

Citation: *R. v. Skookum*, 2017 YKTC 65

Date: 20171212
Docket: 17-05125
17-05112
Registry: Whitehorse

IN THE TERRITORIAL COURT OF YUKON
Before Her Honour Judge Orr

REGINA

v.

BRETT J. SKOOKUM

Appearances:
Kimberly Sova
Allan Lane

Counsel for the Territorial Crown
Appearing as Agent for the Defence

REASONS FOR JUDGMENT

[1] ORR J. (Oral): Before me are two summary offence tickets that have been issued by Officer Sebastien Nadeau, the carrier compliance officer in respect of this matter.

[2] This is a charge against Brett Skookum. Mr. Skookum did not present himself for the trial, but was represented by Mr. Lane. As such, at the outset of this proceeding Mr. Lane acknowledged that identity of Mr. Skookum was not in issue. It was admitted that the person that the officer was dealing with was in fact the person to whom the ticket has been issued.

[3] Mr. Skookum is not here in respect of this matter, but I find that his driver's licence was presented, thus identifying Mr. Skookum to the investigating officer at the time. That deals with the first matter, the issue of identity.

[4] Jurisdiction has been established. It is agreed by everyone involved in respect of this matter that this occurred in the Yukon.

[5] With respect to the date and the time, the ticket that was issued indicates that Mr. Skookum was charged with offences that are alleged to have been committed at or near Whitehorse, Yukon, on or about August 30, 2017 at 13:45, which would be approximately 1:45 p.m.

[6] With respect to the time, the evidence before the Court with respect to time is that Officer Nadeau believed it was sometime around the lunch hour, and that the time that he put on the ticket was the time at which he had issued the ticket, which is 13:45.

[7] Mr. Lane himself testified that the time stamp on the photo that has been entered by consent as Exhibit D4, showing the sod lying on the highway, was time-stamped at 1:25 p.m., which would have been 13:25, so it is certainly within close proximity to the time that the ticket was issued. The ticket does say "at or about 13:45," and there is certainly nothing to show that Mr. Skookum was at some other place at that time and could not have been where the officer says he was.

[8] The first ticket that I am going to deal with is the ticket issued under s. 31(a) of the *Motor Vehicles Act*, RSY 2002, c. 153, alleging wrong class of licence.

[9] While it is a bit of a repetition, I think it is important to have the references to the various sections as part of my decision in this matter.

[10] Section 31 of the *Motor Vehicles Act* states:

31. A person who operates a motor vehicle on a highway
(a) of a type that they are not authorized to operate under the class of operator's licence that they hold . . .

— there is a (b) there that does not apply —

. . . is guilty of an offence.

[11] So the next step, then, is to look at the *Motor Vehicles Regulations, C.O.*

1978/120, as amended by O.I.C. 2004/139. Section 2 has been provided to me. It sets out the variety of classes of operators' licences. Section 2(1) states:

The following are the classes of operators' licence and the types of vehicles the holder of a licence of each class is authorized to operate, subject to the other provisions of these Regulations and the Act.

[12] And 2(1)(e) states:

Class 5: the holder may operate

(i) a motor vehicle not exceeding a registered gross vehicle weight of 11,000 kilograms, other than a high speed motor cycle;

(ii) any combination of vehicles where the towed vehicle in the combination does not exceed a registered gross vehicle weight of 4,550 kilograms and the towing vehicle is authorized by subparagraph (i), ...

[13] The other subsections deal with receiving instruction and driving a high-speed motorcycle. They are not relevant to this particular matter.

[14] Mr. Lane has referred to 2(1)(e)(ii) as being the relevant section, and it provides:

s. 2(1)(e)(ii) Any combination of vehicles where the towed vehicle in the combination does not exceed a registered gross vehicle weight of 4,550 kilograms and the towing vehicle is authorized by subparagraph (i).

[15] Subparagraph (i) states: "a motor vehicle not exceeding a registered gross vehicle weight of 11,000 kilograms."

