



**IN THE SUPREME COURT OF NEWFOUNDLAND AND LABRADOR
COURT OF APPEAL**

Citation: *R. v. Greeley*, 2016 NLCA 30

Date: 20160622

Docket: 201501H0026

BETWEEN:

MEGAN GREELEY

APPELLANT

AND:

HER MAJESTY THE QUEEN

RESPONDENT

Coram: Welsh, Rowe and Hoegg JJ.A.

Court Appealed From: Supreme Court of Newfoundland and Labrador
Trial Division (G) 201401G2271

Appeal Heard: June 6, 2016

Judgment Rendered: June 22, 2016

Reasons for Judgment by Welsh J.A.
Concurred in by Rowe and Hoegg JJ.A.

Counsel for the Appellant: Self Represented

Counsel for the Respondent: Iain R. W. Hollett

Welsh J.A.:

[1] Megan Greeley appeals her conviction under section 253(1)(b) of the *Criminal Code* for driving a motor vehicle with a blood alcohol content exceeding .08. The Crown proceeded by way of summary conviction. Ms. Greeley appealed her conviction to the summary conviction appeal court, but was unsuccessful. She now seeks leave to appeal to this Court.

BACKGROUND

[2] On August 18, 2013, Ms. Greeley was in a single vehicle accident between 4:30 and 5:00 a.m. She was alone in the vehicle which went off the road, struck and damaged a pole, and extensively damaged the vehicle. Two residents in a nearby house were wakened by the crash and went immediately to the scene where they found Ms. Greeley in the driver's seat. When they opened the door to assist her, both testified that they could smell alcohol. The police and ambulance were called. Meantime, Ms. Greeley's parents, whom she had called, arrived. She got into their vehicle and they began to drive away. However, they returned when they saw the police and ambulance arriving.

[3] The police officer spoke to Ms. Greeley about the accident which, given the extent of damage to the pole and the vehicle, was characterized as serious. The officer took photos, and noted the condition and geography of the road and that no alcohol was present in the vehicle. The officer did not notice a smell of alcohol on Ms. Greeley and was prepared to allow her to leave the scene. However, the two witnesses asked the officer about a roadside demand for a breath sample based on their having noticed the smell of alcohol when they opened the door beside Ms. Greeley. Relying on that information and the circumstances of the accident, the officer made the demand to Ms. Greeley to provide a breath sample on the roadside screening device. She registered a fail, with subsequent readings of 170 and 160 on an approved breath analysis instrument.

[4] The trial judge summarized, in his oral decision:

... In this case, I have (a) two mature witnesses; (b) each witness was sober; (c) neither of the witnesses seems to have known the accused or have had any interest in the case or a motive to mislead; (d) each of these witnesses had a good recall and [both] were cooperative with the police. And last, each of them was in immediate and close proximity to the defendant and [they] were the first to open

what had been a closed car door immediately after the accident. I believe that in the circumstances, their evidence is credible and reliable. ...

[5] And further,

... In this case, all that is required is reasonable suspicion of alcohol in the body. I find that the evidence of the two bystanders or neighbours was compelling. The officer concerned had to make a quick decision. He clearly acted on what he was told. He knew these people were the very first on the scene. He also knew that there was no alcohol of any sort open or broken in the car. If these people who had an opportunity to come into first contact collectively smelled alcohol at the opening of the car door given the fact that there were no other passengers, where did the smell come from? As to this, the evidence revealed that there was an automobile which was not on ice or snow wrapped around a pole at 5:00 in the morning and a driver dressed in pajamas. It admittedly would have been better if the officer had asked the defendant if she had been drinking. But when put together, the factors that I just listed, I am satisfied that the officer had objectively sufficient evidence to raise a reasonable suspicion in these circumstances.

[6] The summary conviction appeal judge concluded that the trial judge had not erred in finding that the police officer had the subjective and objective grounds necessary to formulate a reasonable suspicion that Ms. Greeley was driving in contravention of section 253 of the *Criminal Code*. Accordingly, her appeal was dismissed.

