

**File No: 174029-1
Registry: Vancouver**

In the Provincial Court of British Columbia

REGINA

v.

MICHAEL RICHARD POZNIAK

**REASONS FOR JUDGMENT
OF
THE HONOURABLE JUDGE MCGIVERN**

COPY

Crown Counsel:	L. Ashton
Defence Counsel:	M. Mines
Place of Hearing:	Vancouver, B.C.
Date of Judgment:	October 27, 2006

[1] THE COURT: I have reviewed the admissions of fact, as well as the report that was tendered by the defence, which dealt with the expert's analysis of the information provided to her by Mr. Mines, and the exhibits have been accepted by the defence and the Crown as matters that I can take into consideration for the determination of making facts as can be done.

[2] This is one of those two-count matters where the .08 charge is essentially the primary charge, and the impaired driving is the secondary charge, so to speak, but it matters not which order they appear in, but the .08 charge carries with it certain presumptions that could assist the Crown in establishing that the defendant had more than 80 milligrams of alcohol in his blood at the time the driving occurred.

[3] The expert's report, which is based on the defendant being a male person weighing 160 pounds and consuming between the hours of 9:15 and 10:45 and 12:00 a.m. until 1:30 a.m. on the following day; that is, the first day the 18th, the second portion of the day takes place on the 19th. And there's a total of six ounces of vodka acknowledged by the defendant.

[4] In matters of this nature, the evidence of the Crown and of the defence leaves me in a position of having to say that the Crown has to essentially acknowledge that there is

evidence, and the court is satisfied that there is evidence to rebut the presumption, on the basis of the drinking pattern testified to by the defendant, and I am aware that there was certainly some other evidence which could have existed. I am not satisfied that there is sufficient other evidence, other than that which has been placed in the report and was testified to by the defendant. And, therefore, I must and do find him not guilty of that particular charge.

[5] With regard to the impaired driving charge, again, that is a case, where it inevitably happens on impaired driving matters, where there are symptoms that are disclosed by the evidence which could be attributed to the consumption of alcohol. In this particular case, there is additional evidence that the defence has presented that this man at the time was under a flu situation, which caused him some difficulty during the two days, that is, the 18th and the 19th of November is concerned, plus days following that, that may have contributed to symptoms of impairment. There is evidence that he had vomited in the car, and one may be able to think that that's consistent with the consumption of alcohol, or it may well be consistent with having the flu, or it may well be as a result of whatever else may have been affecting the defendant while he was driving his automobile.

[6] Again, although it may appear to be somewhat suspicious as to what has occurred in this case, suspicion is no substitute for evidence. The evidence here at best is of a circumstantial nature, as is the case in the vast majority of impaired driving cases, and it has to be evidence that satisfies the court beyond a reasonable doubt that the conclusion that the court is being asked to conclude has to be that and be inconsistent with any other rational conclusion.

[7] I am not satisfied that other rational conclusions should be denied – they exist, and therefore, I must and do make a finding that his guilt has not been proven, and therefore, I must find him not guilty on each of the two counts, and I do so.

(REASONS FOR JUDGMENT CONCLUDED)