORIAL COURT OF YUKON

Before: His Honour Chief Judge Lilles

R e g i n a

v.

Denis Sevigny

Appearances:
Zeb Brown
Denis Sevigny

Counsel for Crown
Appearing on his own behalf

REASONS FOR JUDGMENT

[1] Mr. Sevigny has been charged with an offence pursuant to s. 2 of the *Motor Transport Act*, 2002 R.S.Y. c. 152, which states:

2(1) No person shall operate a vehicle on a highway for the purpose of transporting goods or passengers for compensation unless the person

(a) has obtained or is exempt from obtaining a certificate or temporary certificate to operate the vehicle for that purpose;

...

(2) Subsection (1) does not apply to any person or class of persons or goods exempted by the regulations.

[2] In s. 1 of the *Motor Transport Act*, the following relevant terms are defined:

“compensation” includes any rate, remuneration, reimbursement, or reward of any kind;

“vehicle” means a motor vehicle as defined in the *Motor Vehicles Act* and includes a trailer.

[3] Mr. Sevigny admitted that, on December 17, 2003, he transported a passenger in his motor vehicle in the City of Dawson for a distance of approximately six blocks. Mr. Sevigny received ten dollars from the passenger, not as a “fare” or a previously agreed amount. Rather, his position, which was not challenged by the prosecutor, was that this payment was made by “voluntary donation”. He did not ask for a fixed amount. There was no tariff. According to Mr. Sevigny, he merely asked the passenger to make a donation – presumably in an amount considered by the passenger to be a fair one in relation to the service rendered.

[4] Mr. Sevigny recounted one incident when he drove someone from downtown Dawson City to Rock Creek and received a donation of only three dollars – obviously not enough to cover his costs. Mr. Sevigny pointed out that he had no reason to complain, as he was relying entirely on the passenger to determine how much to “donate” in return for the ride.

[5] I heard evidence from Mr. Sevigny and others that the incident of December 17, 2003 was not an isolated incident. Mr. Sevigny posted photocopied posters in various locations, including bars and taverns advertising “DC Cab, Dawson City” with a telephone number. They included a cartoon character with the word “TAXI” printed on its chest.

[6] Mr. Sevigny said that he carried out these activities in December 2003 and January 2004. He pointed out that there was a public service element involved, as he often drove individuals, who had been drinking, home from the bars.

[7] I heard evidence from Laurie Hrynuik, Secretary to the Yukon Motor Transportation Board, that upon receiving a complaint about Mr. Sevigny, she

sent an information package containing an application for Yukon Operating Authority for Taxis to the owner of the vehicle used by Mr. Sevigny. The application form is not complicated. The Yukon Transportation Board is primarily concerned with public safety and the application form addresses the qualifications of the driver, the fitness of the motor vehicle and the requirement of adequate insurance.

[8] Upon receiving a further complaint that Mr. Sevigny was operating a taxi service on December 17, 2003, Ms. Hrynuik contacted the RCMP in Dawson City. On January 5, 2004, Mr. Sevigny received a Summary Convictions ticket alleging the offence which is the subject matter before the court. That same day, Mr. Sevigny telephoned Ms. Hrynuik. Mr. Sevigny told Ms. Hrynuik that he had leased the vehicle in question and was acting as a “designated driver” over the holiday period as a service to the community. Ms. Hrynuik advised Mr. Sevigny that he was required to have operating authority to provide a passenger service. On January 7, 2004, Ms. Hrynuik, received an E-mail from Jeremy Sevigny (Denis Sevigny’s son) which stated:

This e-amil (sic) is to confem (sic) our phone conversation concerning designated driving and accpeting (sic) donations due to the fact that we are not yet regisered (sic) as a commercaial (sic) vechile (sic) plate number EAE-44 which is still registered to Philippe. Therefore not breaking any laws or regulations of transport act. Please reply as soon as possible.

[9] In response to my questions, Ms. Hrynuik acknowledged that there had been previous telephone conversations with Mr. Sevigny about taxi licencing requirements and it is possible that he may have been confused about his obligations under the *Act*.

The Law

[10] Section 2(1) of the *Yukon Transport Act* is worded broadly and in my view, in light of its public welfare and safety objectives, should be given a liberal interpretation. The facts as admitted by Mr. Sevigny include the following:

- (1) On December 17, 2003, Mr. Sevigny transported a passenger in his motor vehicle in return for a financial “donation” in the amount of ten dollars.
- (2) This was not an isolated incident, but rather, a part of a course of conduct over several months during which period he provided people with motorized transport in return for financial “donations”.
- (3) Although Mr. Sevigny described his activities as a “designated driver service”, his advertising poster uses the word “taxi”. There is no reference to “designated driver” or the voluntary nature of the payments.

[11] Assuming that the payments to Mr. Sevigny were voluntary and in the nature of “donations”, I am satisfied that they fell within the definition of “compensation” as defined in s. 1 of the *Act*. Although voluntary, such payments amount to “remuneration” and “reward of any kind” and are prohibited by s. 2(1) of the *Act*.

