



THE UPDATE

Issue #18 October 28, 2005

CHARTER - 9 - INVESTIGATIVE DETENTION - GUN COMPLAINT - NO BREACH

R. v. Peters - September 9, 2005
Alta. Prov. Ct. per McDonald,
P.C.J.:

Accused charged with drug offences. Drugs found after police searched accused's knapsack. Accused matched description of person alleged to have been "waving a gun". Knapsack searched after accused appeared to police to be "agitated".

Held: No breach.

Search incidental to investigative detention lawful. Detention lawful given that accused closely matched the description of the subject of the gun complaint. "Unlike the situation in *Mann* where it could not be reasonably inferred that an 'admittedly soft object' could be the source of house breaking tools, the obvious possibility of a hand gun stuffed somewhere in a large knapsack is self evident".

I. Pielecki - Defence Counsel

EVIDENCE - UNSAVORY WITNESS - *VETROVEC* WARNING REQUIRED

R. v. Brar - September 1, 2005
Alta. Prov. Ct. per Semenuk,
P.C.J.:

Careless driving trial. Double fatality collision. Accused alleged by an eyewitness to have travelled through a red light. Accused denied an traffic violation. Eyewitness was a disreputable person with a criminal record that included over 45 convictions.

Held: Acquittal entered.

A *Vetrovec* warning was necessary, notwithstanding the fact that the witness was not an accomplice. The need to look for corroboration arose from the witnesses' generally disreputable character. A trial judge must weigh whether or not the credibility of "any" witness is such that a jury needs to be cautioned as to the danger in reliance upon the testimony in question.

C. Stewart - Defence Counsel

IMPAIRED DRIVING - BREATH DEMAND - "FORTHWITH" - 42 MINUTE DELAY - S. 8 - ACQUITTAL

R. v. Arnett - September 8, 2005
Alta. Prov. Ct. per Daniel, P.C.J.:

Impaired driving trial. Accused arrested and advised of his Charter rights. Tow truck then called, and the police officer spent time taking notes. First breath demand not read for 42 minutes. Breath samples ultimately provided at detachment.

Held: Acquittal entered.

Section 8 breach and Certificate excluded pursuant to 24(2). 42 minute delay between arrest and breath demand violated the statutory requirement that the same be done forthwith or as soon as practicable. "The nexus in time and the factual connection between the arrest for impaired driving and the breath demand referred to in *Johnson* (1990) A.J. No. 384 (C.A.) was broken by the delay".

P. Kay - Defence Counsel

IMPAIRED DRIVING - S. 9 - POST BREATH SAMPLE DETENTION - 4 HOUR DELAY - NO 24(2) REMEDY

R. v. Smith - September 8, 2005
Alta. Prov. Ct. per Maloney, P.C.J.:

Accused charged with impaired driving and over .08. Moderate indicia of impairment. Accused blew 140 mg%. Accused then detained for approximately 7 hours prior to being released. First 3 hours of detention justified so as to allow time for accused to sober up. Accused detained for 4 additional hours due to police inattention.

Held: Breach of s.9. Service of Certificate not excluded.

Weaver [2005] ABCA 105 reviewed. First period of detention justifiable. "There is ample authority that detention until an accused is sober, is not arbitrary". Last 4 hours of detention constituted a breach of s. 9, but not a serious one. No bad faith on the part of police. Accused slept until the time of his release. Authorities reviewed.

T. Foster - Defence Counsel



IMPAIRED DRIVING - 10(B) - DUE DILIGENCE- FACTORS TO CONSIDER

R. v. Haver - September 8, 2005
Alta. Prov. Ct. per Creagh, P.C.J.:

Accused charged with impaired driving and refusal. Alleged 10(b) breach. Accused read the out-dated 10(b) card which did not have a listing of the current Legal Aid phone numbers. However, at detachment accused was presented phone books and Legal Aid lists. Accused seen using the phone, and when he was finished the second breath demand was made and the accused refused.

Held: No s. 10 breach. Conviction entered.

The accused did not communicate to police any difficulty re: contact with counsel. Nothing in accused's actions or words could have led police to believe that accused needed more time, or some assistance, with respect to contacting counsel. No logistical information given to police by accused. Police not required to play "20 Questions" with the accused: **Top** (1989), 95 A.R. 195 (C.A.). Authorities reviewed.

R. Prithipaul - Defence Counsel



SENTENCE - MURDER - PAROLE INELIGIBILITY - SHOOTING - LENGTHY RECORD - 22 YEARS

R. v. Fouquet - September 7, 2005
Alta. Q.B. per Slatter, J.:

Accused convicted by jury of second degree murder. Shooting death within the context of a drug deal and robbery. 42 prior convictions, including violent and firearms offences. Accused diagnosed with borderline psychopathic personality disorder. Accused also on probation and subject to a weapons prohibition at the time of the offence.

Held: 22 year parole ineligibility period set.

Aggravating factors included accused's record, use of a firearm and the weapons prohibition. Jury recommendation, which was split between 10-20 years, given little weight as jury knew nothing of the accused's record.

W. Raponi - Defence Counsel



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