[16] In this case, there is no towed vehicle. Officer Nadeau stopped the vehicle being operated by Mr. Skookum. Mr. Skookum was driving a Dodge truck. He was not hauling anything behind it. There was no trailer or anything else being towed.

[17] The key words in all of this are "a registered gross vehicle weight."

[18] In order to obtain the registered gross vehicle weight, we have Exhibit C1, a certificate of registered ownership that indicates the date range from April 25, 2017, to December 31, 2017. It gives the Yukon licence plate CJ117 attached to a 2014 Dodge Ram SLT 5500 white crew cab. It provides a serial number. The serial number provided has been confirmed by Officer Nadeau in his testimony to be the same VIN number that is on Exhibit D2, the sticker that is in the vehicle. The certificate of registered ownership, certified by the deputy registrar of motor vehicles on November 29, 2017, indicates that the maximum gross vehicle weight, GVW, is 15,999 kilograms. That is what it was registered to. That is the amount that is registered.

[19] The fact that it has a manufacturer's weight of a different amount is not the issue.

[20] The issue that is before the Court is what was the registered gross vehicle weight. The registered gross vehicle weight of the Dodge Ram that Mr. Skookum was operating on the date in question had a registered gross vehicle weight exceeding 11,000 kilograms. As such, with the type of licence that he had, he was not authorized to be operating that vehicle.

[21] I can only deal with the legislation as it is written. The legislation states "registered gross vehicle weight", and the certificate of registered ownership that has been entered as an Exhibit in this matter indicates what that vehicle's registered maximum gross vehicle weight was.

[22] The Crown has established beyond a reasonable doubt that on the date in question Mr. Skookum committed an offence under s. 31(a) of the *Motor Vehicles Act*, in that he operated a motor vehicle on a highway of a type that he was not authorized to operate under the class of operator's licence that he held.

[23] I enter a conviction in respect of ticket number 331400.

[24] The next ticket, 331399, was again issued to Brett J. Skookum. It was issued on the same date, on or about August 30, 2017, at the same place, at or near Whitehorse, Yukon. This has three charges on it. Count 3 was stayed at the outset of this trial.

[25] The first charge is under s. 9(1) of the *Highways Regulation*, O.I.C. 2002/174, for failing to report to the weigh scales.

[26] Section 9(1) of the *Highways Regulation* states:

Reporting requirements

9(1) The driver of

(a) a vehicle exceeding a registered gross vehicle weight of 4,500 kilograms, or

...

must report to each scale designated by the Minister for the purpose unless a sign or signal authorized by an officer instructs that they need not report.

(2) Subsection (1) does not apply to the driver of

(a) a school bus;

(b) a recreational vehicle; or

(c) a vehicle operating under a weigh scale reporting exemption permit.

[27] There is no evidence before me to show that the vehicle in this case was any of those enumerated vehicles, pursuant to Section 9(2), such that it did not apply.

[28] Section 9(4) states:

If a vehicle is loaded, or comes, within 20 kilometres of a stationary weigh scale, the vehicle must, before going on to its destination, be driven without detour to the stationary weigh scale and be weighed to determine if the vehicle is within the weight permitted or authorized for that vehicle.

[29] We had a *voir dire* on the admissibility of statements that were made by Mr. Skookum to Officer Nadeau. Those statements were admitted as being voluntary, and the evidence was then recalled as part of the trial proper.

[30] The evidence was that Mr. Skookum indicated that he had gone to the sod farm. Officer Nadeau testified as to where the sod farm was. He indicated that the sod farm is approximately 30 to 35 kilometres north of Whitehorse on the North Klondike Highway. He indicated that Whistle Bend is approximately 10 kilometres from the weigh station, north of Whitehorse, and that the evidence of Mr. Skookum was that on the way back from the sod farm, he had stopped in Whistle Bend.

