

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27

IN THE TERRITORIAL COURT OF THE NORTHWEST TERRITORIES

IN THE MATTER OF:

HER MAJESTY THE QUEEN

- and -

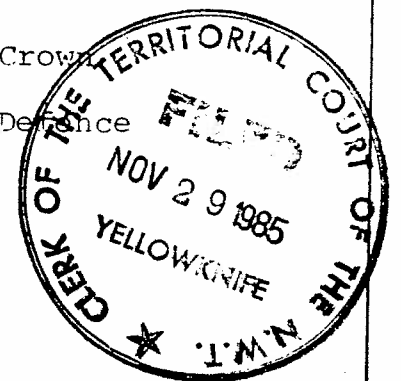
MARK DENTITH

Transcript of the oral judgment delivered by His Honour Judge T.B. Davis, sitting at Yellowknife, in the Northwest Territories, Tuesday, October 29th, A.D. 1985.

APPEARANCES:

MS. N. BOILLAT Counsel for the Crown

MR. R. SPAULDING Counsel for the Defence



1 MR. SPAULDING: Good morning, Your Honour. I appear as agent
2 for Mr. Dentith this morning. The trial has concluded. The
3 Crown elected to proceed summarily. Mr. Dentith has fallen on
4 some difficult times since he appeared before you on October
5 the 4th. He was laid off work soon afterwards for reasons
6 he was told had to do with a lack of need for his continued
7 services with his employer and not to do with any misconduct
8 on his part. He had just broken up with his girlfriend prior
9 to appearing on October 4th and was without a place to stay.
10 He had no funds, then, at the time when he lost his job, and
11 the long and short of it is that his parents, who live in
12 Amherst, Nova Scotia, sent a plane ticket up to him, and he
13 is now in Amherst staying with his parents and has no plans
14 to return here. He has instructed me to appear as his agent
15 today. He had, he tells me, attempted to get a hold of me
16 before he did make his decision to go to Nova Scotia. I,
17 unfortunately, was not in town at the time and have been
18 travelling a good deal since then. And he tells me that he
19 had called regularly attempting to consult with me. The first
20 time he got me was yesterday morning. I would ask then to
21 proceed today, and I understand that my friend has no objection
22 to that.

23 THE COURT: Thank you. I thought I would have a lot more
24 time to do some researching and prepare something in writing
25 for the decision on this matter. But as you know, the Courts
26 have been extremely rushed, and we have been adding additional
27 circuits, so that we have not really had any major time. So,

1 I am going to just review the facts of this case and come to
2 a decision that I have thought over and decided upon without
3 being able to read a written decision at the time. So, you
4 will have to bear with me as we run through it.

5 Mr. Mark Dentith had appeared before the Court
6 on a trial in which he was charged that he did on or about
7 the 12th of May, 1985, in the City of Yellowknife, Northwest
8 Territories, while his ability to drive a motor vehicle was
9 impaired by alcohol or a drug have the care and control of a
10 motor vehicle, contrary to Section 234 of the Criminal Code.

11 The evidence before the Court indicated that
12 two Police Officers had come upon the accused who was sitting
13 in a vehicle and that both of them were of the opinion that
14 the accused was impaired by alcohol or drugs. They both made
15 efforts at arousing the accused by knocking on the windows
16 of the vehicle and finally were able to, in fact, get into
17 the vehicle and physically remove the accused, who at that
18 time remembers little about the circumstances, but who had
19 been drinking and acknowledged that he had been drinking before
20 getting into the vehicle. He was sitting behind the steering
21 wheel of the vehicle in the driver's seat and had given
22 evidence himself that he had had an argument with his girlfriend.
23 He then was put out of the house and went to the rear of his
24 residence for a while and was sitting drinking some beer. He
25 then entered the vehicle of his employer to turn the motor on
26 along with the heater in order to keep warm.

27 The argument in law as presented, therefore,

1 was whether or not the accused entered the vehicle with the
2 intention of putting it in motion, and if he did not enter
3 with that intention, was he able to be found guilty of care
4 and control of a motor vehicle, even though he was in an
5 intoxicated state. There have been cases, of course, in
6 various Courts which show that if a person enters a vehicle
7 without the intention of operating the vehicle that they would
8 not be convicted of this offence. Defence counsel had
9 reviewed a case recently rendered on September the 19th,
10 1985 by the Supreme Court of Canada. It is reported as number
11 17666 in the Supreme Court records under the heading The Queen
12 v. Brian Wayne Toews. I have had an opportunity to review
13 that case and the decision of Justice McIntyre and feel that
14 the general interpretation of the law is stated therein in a
15 very understandable way. It is summarized to some extent on
16 page two of the Supreme Court record:

17 "The mens rea is the intent to assume care or
18 control after voluntarily consuming alcohol or
19 a drug and the actus reus is the act of assuming
20 control."

