



THE UPDATE

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EVIDENCE - EYEWITNESS IDENTIFICATION - PHOTO LINEUP - PROCEDURE

R. v. Grant - June 22, 2005 Alta. C.A. per McFadyen, J.A.; Fruman and Mahoney, J. - Trial Judge: Phillips, J.:

Appeal from robbery conviction. Eyewitness identification case. Issue regarding possible tainting of photo lineup. Contrary to the Sophonow recommendations, the photo lineup contained only 8 photos, were displayed by the investigating officer, and were not presented sequentially.

Held: Appeal dismissed.

The Sophonow recommendations are “persuasive tools to avoid wrongful convictions arising from faulty eyewitness identification. There are no rigid rules respecting the weight to be placed on this evidence”: *Goulart-Nelson* [2004] O.J. No. 4010 (C.A.). No evidence of tainting in present case.

J. Ruttan - Defence Counsel

GUILTY PLEAS - APPLICATION TO STRIKE - TEST TO BE MET

R. v. L.A.J.C. - June 13, 2005 Alta. Prov. Ct. per Daniel, P.C.J.:

Application by accused to strike guilty plea to sexual assault charge. Plea entered with counsel, and s. 606(1.1) C.C. complied with. Counsel subsequently discharged. Accused claimed that he was innocent, and had been pressured by counsel to plead.

Held: Application denied.

Onus on accused to satisfy court that valid reasons exist to strike the plea. The accused must show that “the plea was wrong and that it would be unjust to maintain it”: *Hughes* (1987), 76 A.R. 294 (C.A.). Accused’s assertions of innocence and undue pressure rejected.

In person

IMPAIRED DRIVING - EVIDENCE TO THE CONTRARY

R. v. Doig - June 17, 2005 Alta. Q.B. per Hawco, J.:

Appeal from over .08 conviction. Accused blew 250 mg%. Evidence to the contrary rejected at trial. Issue as to whether roadside test failure, and readings on Certificate may be used in weighing the evidence to the contrary.

Held: Appeal dismissed.

The breath readings as set out on the Certificate are a factor that may be used in weighing evidence to the contrary: *Generoux* [2005] ABQB 202. Regarding the screening test, “it is some evidence which the court can consider to test the accused’s statement that he had little to drink and to test the inference which flows from the statement that the breathalyzer was not working properly”: *Fox* (2003), 178 C.C.C. (3d) 223 (Sask. C.A.).

A. Hepner - Defence Counsel

SENTENCE - ARSON - PRISON RIOT - 4 YEARS JAIL UPHELD ON APPEAL

R. v. Ross - June 29, 2005 Alta. C.A. per Costigan, J.A.; Moreau and Macklin, J. - Trial Judge: Lefever, P.C.J.:

Appeal from 4 year global sentence imposed in relation to charges of arson, possession of a weapon and mischief. Prison riot. Fire set inside of cells, and accused caused considerable property damage. Guards were threatened with a container of hot water. Lengthy record. Early guilty plea.

Held: 4 year sentence upheld.

Serious offences that created a very dangerous situation for other inmates and guards. Sentence not unfit.

G. Green - Defence Counsel



SENTENCE - DRUGS - POSSESSION OF COCAINE FOR TRAFFICKING - 2 YEARS LESS 1 DAY JAIL

R. v. Cardinal - June 23, 2005 Alta. Q.B. per Lee, J.:

Accused pled guilty to possession of 73 grams of cocaine for the purpose of trafficking and unlawful possession of a firearm. Vehicle stop. Related but dated criminal record. Application for conditional sentence.

Held: 2 years less 1 day jail.

“As recently pointed out in *Farah* (2002) ABCA 272, *Rahime* does not mandate the imposition of a conditional sentence for low level commercial trafficking in cocaine”. Aggravating factors included: amount of drugs, presence of firearm and guilty plea not entered until the day of trial.

J. Klassen - Defence Counsel



SENTENCE - DRUGS - POSSESSION OF METHAMPHETAMINE - 9 MONTHS JAIL UPHELD

R. v. Wilkening - June 16, 2005 Alta. C.A. per Paperny, J.A.; Mason and Sirrs, J. - Trial Judge: Stevenson, P.C.J.:

Appeal from 9 month jail sentence following conviction on charge of possession of methamphetamine. Concurrent sentences received for possession of a weapon and counterfeit money. 15.1 grams of drugs valued at \$1,510. Lengthy criminal record.

Held: Appeal dismissed.

Sentence not unfit. “The dangers posed by methamphetamine and its prevalence in the community, as noted by the sentencing judge, are relevant considerations as is the lengthy criminal record.”

D. Andrews - Defence Counsel



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