

IN THE TERRITORIAL COURT OF THE NORTHWEST TERRITORIES

IN THE MATTER OF:

HER MAJESTY THE QUEEN

- and -

CARLA SIMPSON

**REASONS FOR DECISION
of the
HONOURABLE JUDGE B. E. SCHMALTZ**

Voir Dire

Heard at: Yellowknife, Northwest Territories
June 19th, August 12th, and September 2nd, 2014

Reasons filed: September 8th, 2014

Counsel for the Crown: R. Shepard

Counsel for the Defendant: J. Bran

(Charged under s. 154(1) & 146(2) of the *Motor Vehicles Act*, R.S.N.W.T. 1988, c.M-16)

R. v. Carla SIMPSON, 2014 NWTTC 23

Date: 2014 09 02
File: T1ST 2013 000072/73

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I. INTRODUCTION

[1] Carla Simpson is charged with careless driving contrary to s. 154(1), and with failing to wear a seatbelt contrary to s. 146(2), both charges under the *Motor Vehicles Act*, R.S.N.W.T. 1988, c.M-16. The charges arose from a single vehicle accident that occurred in Wekweeti on June 30, 2012. Ms. Simpson was the driver of the vehicle and one of the passengers was killed in the accident.

[2] A *voir dire* was held on June 19, 2014, to determine the admissibility of a statement that Ms. Simpson gave during the course of this investigation. Having considered all the evidence, and the written and oral submissions of counsel, for the following reasons, Ms. Simpson's statement given to Cpl. Caswell on June 30, 2012, is admissible on the trial.

II. FACTS:

[3] In the early morning of June 30, 2012, Cpl. Marc Caswell received a call from Cst. Van Dusen of the R.C.M.P. Major Crime Unit asking for assistance with an investigation of a motor vehicle fatality in Wekweeti. Cpl. Caswell was given information gathered to that point with respect to the investigation, and he was asked to speak with two of the passengers and the driver of the vehicle, all of whom had been brought from Wekweeti to Stanton Hospital in Yellowknife.

[4] Cpl. Caswell attended Stanton Hospital, and located Ms. Simpson. Cpl. Caswell told Ms. Simpson that he was a member of the R.C.M.P., and placed her under arrest for impaired driving causing death. All of Cpl. Caswell's interaction with Ms. Simpson was recorded, and the transcript was entered as an exhibit on the *voir dire* (Exhibit V-1). The transcript is sixty-eight pages long; I will not refer to all of the statement, but I read and considered the entire statement.

[5] From all of the evidence on this *voir dire* it has been proven beyond a reasonable doubt that Carla Simpson was advised of the reason for her arrest, given her right to counsel, given the opportunity to contact counsel which she exercised, and was also given what is commonly called the police caution or warning, i.e. she was advised of her right to remain silent. I am also satisfied beyond a reasonable doubt that no threats or promises were made by Cpl. Caswell or anyone else to induce Ms. Simpson to make a statement; there was no atmosphere of oppression, and no police trickery was used to obtain a statement from Ms. Simpson.

III. ISSUES

[6] There are two issues on this *voir dire*:

- A. After Ms. Simpson provided a breath sample indicating the level of alcohol in her blood was zero should she have been told that she would/could be charged with careless driving and for not wearing a seatbelt and been "re-chartered" and "re-cautioned" with respect to those offences?

and

B. Is the use of Ms. Simpson's statement on the trial prohibited pursuant to s. 313(1)(b) of the *Motor Vehicles Act*?

A. Was it necessary to 're-Charter' and 're-Caution' the Accused for offences under the *Motor Vehicle Act*?

[7] On June 30, 2012, the R.C.M.P. were dealing with a motor vehicle fatality, unquestionably a serious investigation. Prior to speaking with Ms. Simpson, the R.C.M.P. Major Crime Unit contacted Cpl. Caswell and asked for his assistance with the investigation of this fatality. *Before* Cpl. Caswell had any contact with Ms. Simpson:

