

IN THE TERRITORIAL COURT OF THE NORTHWEST TERRITORIES

IN THE MATTER OF:

HER MAJESTY THE QUEEN

- and -

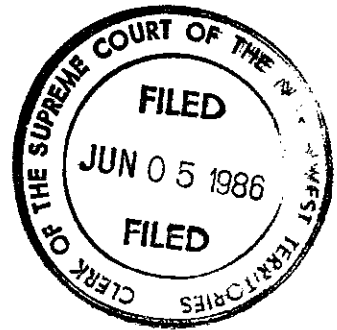
STEVE SHANNON

Transcript of proceedings of a Trial held before
His Honour Chief Judge J. R. Slaven, sitting at
Yellowknife, in the Northwest Territories, on
Wednesday, December 4th, A.D., 1985.

APPEARANCES:

T. HUMPHRIES, ESQ.: Counsel for the Crown
J. BASSIE, ESQ.: Counsel for the Defence

(Transcript of the Oral Judgment)



CHARGE READ:

13 AUG 1985

DATE

JUDGE OR JUSTICE

COURT NUMBER

119378

CROWN ELECTION:

Summary Conviction: [X] Indictment: []

ACCUSED ELECTION:

Magistrate: [] Judge & Jury: [] Judge: [X]

13 AUG 1985

DATE

JUDGE OR JUSTICE

PLEA: Guilty: [] Not Guilty: [X]

DATE

JUDGE OR JUSTICE

FAILURE TO APPEAR:

Bench Warrant issued: []

DATE

JUDGE OR JUSTICE

EVERY TIME THIS INFORMATION IS DEALT WITH APPROPRIATE ENTRIES SHALL BE MADE ON THE REVERSE

DISPOSITION

Convicted: [] Dismissed: [X] Withdrawn: []

FINE:

J.P. COSTS:

POLICE COSTS:

RESTITUTION:

TOTAL:

DEFAULT:

TIME TO PAY:

SUSPENDED SENTENCE: []

CONDITIONAL DISCH: [] ABSOLUTE DISCH: []

PROBATION FOR:

IMPRISONMENT FOR:

DATE

JUDGE OR JUSTICE

STATISTICS

DATE OF BIRTH: 52-04-09 M [X] F []

DRIVER'S LICENCE: 25231

MARITAL STATUS:

Sworn before me this 18 day of JULY

A.D. 19 85

at YELLOWKNIFE, NORTHWEST TERRITORIES

A Judge or Justice of the Peace in and for the Northwest Territories

Appearance Notice []

Promise to Appear [X]

Recognition []

Card selection box with options: CARD, O/S, I.T.P., D.B.S., J.P., M.V.R.

J.P. or Judge's Number: 1242/516, 1277/517, 516/518

THIS IS THE INFORMATION OF PETER CLAUS LINGE (Insert full name, residence and occupation of informant)

A MEMBER OF THE ROYAL CANADIAN MOUNTED POLICE

YELLOWKNIFE, NORTHWEST TERRITORIES

(PEACE OFFICER) HEREINAFTER CALLED THE INFORMANT

THE INFORMANT SAYS THAT [REDACTED] has reasonable and probable grounds to believe and does believe [REDACTED] THAT:

STEVE SHANNON

ON OR ABOUT THE TWELFTH DAY OF JULY, A.D. 1985 AT OR NEAR THE CITY OF YELLOWKNIFE 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 DRIVE A MOTOR VEHICLE, CONTRARY TO SECTION 236 OF THE CRIMINAL CODE OF CANADA.

Signature of Informant (P.C. LINGE), CST.

18 July 19 85 [Signature] Justice of the Peace

DISTRIBUTION: 1. Clerk of the Judge's Court 2. Registrar of Motor Vehicles 3. Police Copy 4. Crown Attorney 5. Defence

1 THE COURT: To me, there are three issues I must deal with,
2 three decisions I must make here.

3 Taking the accused's driving and what transpired when he
4 was asked out of his vehicle, I am satisfied that Constable
5 MacLellan had sufficient reason to make the breathalyzer
6 demand on him.

7 Regarding the taking of the breathalyzer test, I am
8 satisfied that Constable Dempster followed correct procedure
9 and ended up with two suitable samples, the two readings,
10 .13.

11 Against that, I must balance the accused's testimony, which,
12 as Mr. Humphries properly points out, is self-serving.
13 It is uncorroborated. If there is any corroboration for it,
14 it would be found in Constable Dempster's testimony, that his
15 eyes were clear and he didn't smell any alcohol on his breath,
16 at all -- and for a good reason; there was a very strong smell
17 of bug repellent about the accused, who had just come from his
18 camp out in the bush.

19 I find the samples were taken properly and, as far as I am
20 concerned, provided good readings and reflected the amount of
21 alcohol in his blood correctly. I feel I must accept that
22 evidence that the blood alcohol evidence has been proved beyond
23 a reasonable doubt, unless there is much stronger evidence to
24 the contrary than has been adduced in court today.

25 I accept and I have heard Dr. Malicky's testimony and the
26 other testimony that the .16 reading was likely caused by
27 a "burp," if you want to call it that, in anyevent, an escape

1 of gas from his stomach after he'd recently consumed an
2 alcoholic drink, and that likely caused the .16 reading, rather
3 than a malfunction of the machine. I accept that the .13
4 readings, like I say, correctly reflect the amount of alcohol
5 in his blood, and I am satisfied of that beyond a reasonable
6 doubt. That is the first point.

7 The second is the recording on a checksheet of the times,
8 which are then reflected in the Certificate of Analysis.
9 The certificate states the times the samples were taken, which
10 follows the requirements of the Criminal Code.

