

Case Name:
R. v. White

Between
Her Majesty the Queen, respondent, and
Bradley White, appellant

[2002] A.J. No. 1285
2002 ABQB 932
Action No. 017370628S1

Alberta Court of Queen's Bench
Judicial District of Fort McMurray
Edmonton, Alberta
Wilson J.

Heard: October 18, 2002.
Judgment: October 23, 2002.
(6 paras.)

Counsel:

Peter Bruce Gunn, for the appellant.
Anders N. Quist, for the respondent.

REASONS FOR DECISION ON SUMMARY CONVICTION APPEAL

¶ 1 **WILSON J.**— There are two grounds of appeal from this conviction. The first is that the investigating Constable did not have reasonable and probable grounds for the demand he made that the accused submit to a breathalyzer test. The second is that there was an unexplained delay in presenting the Accused to the test machine and that the test was not accordingly taken as soon as practicable in accordance with the requirements of section 253 of the Criminal Code.

¶ 2 The investigating officer stopped the Accused upon observing that he failed to stop at a four way stop. At that time he noticed an odour of liquor. He formed the suspicion that the Accused had consumed some alcohol. The Accused confirmed that. He was stopped at 0027 on the offence date.

¶ 3 A screening device was used. The result obtained was a fail. The Constable's testimony concerning this screening was elicited on direct and cross-examination. He says at one point on direct examination that the fail result meant to him, "That I had reasonable and probable grounds to believe that Mr. White was -- I formed the opinion that Mr. White's ability to operate a motor vehicle was impaired by alcohol". On cross-examination he told the court that the fail indicated that the object of the test was "over the - our - legal amount" but he could not tell the examiner what that was, or how the machine was calibrated. He also admitted on cross-examination that the device does not tell him anything about the ability of the subject to operate a motor vehicle.

¶ 4 I agree with the Respondent Crown that his testimony is less than perfect. I do not agree with the Crown submission that "He (the investigating officer) clearly had grounds to believe that the accused was committing an offence under section 253 even if he could not say precisely at what alcohol level the machine would register a red." All he knew then was what he knew before, that there was alcohol present. His evidence with respect to the use that

could be made from the evidence about the test machine result with respect to ability to drive is equally subject to criticism. I agree with the defence that there is no "logical inference" that the Court could or should draw from this imperfect testimony. I hold that the reasonable and probable grounds did not exist, and that the demand was improper.

¶ 5 On the other ground of appeal, I am not able to agree that the 12 to 16 minute delay was beyond what was "practicable." The reasons for the delay were explained, except for the 6 or 7 minutes that elapsed from the second exit from the telephone room to the technician in front of the machine. I do not think that these were arbitrary, capricious, unreasonable or lengthy delays. I would not allow the appeal on these grounds.

¶ 6 However, on the first ground, the appeal is allowed and the conviction is quashed.

WILSON J.

QL Update: 20021030
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IN THE COURT OF QUEEN'S BENCH OF ALBERTA
JUDICIAL DISTRICT OF FORT McMURRAY

BETWEEN:

HER MAJESTY THE QUEEN

Respondent

- and -

BRADLEY WHITE

Appellant

REASONS FOR DECISION OF
MR. JUSTICE W. E. WILSON
ON SUMMARY CONVICTION APPEAL

APPEARANCES:

Peter Bruce Gunn
for the Appellant

Anders N. Quist
for the Respondent

[1] There are two grounds of appeal from this conviction. The first is that the investigating Constable did not have reasonable and probable grounds for the demand he made that the accused submit to a breathalyzer test. The second is that there was an unexplained delay in presenting the Accused to the test machine and that the test was not accordingly taken as soon as practicable in accordance with the requirements of section 253 of the *Criminal Code*.

[2] The investigating officer stopped the Accused upon observing that he failed to stop at a four way stop. At that time he noticed an odour of liquor. He formed the suspicion that the Accused had consumed some alcohol. The Accused confirmed that. He was stopped at 0027 on the offence date.

[3] A screening device was used. The result obtained was a fail. The Constable's testimony concerning this screening was elicited on direct and cross-examination. He says at one point on direct examination that the fail result meant to him, "That I had reasonable and probable grounds to believe that Mr. White was -- I formed the opinion that Mr. White's ability to operate a motor vehicle was impaired by alcohol". On cross-examination he told the court that the fail indicated that the object of the test was "over the - our - legal amount" but he could not tell the examiner what that was, or how the machine was calibrated. He also admitted on cross-examination that the device does not tell him anything about the ability of the subject to operate a motor vehicle.

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[5] On the other ground of appeal, I am not able to agree that the 12 to 16 minute delay was beyond what was "practicable." The reasons for the delay were explained, except for the 6 or 7 minutes that elapsed from the second exit from the telephone room to the technician in front of the machine. I do not think that these were arbitrary, capricious, unreasonable or lengthy delays. I would not allow the appeal on these grounds.

[6] However, on the first ground, the appeal is allowed and the conviction is quashed.

HEARD on the 18th day of October, 2002.

DATED at Edmonton, Alberta this 23rd day of October, 2002.


J.C.Q.B.A.

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