Date: 1998 12 21
Docket: CR 03663

IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

BETWEEN:

JAMES ROGER BECK

Appellant

- and -

HER MAJESTY THE QUEEN

Respondent

Summary conviction appeals from convictions on charges of impaired driving and obstructing a peace officer.

Heard at Hay River, NT, on December 17, 1998

Judgment filed: December 21, 1998

REASONS FOR JUDGMENT OF THE HONOURABLE J.Z. VERTES

Counsel for the Appellant: Arthur von Kursell

Counsel for the Respondent: Bradley J. Allison

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REASONS FOR JUDGMENT

[1] The appellant, James Roger Beck, was convicted in Territorial Court of two offences: (1) impaired driving (contrary to s.253(a) of the *Criminal Code*); and (2) wilfully obstructing a peace officer in the execution of his duty (contrary to s.129(a) of the Code). He now appeals the convictions on the basis that the trial judge erred in his appreciation of the evidence and application of jurisprudence to that evidence.

Evidence at Trial

[2] The evidence tendered by the Crown at trial came from the testimony of two police officers. One testified that he was on highway patrol on June 20, 1998, when, at 12:30 a.m., he observed a vehicle speeding on the highway. He clocked the speed of that vehicle, through his radar, at 37 kilometers over the posted speed limit of 60 kilometers per hour. He turned on the police vehicle lights and motioned for the oncoming vehicle to pull over. The vehicle did not stop but instead drove by and kept going. The officer gave chase in his vehicle and eventually the other vehicle, driven by the appellant, came to a stop.

[3] The officer talked to the driver. He observed some signs of impairment. The officer testified he could smell alcohol on the driver's breath. The driver exhibited slow movements and had slurred speech and glassy eyes. The driver had problems balancing himself when he first got out of the car. The driver was cautioned and said that he had drank two beers earlier in the evening. The officer asked him his name and the driver replied that his name was "Raymond Beck" and gave a birth date. Raymond Beck is the appellant's brother. The officer placed the driver under arrest and took him back to the detachment for a breathalyser test. No issue is taken as to the grounds for the arrest or the demand for the test.

[4] At the detachment a second officer, being the breathalyser technician, after being advised of the name of the person arrested indicated that he did not think that person was Raymond Beck. He asked the appellant who he was and the appellant did not answer. When informed of the circumstances of the arrest, the other officer formed the opinion that the person under arrest was in fact the appellant, James Roger Beck, since they were looking for him on another matter and knew that he was driving the type of car in which he was arrested. The officer asked the appellant again to give his name and he refused. The arresting officer then obtained a photo of Raymond Beck and, when he was shown the photo, the appellant admitted that he was James Roger Beck.

[5] As it turned out, no breathalyser test was conducted since the machine was malfunctioning. The appellant did not testify at the trial.

The Judgments Under Appeal

[6] The learned trial judge enumerated factors he viewed as supportive of an inference that the appellant was impaired: the admission that he had consumed alcohol and the observations of the police officer as to odour of alcohol, glassy eyes, slurred speech and unsteadiness on his feet. He noted the fact that the appellant was speeding and failed to pull over when signalled by the officer to do so. The trial judge also stated that "one can infer that the accused obviously had a guilty mind if he was firstly trying to get away and, secondly, trying to shift the blame to his brother using a false name."

[7] In dealing with some of the defence arguments (such as that the appellant's slurred speech may have been due to some missing teeth), the trial judge referred to it as speculation. He noted that there is evidence of impairment with no answer from the

appellant. Thus there was nothing to raise a reasonable doubt. In the result, a conviction was entered on the impaired driving charge.

[8] With respect to the obstruction charge, the trial judge held that the appellant's intention was to mislead the police. He said that the police were put to extra work by having to establish the appellant's true identity (even though it was done in "fairly short order" as the judge put it). Thus a conviction was entered on the obstruction charge.

