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IN THE TERRITORIAL COURT OF THE NORTHWEST TERRITORIES

IN THE MATTER OF:

HER MAJESTY THE QUEEN

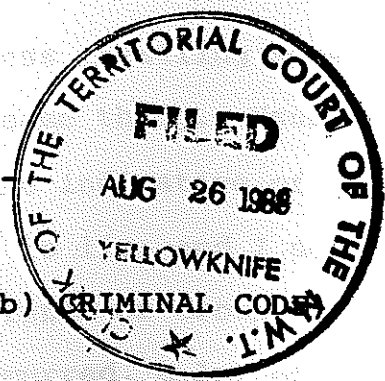
- and -

ECKART WILLIAM KRAHN

Transcript of the Reasons for Judgment of His Honour
Judge R. M. Bourassa, sitting at Yellowknife, in the
Northwest Territories, on Wednesday, August 10th,
A.D., 1988.

APPEARANCES:

MS. B. KOTHE: Appeared for the Crown
P. FUGLSANG, ESQ.: Appeared for the Defendant



(A charge under Section 237(b))

1 THE COURT: I thank counsel for the work they have done on this.
2 Obviously, there has been a lot of research and some thought
3 gone into the defence.

4 The accused is charged with driving with over 80
5 milligrams of alcohol in his blood, to paraphrase it. He
6 is not charged with impaired driving; he is not charged with
7 anything else.

8 In the English language, we have 30 or 40 words to
9 describe the status of a person who has been consuming
10 alcoholic beverages. I don't know which one to use here.
11 None of them, perhaps, need to be resorted to. I will try
12 and deal with the issues as they arose.

13 First of all, I would note that there is some discrepancy
14 in the evidence given by the Defence, versus the evidence
15 given by the Crown, in some minor and some significant areas,
16 direct discrepancies, such as the City of Yellowknife Bylaw
17 Constables testifying that they followed the vehicle,
18 throughout Mr. Krahn's evidence that he was following them
19 until they turned around in the D.P.W. yard and then went
20 after him.

21 There is evidence of one witness recalling something, and
22 no other witnesses recalling the same thing. Usually, those
23 kinds of conflicts are perhaps more indicative of the truth
24 than of anyone consciously trying to lie, and I don't think
25 anyone was lying in this case, Defence or Crown. It has been
26 quite a while since this event occurred, a lot of water has
27 gone under the bridge for the Crown witnesses, and probably
for Mr. Krahn, as well.

1 I do note, however, that the breathalyzer reading set out in
2 the certificate which has been filed indicates a blood analysis
3 or a blood alcohol analysis of two hundred milligrams of
4 alcohol in one hundred millilitres of blood. That is a
5 significant reading. It represents, and I think I can go
6 this far, far more than two gin and tonics. In fact, I think
7 I could go as far as saying, it would be impossible for two
8 ounce or ounce and a half shots, to give a reading of two
9 hundred milligrams of alcohol in one hundred millilitres of
10 blood.

11 I have no evidence before me that either the City
12 Constables or the R.C.M.P. Constable were drinking or in any
13 way that their faculties were compromised.

14 In my view, with a blood alcohol ratio of two hundred
15 milligrams of alcohol in Mr. Krahn's system, his ability to
16 perceive, react, recall, indeed, would be affected adversely
17 to some degree. Where his evidence conflicts with that of
18 the Crown witnesses, I accept their version.

19 First of all, were there reasonable and probable grounds
20 to arrest Mr. Krahn on the charge before the Court? We have
21 to start, perhaps, by working backwards. The City Bylaw
22 officers believed that there was a Yellowknife Bylaw offence
23 in progress, when they saw Mr. Krahn's vehicle completely
24 frosted over, except for a little hole in the windshield.
25 They, in my view, in enforcing the City of Yellowknife Bylaw,
26 had full authority to pull Mr. Krahn over, to bring that
27 matter to his attention. Whether they chose to charge him or
not is a

1 matter of police discretion. They may have charged him; they
2 may not have charged him. It is up to them. They have that
3 discretion. That they didn't charge him, I don't think
4 amounts to anything. It could very well be that Mr. Eckart,
5 rather than just being charged with 237(b), could be charged
6 with driving with his windshield obscured, driving without
7 full and proper identification, or without producing his license,
8 or a myriad of other charges. That is not the point. The
9 City Bylaw officers had the discretion to charge or not.
10 They didn't. I can't make anything of that. I accept their
11 evidence that his windows were clouded over. That's why they
12 stopped him.

13 There was some discrepancy as to how he got from his
14 vehicle to the City Bylaw wagon, not that much turns on it.
15 In any event, he ended up in the City of Yellowknife Bylaw
16 wagon, approximately a foot or so away from the Constables.
17 He was spoken to. The odour of alcohol was detected. He was
18 seen driving a vehicle. At that point, the City officers
19 felt that the R.C.M.P. had better investigate the matter.
20 I do not believe, on the evidence before me, that Mr. Krahn
21 was under arrest. There is nothing to indicate that. Nor do
22 I believe that he was detained, and I will have more to
23 comment on that later, because the argument was made about
24 interpretation.