21 The summary also states that acts of care and control, short
22 of driving a vehicle, involve some use of the car, and it
23 ordinarily is related to some risk in putting the vehicle in
24 motion. The case of Toews shows that there was no evidence
25 before the Court on who put the keys in the ignition. There
26 was evidence that Toews had been driven to a location where
27 the car was parked by another person, and that one must assume
there is a possibility that the other person had left the keys

1 in the ignition and that the accused, Toews had not himself
2 put them in the ignition of the car. At the time that Toews
3 was found in the vehicle he was in a sleeping bag lying across
4 the front seat and his feet were in the bag to the extent
5 that they were not ordinarily able to be used for operating
6 the vehicle pedals on the floor of the car, and the motor was
7 not running. From what I have said, I presume that the last
8 driver of the vehicle was not the accused, Toews himself, and
9 it appears that Toews had really shown no acts of care or
10 control in what he had done, even though he was found intoxicated
11 in the vehicle at the time on being on the front seat. The
12 evidence in that case indicated that the accused was awaiting
13 the driver who had driven him to the party and who had stayed
14 in the party when Toews had left and waited outside for him.
15 The evidence before that Court was that Toews had no intent
16 to drive the vehicle but just to sleep in the vehicle, as such.

17 I have reviewed those facts because I think they
18 are very important, since I am going to have to relate the
19 facts of the case before me to the facts of the case decided
20 by the Supreme Court of Canada in which Toews was not found
21 guilty but the charge was dismissed at the Supreme Court of
22 Canada level. To avoid the presumption of intent to control
23 or operate a motor vehicle which exists under Section 237 an
24 accused must establish that he did not intend to put the
25 vehicle in motion. That is a general statement of law. On
26 the evidence before me, Mr. Dentith was not sure how he got
27 into the van itself, but it is believed that he actually turned

1 the motor on to get some heat in the vehicle. But by doing so
2 he appears to have taken control over the operation of the
3 vehicle before falling asleep slumped over the steering wheel
4 in the driver's seat. He was alone in the vehicle at the
5 time. The accused actually occupied and remained in the
6 driver's seat with the engine running for some period of time
7 before the Police were alerted and came and removed the accused
8 from the vehicle.

9 It is possible to commit the offence of care
10 and control of a vehicle without any motion of the vehicle,
11 as such. The Toews case refers to a decision of the Supreme
12 Court of Nova Scotia Appeal Division, The Queen v. Thomson
13 in 1940 reported in 75 Canadian Criminal Cases at page 141.
14 It says that control does not need a definition, but a man
15 who is in a car and has within his reach the means of operating
16 it is in control of it.

17 The interpretation of care is referred to in
18 the Toews decision at page eight when the Lord Justice quotes
19 Judge Pottier of the Nova Scotia Halifax County Court in a
20 case of The Queen v. Henley reported in 1963 at 3 Canadian
21 Criminal Cases at page 360. He says that:

22 "Care implies at least physical possession of the
23 motor vehicle with an element of control."

24 On the following page the Supreme Court then
25 refers to a case from the New Brunswick Court of Appeal in
26 The Queen v. Price in 1978 in which the Appeal Court says
27 that:

1 "The mischief sought to be prohibited by the
2 section as expressed by the wording is that an
3 intoxicated person who is in the immediate presence
4 of a motor vehicle with the means of controlling
5 it or setting it in motion is or may be a danger
6 to the public."

7 Taking, therefore, that the purpose of the Code is to ensure
8 that people who are intoxicated are not in a situation where
9 they may have control or may be able to set a vehicle in motion,
10 I have to keep that in mind in determining whether or not Mr.
11 Dentith is guilty of the offence as charged.

12 The Supreme Court of Canada in the case of
13 Ford v. the Queen. 1982 at 1 Supreme Court Reports indicated
14 that:

15 "Care or control may be exercised without such
16 intent where an accused performs some act or series
17 of acts involving the use of the car."

18 In the Toews case, page ten on the photocopy,
19 the Supreme Court of Canada indicates that care and control
20 is some course of conduct associated with the vehicle which
21 would involve a risk of putting it in motion so that it could
22 become dangerous to the public. In the Ford case referred
23 to by the Supreme Court, the driver occupied the driver's seat
24 and turned on the engine to operate the heater, and the Supreme
25 Court confirmed the decision that it was appropriate to find
26 Ford was guilty of the offence of care and control and that
27 operating the vehicle and the heater of the vehicle was
sufficient to establish that offence.


Having, therefore, reviewed the decision of
the Supreme Court I find that there are a number of differences

1 that exist between the situation of Mr. Dentith and the accused
2 in the Supreme Court case of Toews, because Dentith did have
3 the vehicle in his care and control by sitting in the driver's
4 seat and turning the engine on. Even though it may have been
5 his intention to get warm, he still had access to the vehicle
6 and was in a position to put it in motion and did not himself
7 know how he entered the vehicle. Since he did not know how
8 he entered the vehicle, I am not sure that I could accept his
9 evidence that he had intention not to drive it but to merely
10 get some heat from the engine.

11 On the combination of those facts, I therefore
12 find that the accused is guilty of the charge of being
13 impaired and having the care and control of a vehicle in
14 violation of Section 234 of the Code, and a conviction will
15 be entered on that basis.

16 -----

17
18
19
20 Certified a correct transcript,

21
22 
23
24 Jill MacDonald, Court Reporter
25
26
27