- Cpl. Caswell was told that Carla Simpson was the driver of the vehicle involved;
- Cpl. Caswell was told that one of the other passengers, Jasper Mantla, told Cpl. Hare that Ms. Mantla was the driver, that they had been drinking, and "she was drinking and driving crazy";
- Cpl. Caswell spoke to another passenger who had been in the vehicle, Victoria Laboline, who told Cpl. Caswell that Carla Simpson was driving, and everybody was drinking; and
- Cpl. Caswell was present when Cst. Anderson was speaking to Jasper Mantla who said that Carla Simpson had provided the alcohol that night in water bottles and had described her as "driving drunk".

[8] At 10:23 a.m. at the Stanton Hospital, Cpl. Caswell came into contact with Carla Simpson and arrested her for impaired driving causing death.

[9] Cpl. Caswell's investigation of the impaired driving causing death was undertaken and continued in good faith, and at all times Cpl. Caswell had reasonable grounds to believe that Carla Simpson had committed that offence.

[10] During the course of her dealings with Cpl. Caswell, Ms. Simpson provided breath samples which indicated that her blood alcohol concentration was zero. Ms.

Simpson submits that after she provided samples of her breath indicating a blood alcohol concentration of zero, the R.C.M.P. may not have intended to proceed with the charge of impaired driving causing death, and she should have been advised that she may be charged with careless driving and with not wearing a seatbelt.

[11] From reviewing the transcript and the evidence of Cpl. Caswell, this is clearly not the case. Cpl. Caswell's focus began and remained on whether Ms. Simpson had been drinking, where she had been drinking, when she had been drinking, what she had been drinking, and whether or not her alcohol consumption may have been a factor contributing to the accident.

[12] Considering the information Cpl. Caswell had received prior to his dealings with Ms. Simpson, along with the further evidence he collected from speaking with Ms. Simpson, the focus of his investigation began and remained the charge of impaired driving causing death. On finding out that several hours after the accident, Ms. Simpson's blood alcohol concentration was zero, Cpl. Caswell did not change the focus of this investigation, as is evident from both Cpl. Caswell's evidence, and from Exhibit V-1. At least twenty-four times after Ms. Simpson had provided samples of her breath, Cpl. Caswell asked her questions related to her alcohol consumption. (See Appendix 'A' attached to these Reasons)

[13] Unquestionably this was a tragic situation, requiring careful investigation by several members of the R.C.M.P. Once the investigation was completed, the evidence would have to be reviewed and examined to determine what, if any, offence or offences may have been committed, and what charges would be pursued. Such would be the only responsible way to proceed with this investigation.

[14] To expect that Ms. Simpson should have been advised of every possible offence that she may or may not be charged with once the investigation was completed, is unrealistic. Further I would expect that if a person were arrested and investigated for a very serious offence, though advised that they could be charged with a less serious, or

even trivial, offence, then an argument may well be made that such a procedure could be seen as an inducement to give a statement in the hope of being charged with the less serious offence.

[15] The information garnered from Ms. Simpson with respect to how the accident happened and the circumstances surrounding it was information that was relevant to an impaired driving causing death offence. Cpl. Caswell did not use any trickery or have any ulterior motive in asking Ms. Simpson about the circumstances of the accident or how the accident happened.

[16] Once the R.C.M.P. had completed the investigation of this accident, Ms. Simpson was not charged with impaired driving causing death, but with careless driving and driving without wearing a seatbelt. Both charges arose from the incident that Cpl. Caswell spoke to Ms. Simpson about. These charges were not laid in addition to the offence that was being investigated, but were laid once the matter had been investigated. There was no need to advise Ms. Simpson that she may be charged with less serious offences than what she was initially arrested for. She had been fully apprised of her right to counsel, given the opportunity to speak with counsel, advised of her right to silence, after which she agreed to provide information about that incident, and then the R.C.M.P. decided the appropriate charge to lay with respect to the incident.