Appeal on Impaired Driving Charge

[9] The appellant's initial ground of appeal on the impaired driving charge relates to what is said to be a refusal by the trial judge to consider relevant jurisprudential authority. During his final submissions at trial, appellant's counsel sought to hand up to the trial judge a copy of the Alberta Court of Appeal decision in *R. v. Andrews*, [1996] A.J. No. 8. The copy counsel sought to submit was the Quicklaw version. The trial judge refused to take it citing his concern that it is not an authoritative copy of that decision and thus there may be inaccuracies in the copy. Defence counsel went on, however, to refer to *Andrews* in his oral submissions. The trial judge did not refer to it in his judgment. Appellant's counsel argued on this appeal that the trial judge's failure to refer expressly to *Andrews*, and the fact that *Andrews* appears to be on all fours with this case yet the result in this case was different, leads to the conclusion that the trial judge failed to consider it.

[10] The *Andrews* case did have a highly similar fact situation. The Court of Appeal there overturned a conviction for impaired driving. It did not, however, enter an acquittal. It merely sent the case back for a new trial. The reason it did so was that the trial judge in that case failed to distinguish between evidence of "slight impairment" and evidence of "slight impairment of one's ability to operate a motor vehicle" (see *Andrews* at para. 17). In the present case the trial judge expressly said "it is sufficient for the court to conclude that the accused's ability to operate a motor vehicle was impaired. That is all the Crown has to prove. It does not have to prove that he was grossly impaired or slightly impaired." In my opinion, this expresses the test accurately, as laid down in *R. v. Stellato* (1993), 78 C.C.C. (3d) 380 (Ont. C.A.), affirmed (1994), 90 C.C.C. (3d) 160 (S.C.C.), and in conformity with the reasons of the majority in *Andrews*.

[11] Counsel's argument that the trial judge's failure to refer to *Andrews* is an error of law fails to appreciate the guiding principles set out in *R. v. Burns* (1994), 89 C.C.C. (3d) 193 (S.C.C.), in particular at pages 199-200:

> Failure to indicate expressly that all relevant considerations have been taken into account in arriving at a verdict is not a basis for allowing an appeal under s. 686(1)(a). This accords with the general rule that a trial judge does not err merely because he or she does not give reasons for deciding one way or the other on problematic points: see *R. v. Smith*, [1990] 1 S.C.R. 991, 109 A.R. 160, 111 N.R. 144; affirming 95 A.R. 304, 7 W.C.B. (2d) 374, and *MacDonald v. The Queen* (1976) 29 C.C.C. (2d) 257, 68 D.L.R. (3d) 649, [1977] 2 S.C.R. 665. The judge is not required to demonstrate that he or she knows the law and has considered all aspects of the evidence. Nor is the judge required to explain why he or she does not entertain a reasonable doubt as to the accused's guilt. Failure to do any of these things does not, in itself, permit a court of appeal to set aside the verdict.
>
> This rule makes good sense. To require trial judges charged with heavy case-loads of criminal cases to deal in their reasons with every aspect of every case would slow the system of justice immeasurably. Trial judges are presumed to know the law with which they work day in and day out. If they state their conclusions in brief compass, and these conclusions are supported by the evidence, the verdict should not be overturned merely because they fail to discuss collateral aspects of the case.

[12] I must admit to some difficulty in understanding the trial judge's reluctance to accept a Quicklaw copy of a case. It seems to me that concerns about its accuracy may be no more or less than concerns about the accuracy of some case printed by a private publisher. A trial judge however is entitled to control the proceedings in his or her court. The significant point here though is that counsel was still able to make his submissions. Similarly, the significant point about the judge's reasons is not his failure to refer to *Andrews* but that his reasons do not reveal error of law or a misapprehension of the evidence.

[13] Appellant's counsel also argued that the trial judge erred in the following extract from the reasons for judgment:

> When I add all the elements up, considerations up, it seems to me that there is some evidence and sufficient evidence of impairment with no answer. I think the Court has to consider that, that there is no explanation. I have no evidentiary basis of any other explanation for any of these indicia other than impairment.