[12] There is a strong public welfare interest in ensuring that Mr. Sevigny’s activities are properly licenced under the *Yukon Transport Act*. Public safety is a prime concern, as individuals who transport others on a regular basis using motorized vehicles must have the proper skills and training, must operate a vehicle which is mechanically safe and sound and must carry adequate insurance to compensate passengers and third parties in the event of an accident. These concerns are not eliminated or reduced by the fact that Mr. Sevigny received his “reward” or “remuneration” by voluntary donation instead of by a predetermined tariff.

[13] There is a further issue as to whether, in light of the exemption prescribed in ss. 2(2) of the *Act*, the Crown must prove that Mr. Sevigny is not exempt from obtaining the required certification under ss. 2(1) of the *Act*. The decision of *R. v. Daniels* (1990), 60 C.C.C. (3d) 392 (BCCA) was brought to my attention. That decision refers to s. 794 of the *Criminal Code* and the principle that the burden of proving an exception, exemption, proviso, excuse or qualification prescribed by law operates in favour of the defendant is on the defendant, not the prosecutor. This is a persuasive burden of proof, not a reverse onus which could attract constitutional criticism.

[14] As the case at bar is a prosecution under Territorial legislation, s. 794 of the *Criminal Code* does not apply. However, *Daniels, supra*, cited in *R. v. Edwards*, [1975] 1 Q.B. 27, and *R. v. Schwartz* (1989), 45 C.C.C. (3d) 97 (SCC) stand for the proposition that the *Criminal Code* provision is merely a codification of the common law and therefore this principle applies to all prosecutions.

[15] Mr. Sevigny has not established that his conduct falls within an exemption recognized by the *Yukon Transport Act* or any regulation promulgated pursuant to that legislation. In addition, the clear evidence from Jean Murphy, Chair of the Transport Board, demonstrates to me that there is no exemption in law or in practice that would apply to Mr. Sevigny's circumstances.

[16] In his submissions, Mr. Sevigny stated that he had contacted the Yukon Transport Board and that he was advised that, based on his circumstances, he did not require a taxi licence pursuant to s. 2(1) of the *Act*. These facts raise the potential application of the excuse of "officially induced error". This principle has been considered in *R. v. Jorgensen*, [1995] 4 S.C.R. 55 (SCC) and *Maitland Valley Conservation Authority v. Cranbook Swine Inc.* (2003), 64 O.R. (3d) 417 (Ont. C.A.). To establish this excuse, the accused must be able to show:

- (1) That he considered the legal consequences of his actions and consulted an appropriate official;

- (2) That he received advice from an appropriate official;
- (3) That the legal advice was erroneous;
- (4) That upon receiving the advice, he relied upon it; and,
- (5) That his reliance was reasonable.

Finally, the excuse of officially induced error must be proven by the accused on a balance of probabilities.

[17] Ms. Hrynuik's evidence was that her position with Mr. Sevigny was consistent, namely that any compensated transportation of passengers was subject to Board approval. Ms. Hrynuik acknowledged that she had had discussions with Mr. Sevigny prior to December 17, 2003, about a taxi licence and that it was possible that Mr. Sevigny might have been confused about his obligations. It was not until January 5, 2004, after the date of the alleged offence, that Mr. Sevigny clearly raised the question whether he needed a taxi licence as he was acting as a "designated driver". Mr. Sevigny was advised by Ms. Hrynuik that he was required to have operating authority to provide a passenger service. The E-mail from Mr. Sevigny's son, Jeremy, dated January 7, 2004 (reproduced earlier) refers to an earlier undated telephone conversation. From Ms. Hrynuik's evidence, I am satisfied that the telephone conversation took place on January 5, 2004.

[18] I have concluded that the excuse of "officially induced error" does not apply to these facts. Mr. Sevigny has not satisfied me on the balance of probabilities that the elements of this legal excuse have been satisfied. While Mr. Sevigny may have had dealings with the City of Dawson, his contact with the Yukon Transport Board was minimal. Mr. Sevigny has not satisfied me that he received erroneous advice. What is apparent is that Mr. Sevigny attempted to devise a scheme involving "voluntary donations" utilizing the idea of a designated driver to avoid the licencing requirements of the City of Dawson and possibly the Yukon Transport Board.

[19] By way of summary, I have found as follows:

- (1) Mr. Sevigny was in violation of s. 2 of the *Yukon Transport Act* on December 17, 2003 by virtue of transporting a passenger for remuneration or reward.
- (2) Mr. Sevigny has not established an entitlement to an exemption to the licencing requirement.
- (3) Mr. Sevigny has not established the excuse of officially induced error.

[20] In the result, I find Mr. Sevigny guilty of the charge before the court. In the circumstances, an appropriate fine would be that indicated on the face of the ticket, \$200.00 plus a surcharge of \$30.00. I will hear from Mr. Sevigny regarding time to pay.

Lilles C.J.T.C.