



THE UPDATE

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ABDUCTION - 283 CC - MEANING OF "TAKE" - TEST TO BE APPLIED

R. v. Goudreault - Feb. 3, 2006
ABCA 46 per McFadyen, JA:

Application for leave to appeal from conviction for abduction contrary to s. 283 CC. Accused convicted of taking the child, in contravention of a custody order, with intent to deprive the custodial parent of possession of the child. Issue regarding the appropriate meaning to attach to the word "take" appearing in s. 283.

Held: Leave to appeal granted.

Question of law being whether or not a parent who has lawful custody of a child commits the offence of "taking", when the parent fails to deliver the child to the other parent pursuant to a court order changing custody. Varying authorities as to whether accused had "taken" the child, or simply was detaining the child: *Dawson* [1996] 3 S.C.R. 783; *K.M.E.* [1982] A.J. No. 618 (C.A.).

H. Silver - Defence Counsel

CHARTER - 8 - DIGITAL RECORDING AMMETRES - WHETHER SEARCH WARRANT REQUIRED

R. v. Rayment - Feb. 14, 2006
ABQB 132 per Erb, J:

Accused charged with offences arising from the execution of a warrant and discovery of a marihuana grow operation. Police attached a Digital Recording Ammetre (DRA) to the electrical supply at accused's residence. DRA printouts led to grounds to obtain a search warrant. Issue as to whether police should have acquired a warrant before having the DRA installed.

Held: No s. 8 breach.

"Recent judicial pronouncements in cases involving DRA devices have been inconsistent, to say the least". Generally, electrical consumption information ought not to be considered the type of private "information about oneself" that attracts s. 8 scrutiny as *Plant* [1993] 3 S.C.R. 281.

D. Chow - Defence Counsel

IMPAIRED DRIVING - SCREENING TEST - REFUSAL - PROOF OF "APPROVED" SCREENING DEVICE

R. v. Dhillon - Feb. 10, 2006
ABQB 109 per Thomas, J:

Crown appeal from acquittal on charge of refusal to provide a screening test. In response to the question as to whether the device was an "approved" screening device, the officer testified that it was an "Alco Sensor IV". Noting that "Alco Sensor IV" was not set out in the Criminal Code, the trial judge found a lack of evidence that the device was "approved".

Held: Appeal dismissed.

Integrity of the device as an "approved" device must be proven beyond a reasonable doubt: *Weir* [1989] N.J. No. 265 (Nlfd. TD). Trial judge entitled to find as a fact that the officer's evidence that he had used an "Alco Sensor IV" was insufficient to prove that the device was "approved". Authorities reviewed.

W. Raponi - Defence Counsel

MEDIA RIGHTS - MEDIA APPLICATION FOR RELEASE OF TRIAL EXHIBITS - TEST

R. v. Hilderman - Feb. 3, 2006 ABQB 107 per Martin, J:

Aggravated assault trial. One of the accused videotaped the crime. The videotape became a trial exhibit. Following the trial the media applied for release of the videotape for broadcast.

Held: Videotape released in part.

Edited tape released. Release of court exhibits for publication is a matter of discretion. Portions of the videotape were obscene. "While I fully subscribe to the principle that all legal proceedings be open and to the right of the media to report what goes on in court, I think that freedom of expression and freedom of the press must stop short of requiring the court to distribute obscene materials". Authorities reviewed.

J. Blumer - Defence Counsel



PARTIES - 21 CC - AIDING AND ABETTING - MERE PRESENCE NOT CRIMINAL

R. v. K.J.M. - Feb. 8, 2006 ABPC 41 per Lipton, PCJ:

Accused charged with assault with a weapon (paint ball gun). Accused was a passenger and 1 of 3 young persons found by police in a vehicle from which a paint ball had been fired earlier. No evidence that accused was either the driver or the paint ball shooter.

Held: Acquittal entered.

"Although one's non-accidental presence at the scene of a crime may constitute abetting ... this Court did not hear any evidence that the accused knew what was going on ... or that he said anything that ... he intended or encouraged the young person in the rear seat to fire the paint ball". As per *Dunlop* (1979), 47 C.C.C. (2d) 93 (SCC) evidence of mere presence alone insufficient to prove an offence through s. 21 CC.

B. McLaren - Defence Counsel



SENTENCE - IMPAIRED DRIVING CAUSING BODILY HARM - 9 MONTHS JAIL

R. v. Aalten - Feb. 10, 2006 ABPC 37, per Fradsham, PCJ:

Accused pled guilty to 5 counts of impaired driving causing bodily harm. Accused drove his truck into a restaurant. Varying degrees of injuries caused to the 5 patrons, ranging from bruising to broken bones and a spinal fracture. Accused blew 210 mg% and had a previous conviction for both impaired and disqualified driving.

Held: 9 months jail plus 18 months probation.

Accused failed to take steps to address an alcohol problem. Accused had also breached the no alcohol clause of his recognizance. Accordingly, conditional sentence inappropriate. Seriousness of offence warranted jail sentence.

A. Hepner - Defence Counsel



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