[14] Appellant's counsel argued that the trial judge used the accused's silence as an aspect of the process in coming to proof beyond a reasonable doubt. This, he submitted, violated the appellant's right to remain silent. As outlined by the majority in *R. v. Noble* (1997), 114 C.C.C. (3d) 385 (S.C.C.), if the case against the accused does not otherwise prove guilt beyond a reasonable doubt, to permit the trier of fact to reach a guilty verdict on the basis of the failure to testify would significantly undermine the right not to testify.

[15] Crown counsel pointed out in response that the trial judge was careful to outline in detail his fact-findings prior to the comments about the appellant's failure to testify. I agree. The trial judge concluded that the evidence was consistent with impairment. The reference to "no answer" merely confirms that there is nothing in the evidence to raise a reasonable doubt. This is not an infringement of the right to silence. It is a recognition that the evidence proves guilt and there is nothing to undermine it. In this, in my opinion, the judgment accords with what the majority in *Noble* said was the permissible use of the failure of an accused to testify (at page 417 per Sopinka J.):

> Some reference to the silence of the accused by the trier of fact may not offend the *Charter* principles discussed above: where in a trial by judge alone the trial judge is convinced of the guilt of the accused beyond a reasonable doubt, the silence of the accused may be referred to as evidence of the absence of an explanation which could raise a reasonable doubt. If the Crown has proved the case beyond a reasonable doubt, the accused need not testify, but if he doesn't, the Crown's case prevails and the accused will be convicted. It is only in this sense that the accused "need respond" once the Crown has proved its case beyond a reasonable doubt. Another permissible reference to the silence of the accused was alluded to by the Court of Appeal in this case. In its view, such a reference is permitted by a judge trying a case alone to indicate that he need not speculate about possible defences that might have been offered by the accused had he or she testified.

[16] Appellant's counsel also submitted, however, that there were rational explanations in the evidence consistent with innocence for some of the indicia of impairment relied on by the trial judge. Suffice it to say that the items mentioned by counsel are mere speculation unsupported by any evidence. To entertain them would have required the trial judge to speculate about possible evidence that might have been offered by the accused had he testified.

[17] The final issue worthy of note is the inference of guilt drawn by the trial judge from the failure to stop and the giving of a false name. The trial judge said that this

behaviour is "not indicative of somebody that is in a sober condition." He went on, however, to say that "one can infer that the accused obviously had a guilty mind."

[18] In *R. v. White* (1998), 125 C.C.C. (3d) 385 (S.C.C.), Major J. (on behalf of the Court) wrote that in some circumstances the conduct of an accused after a crime has been committed may provide circumstantial evidence of the accused's culpability for that crime. As examples, he stated (at page 397) that an inference of guilt may be drawn from the fact that the accused has lied or assumed a false name or attempted to resist arrest. In such cases, however, the trier of fact must exercise caution so as to counter what may be termed a natural tendency to leap from evidence of flight or concealment to a conclusion of guilt. In particular, Major J. wrote (at page 404), the trier of fact must consider, when deciding how much weight, if any, to give such evidence in the final evaluation of guilt or innocence, that even if the accused was motivated by a feeling of guilt, that feeling might be attributable to some culpable act other than the offence for which the accused is being tried.

[19] In this case there was evidence that the police were looking for the appellant on another matter. That is a factor to consider when drawing an inference of guilt. Whether I would have drawn the same inference as the trial judge is immaterial. He was entitled to do so on the evidence in this case. And, as Crown counsel noted, there were sufficient findings of fact without these inferences being drawn to support the conviction.

[20] The trial judge recognized, as did counsel, that these types of cases are fact specific. The test on an appeal is whether the trier of fact, properly instructed and acting judicially, could reasonably render the verdict that it did. In this case there was ample evidence on which the trial judge could reasonably base his verdict. The appeal on this conviction is dismissed.

Appeal on Obstruction Charge

[21] Appellant's counsel conceded, in reference to the obstruction charge, the "wilfulness" of the appellant's conduct. His argument, however, was that, while that conduct was rude and inconsiderate, it did not cross the threshold into criminal obstruction. For that, counsel submitted, there must be evidence of some "major inconvenience" to the police.

