



THE UPDATE

Issue #7 February 17, 2006

CHARTER - 7 - DISCLOSURE - INTOXILYZER RECORDS - O'CONNOR APPLICATION -

R. v. Coopsammy - Dec. 6, 2005 ABPC 342 per Wheatley, PCJ:

Impaired driving trial. Defence application for disclosure of downloadable data from the Intoxilyzer and the alcohol solution log. After the accused provided his first sample, three other tests were done on third parties before the accused's second breath test. Thereafter, subsequent to the accused's second test the alcohol solution was changed.

Held: Application denied.

As per *Keirsted* (2004) ABQB 491 material sought constituted third party records. First stage of *O'Connor* test not met. "Allowing the defence to speculate upon possible deficiencies in police procedure ... [that] might give rise to a possible defence isn't enough to cross the threshold to likely relevance".

B. Gunn, S. Prithipaul -
Defence Counsel

IMPAIRED DRIVING - CHARTER - 8 - REASONABLE GROUNDS - "FORTHWITH"

R. v. Angell - Dec. 13, 2005 ABPC 287 per Allen, PCJ:

Impaired driving trial. Issue regarding alleged s. 8 breach. Police attended at accused's home following reports of a motor vehicle collision. Symptoms of impairment noted and accused arrested. Breath demand read 33 minutes after police arrival.

Held: Section 8 breach, Certificate excluded.

Police officer never addressed his mind to the time of driving, and did not have reasonable grounds to believe that driving had occurred in previous 3 hours. Further, breath demand not read "forthwith or as soon as practicable" as required by s. 254(3) CC. "Forthwith when considered in the context of s. 254(3) should be given the meaning that the act is to be within a reasonable time": *Catling* [2001] W.W.R. 716 (ABPC).

R. Prithipaul - Defence Counsel

IMPAIRED DRIVING - IMPAIRMENT - TEST

R. v. Dahl - Dec. 13, 2005 ABQB 943 per Binder, J:

Appeal from impaired driving conviction. Issue regarding sufficiency of Reasons For Judgment re: impairment. Symptoms of impairment noted by civilian witness, but no unusual driving.

Held: Appeal allowed, new trial.

As per *Andrews* (1996), 178 A.R. 182 (CA) if the accused demonstrates conduct that exhibits a marked departure from the norm, an inference of impairment of the ability to drive can reasonably be drawn. "The trial judge's reasons are deficient in that they do not resolve the contradictory evidence regarding the witness' lack of action or concern regarding the Appellant driving away from the scene, as contrasted with her conclusions concerning impairment".

●

●

●

SENTENCE - ASSAULT - DOMESTIC VIOLENCE - 18 MONTHS JAIL

R. v. Savard Dec. 15, 2005 ABCA 432 per Costigan, Sulyma, Verville, JA: Trial Judge: Rostad, PCJ:

Crown appeal from 23 month conditional sentence imposed after accused pled guilty to 8 offences including: break enter and commit assault, criminal harassment and unlawful confinement. Complainant was accused's wife. Accused was prohibited from contacting complainant at time of offences. Two previous assault convictions. Two months pre-trial custody.

Held: Appeal allowed, 18 month jail sentence imposed.

Accused was a danger to the safety of the community given the record for assault and the breach of the no-contact order. Further, sentencing judge erred in deducting time spent in pre-trial custody before considering whether the sentence could be served in the community. A conditional sentence "should not be stretched to include an offender for whom a penitentiary term would be appropriate were it not for his or her time spent in pre-sentence custody": *Fice* (2005), 252 D.L.R. (4th) 575 (SCC).

P. Lister - Defence Counsel



SENTENCE - SEXUAL ASSAULT - MULTIPLE HOME INVASIONS - 20 YEARS JAIL

R. v. Cromwell - Dec. 8, 2005 ABPC 279 per Brown, PCJ:

Accused pled guilty to numerous sexual assault related offences involving 4 separate victims. Each case involved the accused breaking into the victim's home in the middle night, hooding and tying up the victims, and then having forced unprotected intercourse. Victims ranged in age from 13-29. Crimes remained unsolved for more than 12 years. In the interim the accused attended at counselling and established a good employment record. Dated and unrelated criminal record. One year prior trial custody. Case solved by DNA.

Held: 20 year global sentence.

Sentencing principles concerning home invasion robbery cases applicable: *Matwiy* (1996), 105 C.C.C. (3d) 251 (ABCA). "The taking of victims literally from their beds in the dead of night, the use of weapons, threats, violence and confinement are all factors that characterize Mr. Chromwell's crimes as home invasions. 34 years jail would have been appropriate but for, guilty pleas, post-offence rehabilitation and pre-trial custody time. Authorities reviewed.

L. Ross - Defence Counsel

SENTENCE - SEXUAL INTERFERENCE - 5 YEAR OLD VICTIM - 3 YEARS JAIL

R. v. W.C.C. - Dec. 14, 2005 ABPC 362 per Daniel, PCJ:

Accused pled guilty to sexual interference. 5 year old victim. Accused was a friend of the family who was staying in the family home. One incident. Accused laid down next to the child at night, touched her buttocks, spread her legs and put his fingers inside of her vagina. Accused also had her touch his penis. 24 year old accused with minor unrelated record. Remorseful. Accused suffered from polysubstance abuse (alcohol and cannabis) and "opportunistic paedophilia".

Held: 3 years jail.

Serious sexual assault and breach of trust. Starting point sentence in Alberta continues to be 4 years jail: *Brough* [2004] A.J. No. 684 (CA). Mitigating factors: youthfulness of offender, single incident, early guilty plea. Authorities reviewed.

C. Archer - 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 updates can be found at: www.adkscrimlaw.com

**By clicking on the headings of any of the cases in THE UPDATE,
the reader will be immediately linked to the full text of the case.**