ANALYSIS

Leave to Appeal

[7] An appeal to this Court following a decision of a judge of the summary conviction appeal court is governed by section 839(1) of the *Criminal Code*. The requirements of that provision are discussed in *R. v. Mahoney*, 2011 NLCA 71:

[5] ... [Section 839(1)] requires two conditions to be satisfied: first, leave of the Court must be obtained; and, second, the appeal is restricted to “any ground that involves a question of law alone”. In determining whether leave to appeal should be granted, the test to be applied is set out in *R. v. Newfoundland Recycling Ltd.*, 2009 NLCA 28, 284 Nfld. & P.E.I.R. 153:

[9] Thus, to obtain leave to appeal pursuant to s. 839(1):

(a) the appeal must “be taken on a ground that involves a question of law alone”, and

(b) the ground(s) of appeal must be such that:

(i) either the ground of appeal has a “reasonable possibility of success”, or

(ii) “the proposed question of law [has significance] to the administration of justice”.

[8] In this case, Crown counsel concedes that the criterion under paragraph (a) is satisfied because whether the facts were sufficient to ground a lawful roadside demand raises a question of law. I agree. However, in this case, the criteria under paragraph (b) are not met. For the following reasons, I would refuse leave to appeal.

No Reasonable Possibility of Success

[9] Section 254(2) of the *Criminal Code* provides for roadside screening for the presence of alcohol in a driver’s blood. In order to make a demand, the police officer must have “reasonable grounds to suspect” that the person has alcohol in his or her body and has operated a motor vehicle within the preceding three hours.

[10] Regarding the use of the roadside screening device, in *R. v. Bernshaw*, [1995] 1 S.C.R. 254, Sopinka J., for the majority, explained:

[49] It is clear that Parliament has set up a statutory scheme whereby a screening test can be administered by the police merely upon entertaining a reasonable suspicion that alcohol is in a person’s body. The purpose behind this screening test is evidently to assist police in furnishing the reasonable grounds necessary to demand a breathalyzer. The roadside screening test is a convenient tool for confirming or rejecting a suspicion regarding the commission of an alcohol-related driving offence under s. 253 of the *Code*. ...

[11] The basis of Ms. Greeley’s submission is that the police officer did not smell alcohol when he interviewed her about the accident and that, therefore, he could not have the necessary reasonable grounds to suspect that she had alcohol in her body. This submission ignores the information provided by the witnesses who first encountered Ms. Greeley. They told the officer that they had smelled alcohol when they opened the door of the vehicle. The officer considered this information together with the circumstances surrounding the accident when he determined that he had reasonable grounds to suspect a violation of section 253 of the *Code*. Acting on that suspicion, he made the demand for a roadside screening.

[12] The police officer was entitled to rely on the information provided by the witnesses for that purpose. The general principle is referenced in *R. v. Ackerman*, 2014 NLCA 26, 349 Nfld. & P.E.I.R. 316:

[29] ... The fact that the erratic driving, together with information to identify the vehicle, was provided by a concerned citizen has no effect on the analysis. It is clearly within the authority of the police to investigate potential offences reported by members of the public.

[13] In light of the law and the findings of fact and conclusions set out in the trial judge's decision, together with the decision of the summary conviction appeal judge, it is clear that Ms. Greeley's ground of appeal challenging the officer's reasonable suspicion that an offence had been committed has no reasonable possibility of success.

Significance to the Administration of Justice

[14] Further, the second of the paragraph (b) factors; that is, that the proposed question has significance to the administration of justice, is not engaged in this appeal. There is no uncertainty as to the applicable principles of law or the application of those principles in the circumstances.

SUMMARY AND DISPOSITION

[15] In the result, Ms. Greeley failed to satisfy the test for leave to appeal because she was not able to establish that her appeal has a reasonable possibility of success. Further, the question of law raised in the appeal does not have significance to the administration of justice such that leave to appeal should be granted.

[16] Accordingly, I would deny leave to appeal.

B. G. Welsh J.A.

I Concur: _____

M. H. Rowe J.A.

I Concur: _____

L. R. Hoegg J.A.