



THE UPDATE

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BAIL - MURDER - APPEAL TO COURT OF APPEAL - TEST TO BE APPLIED

R. v. White - Nov. 18, 2005 ABCA 403 per Berger, J.A.:

Accused charged with murder released on bail in Queen's Bench. Crown application pursuant to s. 680 CC for a bail review by Court of Appeal. Issues regarding test to be met.

Held: Application granted.

Threshold issue under s. 680 CC is whether or not the request for review has "arguable merit": *Cooper* (2000), 138 C.C.C. (3d) 292 (Alta. C.A.). Review not to be a hearing *de novo*. "Parliament intended the review to be conducted with due consideration for the initial order but ... It is not necessary that the reviewing court, before intervening, come to a conclusion that the decision under review was unreasonable or that an error in principle was committed". Standard of review being correctness. Authorities reviewed.

L. Stevens - Defence Counsel

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JURIES - JURY SELECTION - CHALLENGE FOR CAUSE - FORM OF QUESTIONS

R. v. McLeod - Nov. 14, 2005 ABQB 846 per Slatter, J.:

Two accused charged with murder. Both accused were young black men, while the deceased was Asian. Issue regarding the nature of questions to be asked in the challenge for cause, and whether the judge or counsel were to ask the questions.

Held: Judge to ask questions.

Two questions allowed: (1) "Do you believe that black Jamaican men ... are more likely to be violent ...?"; (2) "Would your ability to judge the evidence ... be affected by the fact that the accused are black ... and the deceased Asian?" The trial judge should pose the questions. "Counsel are all in agreement that the fundamental purpose of the challenge for cause is to ensure that the jury is impartial ... not to be used to obtain any tactical advantage". Authorities reviewed.

L. Anderson, M. Daneliuk -
Defence Counsel

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SENTENCE - BREAK ENTER AND COMMIT THEFT - PRIVATE DWELLING - 15 MONTHS JAIL

R. v. Mudaliar - Nov. 15, 2005 ABPC 333 per Malin, P.C.J.:

Accused pled guilty to break enter and commit theft. Private residence broken into when no one home. \$2,300 worth of property taken. 31 year old accused with lengthy record (21 prior convictions) including 10 property related offences.

Held: 15 months jail.

"It is clear that denunciation and deterrence are the most important of the sentencing objectives to be achieved ... I am satisfied that these cases support a sentence in the range of 9 to 18 months imprisonment for a single, unsophisticated breaking and entering of an unoccupied dwelling house where theft was the indictable offence committed and the offender is a mature adult, with an extensive record." Conditional sentence inappropriate, as the safety of the community would be endangered by the same. Authorities reviewed.

J. Sinclair - Defence Counsel

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SENTENCE - DANGEROUS DRIVING - CONDITIONAL DISCHARGE

R. v. Poitras - Nov. 18, 2005 ABPC 334 per Allen, P.C.J.:

Accused pled guilty to dangerous driving. Accused fled from the scene of a minor collision, and was pursued by the complainant. At times the accused travelled at speeds ranging from 90-100 km/hr within the downtown of Edmonton. Accused travelled through several red lights. Accused was an accomplished artist who suffered from bipolar disorder and fled the scene in a state of extreme panic. Dated record including a 1991 impaired driving conviction and a drive while disqualified in 1992.

Held: Conditional discharge – 9 months probation.

Case law regarding conditional discharges within the context of dangerous driving thoroughly reviewed. Discharge not contrary to the public interest. Public interest not to be equated to public concern. “General deterrence is an important component of the public interest but it is not the sole component ... A myriad of factors may need to be balanced to determine the public interest component ... the public has an interest in the accused’s continuing contribution to society.”

R. Davidson - Defence Counsel

SENTENCE - FRAUD - \$117,188 CREDIT CARD DATA THEFT - 18 MONTHS JAIL

R. v. Naqvi - Nov. 18, 2005 ABPC 339 per Stevenson, P.C.J.:

Accused pled guilty to theft of credit and debit card data. Using a skimming device while working at a gas station, accused able to gain access to customer bank accounts. Over a 12 day period accused skimmed 112 debit and/or credit cards. Accused then sold the information to a high school friend for \$100 each. Accused’s profit was \$17,700. Bank card information then used by others to commit fraud in the amount of \$117,188. 23 year old accused with no record.

Held: 18 months jail.

Identity theft to be treated as extremely serious. Accused breached his employer’s trust. Sophisticated fraud. Deterrence and denunciation paramount. Conditional sentence not appropriate. “No doubt, conditional sentences ... can provide denunciation and deterrence. Imprisonment, however, remains the most forceful and effective expression of those objectives”: *McTighe* (2005) ABCA 30.

C. Stewart - Defence Counsel

SENTENCE - INFANTICIDE - NEGLIGENCE IN CHILD BIRTH AND CONCEALING DEAD BODY - PROBATION

R. v. Anderwald - Nov. 25, 2005 ABQB 888 per Clackson, J.

Accused pled guilty to neglecting to obtain assistance in child birth and concealing the body of a child, contrary to ss. 242 and 243 CC. Originally charged with murder. Accused had concealed her pregnancy from family, friends and co-workers. She gave birth in private. Accused believed that the child was still born. Psychiatric evidence established that accused suffered from a disturbance of the mind at the time of the child birth. Accused spent approximately 3 months in custody (majority of which at Alberta Hospital) prior to being released on bail.

Held: 2 years probation.

“I’m not sentencing a violent killer, but a woman who was desperate to hide her pregnancy from the world ... the accused will also have to bear the social stigma of her actions. Again, this is a form of punishment”. Term of probation included pregnancy testing every 3 months.

L. Anderson - Defence Counsel

Anderson Dawson Knisely Stevens & Shaigec
Suite 300, 9924-106 Street, Edmonton, Alberta, T5K 1C4
Tel: (780)424-9058 Fax: (780) 425-0172
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