B. Is the use of Ms. Simpson's statement on the trial prohibited pursuant to s. 313(1)(b) of the *Motor Vehicles Act*?

[17] Section 262(1) of the *Motor Vehicles Act* requires a driver of a motor vehicle involved in an accident to provide certain information to the R.C.M.P. with respect to the circumstances of the accident, and how it occurred. Section 313(1)(b) of the *Motor Vehicles Act* provides that any report or information submitted to the Registrar pursuant to section 262 is not admissible in evidence for any purpose in a trial arising out of the accident.

[18] If Ms. Simpson's statement was a "report" or "information" submitted to the Registrar pursuant to section 262, then as such it would not be admissible as evidence on this trial.

[19] Ms. Simpson did not testify on the *voir dire*. In *R. v. White*, [1999] 2 S.C.R. 417, the Supreme Court was dealing with an application to exclude White's statements pursuant to section 24(1) of the *Charter*, the Court held that White's statements should be excluded as White believed she had given the statements under a statutory duty to provide information to the police under the British Columbia *Motor Vehicle Act*. The facts in *White* are very different than the facts in this case, being that White had called the R.C.M.P. to report an accident and White had a reasonable and honest belief that she had a duty to report the accident to a police officer.

[20] In this case Ms. Simpson did not call the police to report the accident; Cpl. Caswell attended the hospital where Ms. Simpson was and immediately upon introducing himself arrested Ms. Simpson for impaired driving causing death. Cpl. Caswell did not first ask Ms. Simpson any questions about the accident or whether or not Ms. Simpson was the driver, but simply immediately placed her under arrest, advised her of her right to counsel, and told her she did not have to say anything to him or to any other police officer.

[21] The Supreme Court stated in *White* (para. 80):

Provided that the police have offered no indication to the driver that the statutory requirements for the reporting of an accident have been satisfied, it will likely be reasonable for a driver to assume that he or she continues to be subject to a statutory duty to speak to police. Accordingly, as a practical matter, it will be very important for the police officer who takes an accident report while simultaneously investigating a crime to delineate clearly for the declarant the start and end points of the accident report.

[22] Cpl. Caswell was not taking an accident report while simultaneously investigating a crime. This was not a case of the police coming upon or being called to an accident, nor was it a case of Cpl. Caswell attempting to determine only the circumstances or how

the accident happened. On reading the entire transcript of Ms. Simpson's interactions with Cpl. Caswell it is clear that upon arresting Ms. Simpson for impaired driving causing death, he was attempting to secure evidence as to whether Ms. Simpson was in fact impaired at the time of the accident.

[23] In this case, I find that it would not have been reasonable for Ms. Simpson to believe that she was subject to a statutory duty to speak to Cpl. Caswell. Very early in his dealings with Ms. Simpson, Cpl. Caswell told Ms. Simpson:

[Y]ou don't have to say anything to the police right so, other than you know we got your name and your date of birth, *you don't have to tell us anything about the accident* or any of that stuff ok, that's your choice, if you want to talk to us about that but since you said you wanted to call a lawyer, ok, then *I'm not going to ask you any questions or anything like that about the accident* until you talk to your lawyer. (my emphasis) Exhibit V-1, Lines 121-4

[24] Even after Ms. Simpson provided breath samples indicating she had a blood alcohol level of zero at the time the samples were taken, (line 624) Cpl. Caswell continued to attempt to gather evidence of Ms. Simpson's consumption of alcohol and whether or not alcohol had been a factor contributing to the accident. From the beginning to the end Cpl. Caswell's interaction with Ms. Simpson, his main focus was whether Ms. Simpson had been drinking, where she had been drinking, when she had been drinking, and what she had been drinking. Any questions with respect to the circumstances or how the accident occurred were asked to determine whether her alcohol consumption was the main cause, a contributing factor, or not a factor at all, in the accident.