25 Constable Marcoux arrived within minutes. He conversed
26 with one of the City of Yellowknife Bylaw Constables and was
27 appraised of the situation. I take those words in an

1 ordinary context, Marcoux was told what was going on, what
2 had happened. Marcoux went into the vehicle, smelled the
3 breath, asked a few questions, and, in my view, reasonably
4 suspected that an offence was being committed, such as to
5 entitle him to demand Mr. Krahn to provide a sample of his
6 breath on the A.L.E.R.T. Mr. Krahn did so after three attempts,
7 and it indicated a fail. The very slight slurring, the smell
8 of alcohol, the failure of the A.L.E.R.T. test, in my view,
9 is reasonable and probable grounds, justifying Constable
10 Marcoux in making the breath demand upon the accused.
11 At that point, the accused, in my view, without question,
12 was detained. He was not given his Charter rights.

13 Within four minutes, Krahn was at the R.C.M.P. detachment.
14 At the R.C.M.P. detachment, before he gave his samples of
15 breath, I am satisfied that he was advised as to his rights
16 with respect to counsel and that he understood them. Constable

17 Marcoux testified to that fact. Mr. Krahn testified that
18 he didn't recall, which is quite possible, given the level of
19 alcohol in his blood. The four or five minutes, being very
20 generous at the outset, that it took from the time that he was
21 asked to provide the A.L.E.R.T., or given the A.L.E.R.T.
22 demand, until the time he was brought to the detachment, in
23 my view, cannot be seen as a significant delay.

24 The two breath tests were administered. They both
25 indicated readings of two hundred milligrams of alcohol.
26 Halfway through, after the first test, Mr. Krahn indicated
27 to Constable Tyrrell when he was providing a sample that he

1 wanted a blood test. That is completely up to Mr. Krahn.
2 He can have as many blood tests as he wishes. The law does
3 not authorize the police to take a blood test; nor are the
4 police equipped or obliged by law to have a doctor or a nurse
5 on-site to take blood tests. Mr. Krahn was free to take a
6 test following his release. He, in fact, was released.

7 Constable Marcoux testified he was brought to the front
8 door, and Marcoux went around to the back door to pick up his
9 vehicle, with the intention of driving him home, assuming
10 that Mr. Krahn would wait. Mr. Krahn didn't wait and started
11 walking towards the taxi stand, to take a cab, either to the
12 hospital or to home. Marcoux picked him up and took him
13 home, apparently cautioning him to stay at home and not to
14 drive and, indeed, cautioning him, in some fashion or another,
15 that it would be in his best interests to stay at home.

16 Now, much, I think, turns on Mr. Krahn's interpretation
17 of all this. Mr. Krahn interpreted the very polite request
18 of the Bylaw officers as a command. He interpreted the very
19 polite actions and conduct -- and I use the words, very
20 polite here, from the evidence of Mr. Krahn -- of Constable
21 Marcoux as an order, a command, an imperative directive.
22 It would seem to me, in the ordinary course of events, that
23 it is not unreasonable or untoward for a police constable,
24 after releasing someone on an undertaking after being
25 apprehended for a drinking-driving offence, to caution them
26 to stay at home, to caution them not to drive. I think the
27 interpretation I am urged to take, that Mr. Krahn validly

1 assumed that that was an order to stay at home, regardless,
2 I think is going too far.

3 Mr. Krahn's interpretations are extremely subjective,
4 and they are very subjective interpretations of very normal
5 events. There is nothing here to indicate bullying or
6 pushing around or posturing by the police, intimidation by
7 the police. In fact, throughout, I only have evidence of
8 how polite the people were, both Mr. Krahn and the police.

9 I can agree with Defence counsel that if the pressure had
10 been put on Mr. Krahn in no uncertain terms and there was
11 clear evidence that he was told to stay home, obviously in
12 the hope that he wouldn't get a blood test and somehow prove
13 the machine wrong, that that would have significant impact
14 on my decision, but I have none of that, whatsoever. And I
15 have come to the conclusion that Mr. Krahn's apparent
16 interpretation that the urging of Constable Marcoux that he
17 stay at home and not drive any more, that that was somehow
18 a post-event imprisonment or detention, I think that's going
19 to extremes. Mr. Krahn was free at any time to take a cab and
20 go to the hospital. I dare say he was free to ask Constable
21 Marcoux to take him to the hospital for his blood test.

22 I don't think I can make any findings that will benefit
23 Mr. Krahn, based on his subjective interpretations, apart
24 from his personality, whatever it may be. Those subjective
25 interpretations were made by an individual with two hundred
26 milligrams of alcohol in one hundred millilitres of blood.
27 Those interpretations are too extreme, given the circumstances

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before me. On the circumstances that are before me, I can't see or find anything that would hint or indicate that anything remotely near those interpretations is justified or valid, even in the mind of someone who is mildly intoxicated or even heavily intoxicated.

With respect to the argument on Mr. Iacobucci's authority to sign the Canada Gazette, this is an administrative act. I think the case is readily distinguishable from Pitfield's Foods, and I can find no merit in that particular submission. The accused is convicted.

(REASONS FOR JUDGMENT CONCLUDED)

Certified a correct transcript,

Debora Chipperfield
Debora Chipperfield,
Court Reporter.