



THE UPDATE

Issue #2 January 13, 2006

EVIDENCE - JURY TRIAL - ADMISSIBILITY OF GRUESOME PHOTOGRAPHS

R. v. McLeod - Nov. 10, 2005
ABQB 842 per Slatter, J.:

Two accused charged with murder. Victim shot in the back 6 times and then burned. Jury trial. Issue regarding admissibility of certain photographs – both of the burned body at the crime scene and at the autopsy.

Held: Photos excluded.

Primary issue at trial being identity of shooter. Questions of provocation or self defence not arising. Pictures described as “particularly gruesome”. Prejudicial effect outweighed probative value. “The Crown referred to several cases which express the view that modern jurors are desensitized to violence ... I do not share [that] view ... People realize that the violence they see on television and in the movies is staged and fake”.

L. Anderson, M. Daneliuk -
Defence Counsel

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JURIES - INSTRUCTIONS - INSTRUCTIONS NOT TO BE MEASURED BY STANDARD OF PERFECTION

R. v. Heil - Nov. 10, 2005 ABCA
397 per Russell, Hunt, O’Brien,
J.A. - Trial J. - Brooker, J.:

Defence appeal from manslaughter conviction following jury trial. Self-defence raised at trial. Issue regarding jury instructions, namely, whether the trial judge placed an onus on accused to prove self defence, and whether it was an error to not instruct the jury that the fatal consequences of the blow ought not to obviate self defence.

Held: Appeal dismissed.

New trial only in instances where the charge read as a whole may have misled the jury. Jury instructions not to be measured against a standard of perfection: *Jacquard* (1997), 113 C.C.C. (3d) 1 (S.C.C.). Charge as a whole did not place any onus on accused to prove self defence. The authorities do not mandate a specific instruction that the consequences of a blow are irrelevant to the application of self defence.

B. Der - Defence Counsel

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SELF DEFENCE - S.34(1) CC - FACTORS TO CONSIDER

R. v. Kravshar - Nov. 7, 2005 ABPC
313 per Allen, P.C.J.:

Accused charged with dangerous driving. Primary issue being self defence. Accused drove past police officers on Whyte Ave. yelling “pigs”. Accused then stopped at a red light a block later. Unknown to the accused, a police officer had pursued his vehicle on foot, and caught up to him at the light. As officer approached the driver’s window, he said “hi, city police”. Accused did not hear the officer, and simply saw a black sleeve reaching into his vehicle. Accused thought he was under attack from a “hooligan”, he felt threatened and he drove through the red light.

Held: Acquittal entered.

Self defence under s. 34(1) CC available to accused. Accused was under a mistaken belief that he was about to be assaulted, he did not provoke the assault and did not intend to cause grievous bodily harm. Driving through the light was a proportionate response. Authorities reviewed.

P. Northcott - Defence Counsel

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SENTENCE - AGGRAVATED ASSAULT - STABBING - CSO OVERTURNED ON APPEAL - 18 MONTHS JAIL

R. v. Bazinet - Nov. 9, 2005 ABCA 388 per Russell, J.A.; McIntyre, Mahoney, J. - Trial J.: MacLeod, J.:

Crown appeal from 18 month conditional sentence imposed after accused pled guilty to aggravated assault and possession of a weapon. Accused stabbed unarmed victim in the neck, lacerating a major vein. Incident arose from a pushing match outside of a restaurant. Parties did not know each other. Youthful accused with significant family support. No record.

Held: Appeal allowed, 18 months jail.

Deterrence and denunciation not achieved by a conditional sentence. "This was a case of extreme violence committed by an individual carrying a knife ... Those who would carry and use knives must be deterred. Individual rehabilitation must be secondary to the paramount principles of general deterrence and denunciation".

E. Wilson - Defence Counsel



SENTENCE - FRAUD AND PERSONATION - SERIOUS CASE - PENITENTIARY SENTENCE NECESSARY

R. v. Jadavji - Nov. 7, 2005 ABPC 322 per Brown, P.C.J.:

20 year old accused pled guilty to forging documents, fraud and impersonating an official with the University of Lethbridge. Accused fraudulently obtained a student loan and fraudulently obtained credit to buy two vehicles. Sophisticated and involved series of frauds. 68 Youth Court convictions, 47 of which were theft or fraud related.

Held: 16 months jail plus 1 year probation.

16 month jail sentence in addition to over 5 months pre-trial custody. Deterrence and denunciation paramount. Case "called for a penitentiary sentence" notwithstanding accused's youth. Authorities reviewed.

B. Der - Defence Counsel



SENTENCE - PUBLIC MISCHIEF - FACTORS TO CONSIDER - LENGTH OF CSO REDUCED

R. v. Heatherington - Nov. 14, 2005 ABCA 393 per Russell, J.A.; McIntyre, Mahoney, J. - Trial J. Caffaro, P.C.J.:

Defence appeal from 20 month conditional sentence following conviction for public mischief. Accused made a false claim of having been stalked and sexually harassed. Case attracted considerable media attention.

Held: Appeal allowed, length of sentence reduced to 12 months.

Ambrose (2000), 271 A.R. 164 (C.A.) distinguished, given that in present case no individual was targeted by the false complaint. "The Crown maintains that the sentencing judge had discretion to give no weight to the public humiliation suffered by the appellant. Given ... the contents of the pre-sentence report describing the consequences the appellant and her family have suffered ... and public scorn in the media, some rationale should have been provided for assigning little or no weight to that factor ... the consequence of the ensuing humiliation in this case was inordinate and entitled to material consideration in mitigation".

B. Der - Defence Counsel



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