11 Mr. Bassie refers me to the decision of Regina v. Paul
12 Gregory Gallant, an appeal case to Mr. Justice Moshansky, of
13 the Court of Queen's Bench in Alberta, which followed --
14 I am sorry, no -- the case of Regina v. Barr, Court of Queen's
15 Bench of Alberta, Mr. Justice Holmes, which followed the
16 decision of, as he was then, District Court Judge Stevenson,
17 who later became Chief Judge of the Appeal Court of Alberta,
18 in Regina v. Berg. There was no proof of the time of the
19 taking; rather, it was the time of the analyzing. I followed
20 that decision in the case of Regina v. Mrdjenovich.

21 Under examination and cross-examination, as I recall, the
22 technician stated that he had written down on the sheet the
23 time of analysis, rather than the time of taking. Looking at
24 the Exhibits 2 and 3, the breathalyzer operational checklist,
25 items 7, 8 and 9, step 7: "set control at Take, introduce
26 breath sample, then set control at Analyze. Step 8, record
27 time. Step 9: when red light illuminates, wait one and a half

1 minutes, then illuminate photo lamp and center nullmeter,
2 record blood alcohol scale reading." And with no evidence
3 to the contrary, I take it from that that the time recorded
4 was the time the breath sample was introduced and the
5 control set at Analyze and before the analysis, if you wish,
6 recording the blood alcohol scale readings.

7 With the evidence before me today, I find that R. v. Barr,
8 R. v. Berg, and R. v. Mrdjenovich do not apply. I am
9 satisfied that the time of taking was properly recorded on
10 the checksheet and the Certificate of Analysis. So, meeting
11 those arguments, if there were no other matters for me to
12 consider, I would convict.

13 Now, I have to go to the matter of advice regarding the
14 right to counsel. We don't run into that many cases in
15 breathalyzer up here, that are contested, although we have had
16 quite a bit of experience with the Charter of Rights
17 provisions regarding the right to counsel, when we get into
18 admissibility of statements by accused persons. I had two
19 of them last week. One statement, when the person was
20 arrested, he was given his rights to counsel, along with the
21 right to remain silent. Some hours later, after various things
22 had transpired and the statement was eventually taken, he was
23 not reminded again, if you wish, of his right to counsel, and
24 I disallowed the statement.

25 In the second case, he had given his statement and he had
26 pled guilty to the charge involved there. He was still under
27 arrest, and about three hours later, the constable had

1 continued his investigation and come back and said, now, we
2 are going to lay another charge against you. And he gave him
3 the right to remain silent and again gave him his right to
4 counsel, before the taking of that second statement; and I
5 did allow that statement, because the warning and the right
6 to counsel had been given again.

7 Now, it is my concern regarding the Charter of Rights,
8 the right to counsel, that there is a tendency on the part of
9 some policemen to pay lip service to it and not carry through
10 on the spirit of the provisions. In this case, it is very
11 much like the R. v. Gallant case, Mr. Justice Moshansky.
12 The accused's rights were given to him and he was taken right
13 to the breathalyzer room and eventually blew. It is the same
14 here, that when he was on his way to the breathalyzer room,
15 that the police officer didn't say, there is the phone over
16 there, if you want to call your lawyer. There was plenty of
17 time while preparing the machine, during the 20 minutes that
18 Constable Dempster quite properly allows before he takes a
19 sample. Nothing was mentioned re. his right to counsel,
20 except the original statement on the street, at the time the
21 breath demand was made to him.

22 The letter of the law was fulfilled, the pro forma
23 requirements were fulfilled, but I feel the police could have
24 gone further at the police office, before the first blow was
25 taken, to reiterate his right to counsel and to tell him that
26 a telephone would be made available to him if he wanted to
27 call counsel.

1 On the other hand, seeing the accused on the stand, he
2 is an articulate and obviously intelligent and, I suppose,
3 relatively well-educated man. He said he was upset, but the
4 police described him as polite, co-operative, conversational,
5 friendly. He must have known he had a right to counsel.

6 I am rather surprised he said the blowing of .16 was a
7 real surprise and a shock to him, but he was quite definite,
8 because he felt he hadn't nearly had enough to drink, where
9 he'd blow over. I am rather surprised that instead of doing
10 push-ups, he didn't call counsel.

11 If he were younger, more poorly educated, less sophisti-
12 cated, less skilled in the English language, he would have no
13 problem at all in holding that further explanation of his right
14 to counsel should have been given to him at the police office.
15 I have more difficulty finding that in his case -- and I might
16 have, in the case of another person such as I have described.
17 However, the Gallant case is not binding on me. However,
18 given that it was a Queen's Bench of Alberta Court judge who gave
19 the decision and that it is very recent, it is very persuasive
20 on me.

21 I guess it would be natural, for police who are on patrol,
22 and technicians, who have seen many drivers and many
23 breathalyzer tests, that they become very routine, possibly
24 more routine than the taking of the statements on indictable
25 offences. But I do feel in all cases, even those like
26 drinking/driving, when there are so many of them, even in those,
27 that the spirit of the Charter of Rights must be observed and
the police must

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go further in most instances or, at least, in many instances, than the pro forma requirements, and I feel that applies in this case.

Accordingly, I find that the right to counsel as provided under the Charter of Rights, or the right of advice regarding counsel, was not adequately complied with and, accordingly, I find the defendant not guilty.

(ORAL JUDGMENT CONCLUDED)

Certified a correct transcript,

Debara Chipperfield
Debara Chipperfield,
Court Reporter.