[22] Counsel relied on two cases. The first is *Moore v. The Queen* (1978), 43 C.C.C. (2d) 83 (S.C.C.). There the accused was observed riding a bicycle through a red light. A police officer stopped him and asked him to identify himself. He refused to do so. The majority of the Court concluded that the accused's conduct amounted to an obstruction of the officer in the performance of his duties. In doing so, Spence J. wrote (at page 90) that "the refusal of a citizen to identify himself under such circumstances causes a major inconvenience and obstruction to the police". The judgment did not outline what inconvenience was caused, i.e. what beyond the mere fact of refusing to identify himself.

[23] The second case referred to by counsel is *R. v. Whalen*, [1993] A.J. No. 618 (Prov. Ct.). There the accused was stopped on suspicion of a vehicle offence and gave a false name to the police officer. The officer did a check and then the accused admitted his true identity. A charge of obstruction was dismissed on the basis that, as held in that case, for an accused to be guilty of obstruction he must do something that affected the work of the police officer in more than a trifling manner.

[24] Appellant's counsel submitted that in this case the trial judge said, in effect, that *Whalen* may be right but it does not apply because here the police were investigating a criminal matter and not a minor provincial motor vehicle matter. This, counsel contended, was the drawing of a distinction where none was allowed. He submitted that the judge erred by not assessing the degree of inconvenience caused to the police.

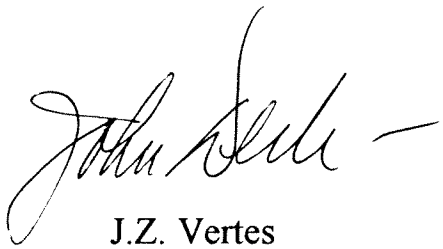
[25] In my opinion, a careful reading of the trial judge's reasons do not support this contention. The trial judge said, admittedly, that it was "on the low end of the scale", but he also said that (a) the police officer was put to extra work because the appellant gave a false name; (b) the appellant intended to mislead the police; (c) the appellant was prepared to continue with his ruse; and, (d) the activity engendered by this ruse was more than what happened in *Whalen*. The trial judge may have distinguished *Whalen* on the basis of the type of charge; but he also distinguished it on the basis of the amount of inconvenience caused to the police.

[26] In my opinion, it is stretching the judgment in *Moore* to impose a requirement that the obstructive act cause a "major inconvenience". The act must obstruct the police officer in the execution of his or her duty. If it obstructs it to any degree, then the offence is made out. To add a further qualification that the obstruction must result

in major inconvenience is to impose a question of the magnitude of the crime as opposed to a question of simply the commission of the crime. In my view, the reference to "major inconvenience" in *Moore* was merely a description of what happened in that cause. It did not establish a legal standard for all cases of obstruction.

[27] The elements of the offence of obstruction are proof that the police officer was obstructed, that the obstruction affected his or her execution of a duty, and that the accused acted wilfully: *R. v. Tortolano et al.* (1975), 28 C.C.C. (2d) 562 (Ont. C.A.). The trial judge found as a fact that the police officer was obstructed in that he was actually put to extra work. The other elements are not disputed. The police officer was eventually successful in ascertaining the true identity of the appellant but that is not the test. The obstruction need not totally frustrate the officer in the execution of duty: *R. v. Ure* (1976), 6 A.R. 193 (S.C.T.D.). The act of obstruction was made out by the simple fact that it made it more difficult for the police to carry out their duties: see *R. v. L.S.L.* (1991), 89 Sask. R. 267 (Q.B.), at para. 21. The giving of a false name succeeded in doing that, however briefly.

[28] Once again, this type of case is fact-specific. Once again there was ample evidence upon which the trial judge could reasonably base his verdict. Accordingly, the appeal from conviction on the obstruction charge is also dismissed.



J.Z. Vertes
J.S.C.

Dated at Yellowknife, NT, this
21st day of December, 1998

Counsel for the Appellant: Arthur von Kursell
Counsel for the Respondent: Bradley J. Allison

CR 036

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OF THE NORTHWEST TERRITORIES

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Appellant

- and -

HER MAJESTY THE QUEEN

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REASONS FOR JUDGMENT
OF THE HONOURABLE JUSTICE J.Z. VERTES