[31] The evidence of the officer in respect to this matter was that he did not check to see whether or not Mr. Skookum had checked in at the weigh station. The reason that he had not checked any of the systems that would have given him that information was because of the fact that Mr. Skookum had indicated to him he had not done so. So Officer Nadeau obviously did not feel there was any necessity to look into anything when the indications were he was not going to find anything there.

[32] On his way back from the sod farm, by stopping in Whistle Bend, Mr. Skookum would not have been in compliance with s. 9(1) of the *Highways Regulation*. He failed to report to the weigh scales as he was required to do.

[33] The Crown has established beyond a reasonable doubt that that count 1 has been made out. I enter a conviction on that charge.

[34] The second count is a charge under s. 10 that has been amended to s. 10(2) of the *National Safety Code* standards. The *Motor Vehicles Act* incorporates some of the provisions of the *National Safety Code* (“NSC”) pursuant to the *National Safety Code Regulation*, OIC 2007/168 (“NSC Regulation”). Standard 10 of the NSC is incorporated

to have the force of law to the same extent as if it was set out in the *Regulation* (s. 3(1) of the *NSC Regulation*).

[35] Section (2) of the *NSC Standard 10* states:

A driver shall not operate a vehicle where the cargo transported in or on the vehicle is not contained, immobilized or secured in accordance with this Standard.

[36] Then Division 2, the General Performance Criteria, is set out immediately following, and it states:

Cargo securement

Cargo transported by a vehicle shall be contained, immobilized or secured so that it cannot

- (a) leak, spill, blow off, fall from, fall through or otherwise be dislodged from the vehicle, or
- (b) shift upon or within the vehicle to such an extent that the vehicle's stability or manoeuvrability is adversely affected.

[37] So, the relevant section in respect of this matter is (a).

[38] The evidence in respect of this matter is Mr. Skookum and the vehicle he was operating came to the attention of Officer Nadeau on the basis that he saw the truck as he was waiting to make a turn onto the Alaska Highway. He saw a piece of sod blow off of that truck. We have a picture, Exhibit D4, showing what appears to be something that is quite consistent with a piece of sod on the highway, in what was described as being the southbound lane; it is almost near the yellow line. That is what brought the vehicle to Officer Nadeau's attention.

[39] In order for the sod to blow off of the vehicle, it clearly was not contained, immobilized, or secured such that it could not do so. I do not use Latin very often because it is not something that we use in everyday language, but there is a legal Latin phrase *res ipsa loquitur*, which means "the thing speaks for itself." When something blows off a load, lands in the middle of the highway, and is consistent with what is on the truck otherwise, then obviously it either blew off, it fell from, or somehow was dislodged from the vehicle it was on. It therefore was not immobilized, was not contained, and was not secured sufficiently to prevent it from becoming dislodged, blowing off, falling from and somehow leaving the vehicle and ending up anywhere other than on the vehicle.

[40] A great deal has been made in this matter about notes and disclosure in respect of this matter. I think as a general statement, as it applies to all of these charges and the two tickets that I am dealing with in respect of these matters, notes are something that ordinarily are made at the time of an event to assist the person who is making them to recall specific details at a later time, if they are called upon in order to give testimony or to give a report or to be able to provide information about that particular incident. Notes are made, hopefully and usually, contemporaneously with the events that they record.

[41] Notes seldom are made in a paragraph form or a lengthy form. They are notes; they are jottings. They are things that are put down to act as an aid to assist in refreshing a person's memory, so that if at some later point in time there is a need to ensure the accuracy or to assist in the recall of the matter that they would be there in order to be consulted to see whether or not they can provide that assistance.

[42] Notes rarely become evidence in a trial. They often become the focus of a trial because if an individual indicates a difficulty in recalling specific matters, many times witnesses ask for the ability to consult with their notes to refresh their memory to see if that will assist them in being able to provide accurate testimony before the court. If they do not have any difficulty in recalling the matter, then they never have to look at the notes and they do not become an issue.

