



THE UPDATE

Issue #1 July 1, 2005

EVIDENCE - VIDEO LINK - TEST TO BE MET - S. 714.1 C.C.

R. v. Morin - May 6, 2005, Alta. Q.B. per Watson, J:

Crown application to permit a medical doctor living in Toronto to testify via video link in accordance with s. 714.1 Criminal Code.

Held: Application granted.

Section 714.1 requires the Court to consider:

- (1) the location and personal circumstances of the witness;
- (2) the cost to be incurred if the witness had to be physically present;
- (3) the nature of the witness's anticipated evidence.

All factors weighed in favour of the video link evidence. Evidence to be taken in a "specialized courtroom ... structured in a way that guarantees the virtual presence of the parties and the Court".

D. Ross - Defence Counsel

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IMPAIRED DRIVING - CROWN MUST PROVE PROPER WORDING OF BREATH DEMAND

R. v. Jackson - May 2, 2005, Alta. Q.B. per Marceau, J. – Trial Judge: Creagh, P.C.J.:

Appeal from conviction on charge of blowing over. Investigating officer testified that he read the accused the "breath demand", but no evidence was given regarding the wording.

Held: Appeal allowed, acquittal entered. "The Crown must prove that a section 254(3) breath demand was made. The matter cannot be proven by simply referring to the Certificate of Analyses ... The Court need not be provided with the actual words used by the peace officer, but evidence must be provided to the Court which will permit the Court to conclude that there was a section 254(3) breath demand. The Court may not take judicial notice of what is contained in 'a standard demand': *Hall* (2003) ABPC 124. Authorities reviewed.

R. Prithipaul - Defence Counsel

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SENTENCE - DANGEROUS DRIVING - HIGH SPEED POLICE CHASE - STOLEN VEHICLE - 2 YEAR CONDITIONAL SENTENCE

R. v. Hrychuk - May 2, 2005, Alta. Prov. Ct. per Nemirsky, P.C.J.:

29 year old female accused with no record plead guilty to theft of a motor vehicle, dangerous driving and evading police. Police chase. Chase lasted several minutes at night over rural roads. Accused travelled through three stop signs and reached speeds of 165 km/hr. Accused ultimately drove into a farmer's field and was apprehended by police. Upon arrest accused was cooperative, remorseful and high on drugs. Positive PSR. Prior to the guilty plea the accused had voluntarily engaged in 56 days of residential treatment for drug addiction. 23 days pre-trial custody before bail was granted.

Held: 2 years less one day conditional sentence. "I am mindful of the need for denunciation and deterrence for violent offences committed against police officers. However, pursuant to principles enunciated

in *Proulx*, these objectives can be achieved through a conditional sentence order containing onerous conditions”: *McLean* (2005), 190 C.C.C. (3d) 472 (Alta. C.A.). Sentence included 12 months of house arrest, 240 hours of community service and mandatory attendance at AA and NA.

R. Shaigec - Defence Counsel



SENTENCE - DANGEROUS DRIVING - HIGH SPEED POLICE CHASE - 5 MONTHS JAIL

SENTENCE - COCAINE TRAFFICKING - 17 MONTH CONDITIONAL SENTENCE

R. v. Khoshnow - May 2, 2005, Alta. Prov. Ct. per Malin, P.C.J.:

Accused plead guilty to trafficking in cocaine and evading the police. Pleas entered following an abbreviated preliminary inquiry. Accused was acting as a dial-a-doper, and upon being boxed in by two unmarked police vehicles, the accused fled. High speed police chase through a residential area at 1:30 in the afternoon. After running his fourth stop sign the accused collided with a civilian

motor vehicle. Police chase lasted 2.6 kms. No injuries caused. Drug transaction consisted of \$80 worth of cocaine sold to an undercover police officer. 22 year old accused with no record. Positive PSR.

Held: 5 months jail for evading police plus 17 month conditional sentence for trafficking.

Custodial time may be blended with a conditional sentence: *R (R.A.)* (2000), 140 C.C.C. (3d) 523 (S.C.C.). As per *Roberts* (2005) ABCA 11, denunciation and deterrence paramount in police chase cases. Very low end commercial trafficking. Authorities reviewed.

S. Tarrabain - Defence Counsel



YOUTHS - SENTENCE - POSSESSION OF A WEAPON - 9 MONTHS PROBATION

R. v. P.W.R. - May 6, 2005, Alta. Prov. Ct. per Ho, P.C.J.:

Youth plead guilty to possession of a weapon for a purpose dangerous. Joint submission for 9 months probation. Troubled youth became involved in a scuffle with a Child Welfare worker.

Youth picked up a hunting knife and cut the complainant on his leg and chest. Youth immediately apologized and demonstrated remorse. Prior conviction for assault with a weapon. Issue as to whether offence constituted a “serious violent offence” within meaning of s. 42(9) YCJA.

Held: 9 months probation imposed. Serious violent offence application denied.

“I am satisfied that the accused did not intend to harm the case worker ... I do not believe that the circumstances of the present offence should be used to trigger the future possibility of an adult sentence for this youth. The YCJA sets out a separate regime for the sentencing of youths from which exists for the sentencing of adults under the Criminal Code. The YCJA recognizes that the accountability of youths needs to be balanced with the considerations of dependency and reduced maturity. The actions of the youth in the present case have much to do with dependency and reduced maturity.”

C. Seto - Defence Counsel

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