[25] The statement given by Ms. Simpson was not a report or information given pursuant to section 262 of the *Motor Vehicles Act*, and is therefore not inadmissible pursuant to s. 313(1)(b) of that *Act*.

IV. CONCLUSION

[26] Having considered all of the evidence on this *voir dire*, the statement of Carla Simpson given to Cpl. Caswell on June 30, 2012, was a voluntary statement. In the circumstances of this case, there was no need to advise Ms. Simpson that she may be charged with the lesser offences of careless driving or failing to wear a seatbelt, and the admission of her statement on the trial for these charges would not result in any unfairness on this trial. Further her statement to Cpl. Caswell was not an accident report pursuant to s. 262 of the *Motor Vehicles Act*, and is consequently not inadmissible pursuant to s. 313 of that *Act*. In all of the circumstances, Ms. Simpson's statement is admissible on this trial.

B. E. Schmaltz
Territorial Court Judge

Dated at Yellowknife, Northwest Territories
this 9th day of September, 2014

APPENDIX 'A'

The following are excerpts from Exhibit V-1 of questions put to Carla Simpson by Cpl. Caswell:

- Lines 714-5: I'm more concerned with, with the accident and what went on before that ok so ...
- Lines 726-7: ...if we can go back to you said you were at the school camp and they were sipping. Can you go back and just tell me more about that?
- Lines 732-6: Ok, so you said they were sipping, what were they sipping? ... Mickey ok, of what? ... and do you know where they got that mickey of vodka?
- Lines 747-9: ...I'm more concerned about the accident ok and finding out what happened there so um, so you said you're sipping a the school camp and you said you were there for about.
- Lines 832-3: ...so when you were at the camp now you told me earlier you had a little bit to drink so where were you when you were drinking?
- Lines 837-45: ... how much did you have to drink? ... what did you take sips of? Like do you know what kind of drink it was? ... Was it straight vodka or was it mixed? ... after you take you 2 sips ... how long after that were you driving?
- Lines 851-3: So on a scale of 1 to 10 with zero being sober and 10 being drunk like ah, bobby was where you have to carry him in the house, where do you think you fell in that form 0 to 10?
- Line 864: And what about Jasper, how much did he have to drink?
- Line 875: Ok, how much do you think Jasper said you had to drink?
- Line 879: Did the people you were driving, did they have alcohol in the vehicle with you?
- Line 885: Vodka, ok, was it mixed in the water bottle.
- Line 1030: Ok and so when you go to Yellowknife tell me about that.
- Line 1040: ...and then what time was it when [you] had the 2 sips?
- Lines 1058-9: ...and did you have anything to drink while you were driving around?
- Lines 1072-3: And then from the time of the accident until you got to Yellowknife did you have anything to drink in between there?
- Line 1078: Ok, in there, did you smoke any marijuana?
- Line 1083: ...did you have anything to drink while you were in Yellowknife?
- Line 1111: And so while, while you were at the house and all this was going on did you have anything to drink while you were at the house?
- Line 1130: And you're feeling sick, is that hang over sick?
- Lines 1042-3: So is that why you feel like nauseous or you wanted to vomit or was that from the alcohol do you think?
- Lines 1147-8: ...between 10 and 10:30 you had those 2 sips, how big do you think they were?
- Line 1159: Do you feel like you should have been driving with how much you had to drink?

Lines 1364-5: You told me that the last drink you had was 4 am and then when we were talking in here now you're telling me it was 10:30. So I really need you to tell me the truth.

Lines 1369-77: So before the accident happened, how long was you last drink before you got in the accident? ... Ok but so from the time the accident happened, before that how long do you think, how long a time frame do you think it was, from the time you had your last drink until you got into the accident? ... cause it's really important that you tell me the truth, ... it's a very serious matter alright?

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