[43] The second purpose of notes is that they provide information to anyone who is inquiring about the particular matter. They can look at the notes to see whether or not that assists them in understanding what occurred, since they may not have been there at the time, or their recollection of the matter, for any number of reasons, may be different.

[44] In this case, the indications are that the officer made notes on the back of a ticket, which is fairly consistent with the way in which summary offence tickets occur and how they are dealt with by investigating officers. It is not a criminal case. There is usually not a lengthy report prepared as we see in a criminal case because they are summary offence tickets. They are dealt with in a much more informal manner because of the fact that, although there may well be some serious consequences to them, they are not criminal cases.

[45] We have, in this case, the indication that there were notes made on the back of a ticket. There were inquiries made on behalf of the defence for further information. There was a can-say statement provided to give some further information to the defence to assist them in respect of this matter.

[46] A "can-say" is exactly what that title specifies. It is what the expectation is that the witness can say. It is not a sworn declaration. It is not a videotaped statement. It is not a handwritten statement by whomever the person is, with their signature at the bottom. It is reasonably expected to be as accurate as one can hope it to be, from information that is provided, to give some assistance to understanding what occurred.

[47] What I have to consider when I am considering all of the evidence in respect of this matter is what I heard from all of the witnesses on the witness stand, the way in which they answered the questions, and if they had any difficulty in recalling the details. If there was difficulty, I must consider whether or not there is any reason for that, whether or not they had notes that they referred to, and whether or not those notes were of assistance to them.

[48] I think it would be very fair to say in respect of this matter that Officer Nadeau gave his evidence in a straight-forward manner. He was extensively cross-examined in respect of this matter. There were a number of occasions on which he indicated a great deal of confusion as to what was being asked of him. I think that some of those indications of confusion would be quite appropriate, because there were a number of times when those questions to him were not very clear as to how they related to this particular matter. However, he answered the questions. He provided the information that he had as to how he recalled the matter, what he did, why he did it, and what the basis of the legislation that he was acting upon was.

[49] I am satisfied in respect of this matter that Officer Nadeau was a credible witness whose evidence could be relied upon. All of these tickets have proceeded as one trial.

I think it is a fair comment that Officer Nadeau did not know all of the answers to the questions. He indicated some of the questions that were being put to him were irrelevant, and I would have to agree with him that they were not relevant to the legislation or the role that he has. He is not the policy-maker; he is the enforcer of the legislation as it has been passed by the legislature of this territory. I found him to be a credible witness in respect of this matter.

[50] Exhibit D3 is a picture of two skids of sod. Officer Nadeau looked at that picture, and he indicated that he could not identify what truck they were on. He could identify that there were two skids with sod on them. I can see from Exhibit D3 there is no indication as to what truck or what vehicle they are on. They are certainly on something, but it is not clear as to what it is. Officer Nadeau was not able to say what that picture represented.

[51] The evidence of Mr. Lane in that regard was that that is how the vehicle looked at the time that they were able to get to the weigh station to deal with it. However, there was no indication as to when that was.

[52] Whether there were two skids on the back of the Dodge Ram that Mr. Skookum was operating or there was one skid or there were five skids is not the issue that is before the Court. The issue that is before the Court is whether or not the load was secured. The evidence in respect of that is that one piece of sod came off. That is what drew the attention of Officer Nadeau and led him to the investigation in this matter. He further saw that there were other pieces of sod that were loose that had fallen off and were on the flat bed of the truck; they were not on the highway. Determining how many

skids were on the back of the truck was not an issue that was relevant to the tickets that were before the Court, and it is certainly not a relevant matter as far as determining the outcome of the tickets that are before the Court.

[53] I am satisfied that the offence under s. 2 of the *National Safety Code Standard 10* alleging insecure cargo has been made out. Crown has established all of the elements of that offence beyond a reasonable doubt, and I enter a conviction in respect of that charge.

ORR T.C.J.