



THE UPDATE

Issue #22 November 25, 2005

CHARTER - 10 - DETENTION - JETWAY PROGRAM - QUESTIONING OF ACCUSED AT BUS DEPOT - NO BREACH

R. v. Rajaratnam - Oct. 12, 2005
ABQB 739 per Rowbotham, J.:

Accused charged with drug offences following discovery of cocaine in his duffle bag at a bus depot. Accused got off of a bus in Calgary and was approached by police officers working with the Jetway Unit. Accused told by police that he was free to leave, but they then went on to ask a series of questions. Accused's answers ultimately led to his arrest. Alleged 10(b) breach.

Held: No breach.

Accused not detained. Element of psychological compulsion not made out. As per *F.(D.M.)* (1999), 139 C.C.C. (3d) 144 (Alta. C.A.) "the choice of language and the context of the encounter are paramount." *Kang-Brown* 2005 ABQB 608 followed. Authorities reviewed.

D. Geller - Defence Counsel

SENTENCE - ASSAULT - EX- GIRLFRIEND CONFINED AND BERATED IN AN ALLEY BEHIND A BAR - 30 DAYS JAIL PLUS PROBATION

R. v. Narayan - Oct. 11, 2005
ABPC 270 per Semenuk, P.C.J.:

Accused pled guilty to assault and unlawful confinement. Accused confined and berated an ex-girlfriend in an alley way behind a bar. Assault consisted of pulling down her top and exposing her breasts, pulling her to the ground and tearing a necklace. 26 year old accused with minor record.

Held: 30 days jail plus probation.

Denunciation and deterrence paramount given assault upon ex-domestic partner. Range of sentence anywhere from probation to high provincial jail time: *Hatch* (1994) A.J. No. 767 (C.A.). Conditional sentence inappropriate.

J. Lutz - Defence Counsel

SENTENCE - DRUGS - MARIHUANA GROW OPERATION - 15 MONTH CONDITIONAL SENTENCE

R. v. Penner - Oct. 7, 2005 ABPC
284 per Semenuk, P.C.J.

Accused pled guilty to possession and production of marihuana. Substantial hydroponic grow operation – 67 active plants weighing 54.3 kilograms. Estimated street value of \$31,406 - \$50, 250. 25 year old accused. No record. Positive PSR.

Held: 15 month CSO.

Specific and general denunciation and deterrence paramount in marihuana grow operation cases: *Hannan* (2003) ABPC 178. Accused's motive was profit, wanting to make enough money to go back to school. Prevalent offence, and accused's involvement exceeded that of a mere "crop sitter". Sentence mitigated by early guilty plea, and smaller end size of the operation. Authorities reviewed.

M. Stephenson - Defence Counsel

SENTENCE - IMPAIRED DRIVING CAUSING BODILY HARM - SERIOUS INJURY - CONDITIONAL SENTENCE

R. v. Baker - Oct. 11, 2005 ABPC 269 per Semenuk, P.C.J.:

Accused pled guilty to impaired driving causing bodily harm. Accused lost control of his vehicle and struck a stationary tractor trailer. Passenger seriously injured – right arm amputated, broken ribs, broken leg, collapsed lung. 156 mg%. 26 year old accused. No record.

Held: 18 month CSO.

“The broad range of sentences for impaired causing bodily harm is probation ... to imprisonment for 30 months”: **Callan** (2002) A.J. No. 342 (Prov. Ct.). Conditional sentence appropriate given: early guilty plea, no record, genuine remorse and attendance at AADAC and positive PSR. Conditions included 9 months of house arrest and 100 hours of community service. Authorities reviewed.

J. Livergant - Defence Counsel

-

SENTENCE - UNLAWFUL CONFINEMENT - FORMER SPOUSE - 5 YEARS JAIL

R. v. Palomaki - Oct. 12, 2005 ABCA 330 per Paperny, J.A.; Bensler, Erb, J. - Trial Judge: Cooke, J.:

Appeal from 5 year sentence less pre-trial custody credit imposed following accused’s conviction for unlawful confinement, and possession of a weapon. Accused forced his way into his ex-wife’s home and held her at gun point “for a significant period of time”. Accused had left a suicide note. Accused ultimately persuaded to abandon his plan.

Held: 5 year sentence upheld.

Previous history between the parties made offences even more serious. Complainant had taken steps to protect herself from her ex-husband. Confinement in one’s own home, involving the abuse of a former spouse, mandated high end sentence. Although 5 year sentence upheld, appeal allowed on basis of reasonable apprehension of bias. “The circumstances surrounding the sentencing hearing, specifically direct contact between the sentencing judge and the victim before sentencing, are unfortunate and inappropriate”.

J. Kelly - Defence Counsel

-

YOUTHS - SENTENCE- 39(1)(C) YCJA - CUSTODIAL SENTENCE - FACTORS TO CONSIDER

R. v. B.K.B. - Oct. 12, 2005 ABCA 331 per Paperny, J.A.; Bensler, Erb, J. - Trial Judge: Cook-Stanhope, P.C.J.:

Defence appeal from 12 month global custodial sentence imposed in relation to a series of offences including trafficking in cocaine. Accused had 11 prior convictions. Issue as to whether a custodial sentence was available, i.e. whether the accused had demonstrated the necessary pattern of conduct required by s. 39(1)(c) YCJA as defined in **J.(C.J.)** 2005 ABCA 293.

Held: Appeal dismissed.

“This Court in **J.(C.J.)** held that there must be some recognizable regularity, consistency or similarity to the offences in order to demonstrate a pattern of findings of guilt. A mere prior history on its own, without a demonstrated pattern, is not sufficient. In BKB’s case, the sentencing judge fairly concluded on the totality of the record, that there was an escalating pattern of criminal conduct and non-compliance with court orders.”

I. McNish - Defence Counsel

-

Anderson Dawson Knisely Stevens & Shaigec
Suite 300, 9924-106 Street, Edmonton, Alberta, T5K 1C4
Tel: (780)424-9058 Fax: (780) 425-0172
All 2005 updates can be found at: www.adkscrimlaw.com