



THE UPDATE

Issue #4 July 22, 2005

APPREHENSION OF BIAS - TRIAL JUDGE - TEST

R. v. Klostergaard - May 26, 2005
Alta Q.B. per Belzil, J.:

Two accused charged with drug offences. Police watched what they believed to be a drug deal involving the accused and a third party in a bar parking lot. Trial started with voir dire on the issue of reasonable grounds to arrest. At conclusion of voir dire judge stated: "It would be naive to believe" that both accused were not "fully aware of and involved in the transaction" with the third party. Application for mistrial on basis of reasonable apprehension of bias.

Held: Application dismissed.

Test being whether an "informed person" would think that the judge had prejudged the case. No final findings of fact made. "A reasonable informed person would be one who understood ... the function of a voir dire as distinct from the trial proper".

S. Beaver, R. Shaigec -
Defence Counsel

AGGRAVATED ASSAULT - DEGREE OF INJURY REQUIRED

R. v. Van Wezel - May 18, 2005
Alta C.A. per Cote, Hunt and Fruman, J.A. - Trial Judge:
Lamoureux, P.C.J.:

Appeal from conviction on charge of aggravated assault. Issue as to whether the injuries suffered by complainant were sufficient to constitute an aggravated assault.

Held: Appeal allowed.

Conviction entered for lesser offence of assault causing. "The evidence is that the complainant had a puncture above the lip, cut to the forehead, swelling and bruising. He received no stitches, nor was there evidence of scarring. The trial judge did no analysis of the legal nature of the wounding necessary to constitute aggravated assault."

J. Brunnen - Defence Counsel

CHARTER - 9 - TRAFFIC STOP - ARBITRARY DETENTION - TEST

R. v. Nyal - May 26, 2005 Alta
Prov. Ct. per Ayotte, P.C.J.:

Impaired driving trial. Accused stopped by police after leaving a bar parking lot. Accused drove through parking lot with headlights off. Alleged s. 9 breach.

Held: No s. 9 breach.

Standard for random vehicle stops still defined by *Ladouceur* [1990] 1 S.C.R. 1257. Law develops a clear distinction between stops for road safety, and other stops having nothing to do with enforcement of traffic laws. Stop in present case authorized by s. 166 TSA. "Officers can stop persons only for legal reasons, in this case reasons related to driving a car such as checking the driver's license and insurance, the sobriety of the driver ...". Authorities reviewed.

M. Tims - Defence Counsel

**OBSTRUCTION - S. 129 CC -
PROOF OF OFFENCE**

R. v. Haymour - May 18, 2005
Alta. Prov. Ct. per Mandamin,
P.C.J.:

Accused charged with obstructing a police officer and assault. Police investigated a stabbing at accused’s restaurant. Accused twice “tapped”the investigating officer to “get his attention” and once “brushed” by him. After the accused refused to leave, he was grabbed and thrown up against the wall by police.

Held: Acquittals entered.

Accused’s actions did not constitute an obstruction. Police officers must be “civil and attentive ...there is no qualification more indispensable to a police officer, than a perfect command of temper”: 1892 London Metro Police Service Instructions.

P. Horner - Defence Counsel



**SENTENCE - IMPAIRED
DRIVING AND LEAVING
THE SCENE - FATALITY -
CONDITIONAL SENTENCE**

R. v. O’Flynn - May 25, 2005
Alta. Prov. Ct. per Fradsham,
P.C.J.:

Accused plead guilty to impaired driving and leaving the scene. Accused struck and killed a jaywalker. Impairment not a casual factor in the collision.

Held: \$900 fine re: impaired driving. 2 year CSO re: leaving the scene.

“Since the Information ... does not allege facts which would bring into play the provisions of s. 252(1.3)(b), it is not now open to the Crown to rely on that section after the accused had pleaded guilty”. Young accused with very limited record who had successful completed addictions treatment. Extensive review of case law re: sentence for leaving the scene.

J. Ogle - Defence Counsel



**SENTENCE - MURDER -
PAROLE INELIGIBILITY - 20
YEARS UPHeld ON APPEAL**

R. v. Fuller - May 30, 2005 Alta.
C.A. per Conrad, J.A.; Kent and
Hawco, J. - Trial Judge: Chrumka,
J.:

Defence appeal from 20 year parole ineligibility order following accused’s conviction for second degree murder. Brutal beating death in the presence of victim’s 6 year old step-son. Jury recommendation was for an extension of parole ineligibility to 25 years.

Held: Appeal dismissed.

20 year parole ineligibility order well within acceptable range, and constituted a fit sentence.

L. Stevens - Defence Counsel



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