

IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

Between:

HER MAJESTY THE QUEEN

Appellant

-and-

LEONARD ALBERT CARDINAL

Respondent

15-Oct-1975

REASONS FOR JUDGMENT OF THE HONOURABLE
MR. JUSTICE W. G. MORROW

Now, in the present case there is no issue whatsoever as I see it, and no issue certainly has been made by Defence Counsel as to the impairment within the meaning of Section 236 of the Criminal Code.

The whole issue here is as to whether or not the accused had care and control of the motor vehicle under the circumstances that have been outlined by the police witnesses.

Section 237 is one of the Sections which has been legislated by the Parliament of Canada in order to assist in the application of this Section and other similar types of Sections.

The law reports are full of the type of case we have heard today as to what is or is not effectually within the meaning of

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I accept the evidence of the Constable here that as they drove up there were fumes coming out of the exhaust pipe, which is certainly suggestive that at that moment, as they came up from the rear of the vehicle involved, the engine was running. They found the accused in the driver's seat, sitting there in the normal position a driver would be expected to be if he was in the care and control or had just moved up to park or was about to leave.

I am satisfied that within the meaning of the Section the Crown has satisfied its charge in this case. Accordingly the appeal is allowed and Mr. Cardinal is found guilty as charged.

There will be a fine imposed of one hundred dollars or fifteen days in default.

Pronounced at Inuvik, N.W.T.,
Tuesday, March 2, 1976.

"W. G. Morrow"

W. G. MORROW

BETWEEN:

HER MAJESTY THE QUEEN,
Upon the Information
of Corporal B.M. Charlebois,
a member of the Royal
Canadian Mounted Police

Appellant

- and -

LEONARD ALBERT CARDINAL

Respondent

NOTICE OF APPEAL

TAKE NOTICE that Her Majesty the Queen intends to and does hereby appeal to the Supreme Court of the Northwest Territories at such sitting thereof where such appeal may lawfully be entered and heard against that certain acquittal in respect thereof made the 16th. day of September, A.D. 1975 at Inuvik by His Worship J. H. Sunstrum, a Magistrate for the Northwest Territories whereby LEONARD ALBERT CARDINAL was acquitted of a charge under Section 236 of the Criminal Code of Canada charging that:

LEONARD ALBERT CARDINAL, on or about the 1st. day of September A.D. 1975, at the Town of Inuvik in the Northwest Territories, having consumed alcohol in such a quantity that the proportion thereof in his blood exceeded eighty milligrams of alcohol in one hundred millilitres of blood did have the care and control of a motor vehicle, contrary to section 236 of the Criminal Code.

AND FURTHER TAKE NOTICE that the grounds upon which Her Majesty the Queen appeals are as follows:

1. THAT the conviction is against the law on the evidence and the weight of the evidence.
2. UPON such further and other grounds as may appear.

DATED at the City of Yellowknife, in the Northwest Territories this 15th day of October, A.D. 1975.



Orval J. T. Troy, Q.C.
Crown Attorney
Counsel for the Appellant
and Agent of the Attorney
General of Canada and the
Northwest Territories

TO: LEONARD A. CARDINAL
Inuvik, N.W.T.

AND TO:
His Worship
J. H. Sunstrum
Magistrate
Yellowknife, N.W.T.

Constable D. I. Bowering
R.C.M. Police
Inuvik, N.W.T.

Robert Halifax
Barrister & Solicitor
Yellowknife, N.W.T.