



THE UPDATE

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CHARTER - 8 - GROUNDS TO ARREST - SEARCH POWERS

R. v. Kluczny - May 12, 2005
ABQB 350 per Moen, J:

Trial on charges including possession of cocaine for trafficking. Vehicle stopped initially due to seatbelt violation. Passenger refused to answer any questions, and appeared to have something in his mouth. Police also noted a cell phone and a water bottle in the vehicle. Subjective reasonable grounds formed, accused pulled from the vehicle and arrested. Search of accused located drugs and money.

Held: No s. 8 breach.

The officer's shining of his light into the vehicle and questioning of the accused all related to officer safety. Questioning of passenger did not form part of a search as in *Mellenthin* [1992] 3 SCR 615. Given the police observations, objective reasonable grounds to arrest existed, and the search flowed as incident to the arrest.

G. Lazin - Defence Counsel

CHARTER - 11(B) - DELAY - 1300 DAYS - NO STAY

R. v. Yelle - May 23, 2006 ABCA
160 per McFadyen, Russell,
Martin, JA - Trial Judge:
Fradsham, PCJ:

Crown appeal from stay. Complex case. Total delay exceeded 1300 days. Before charges laid, search warrants were executed. Accused unsuccessfully applied to quash the warrants. After accused were charged, the same Charter arguments were advanced at trial. Crown argued *res judicata* and sought an order (unsuccessfully) for prohibition to prevent the Charter litigation. Prohibition application resulted in 350 days of delay, which the trial judge focussed on in granting the stay.

Held: Appeal allowed, new trial.

Focus on 350 days of delay was overly narrow. As per *Morin* [1992] 1 SCR 771, the whole delay had to be weighed. "The prejudice suffered was minimal and greatly outweighed by the seriousness of the charges".

L. Scott, N. Anderson -
Defence Counsel

HEARSAY - STATEMENTS OF DECEASED CO-ACCUSED

R. v. Ackland - May 19, 2006
ABQB 347 per Germain, J:

Robbery trial. Co-accused died prior to commencement of trial. Defence sought to adduce a statement made by the co-accused to her mother, which if accepted, offered an alternate explanation for the alleged offence. Evidence that co-accused led a troubled life involving a cycle of drug dependency.

Held: Statement inadmissible.

Principled approach of necessity and reliability applied. Threshold reliability not established. No hallmarks of reliability present. "Any exculpatory evidence that is no longer available, is potentially prejudicial to an accused person, however, the principled approach requires a careful balancing of the principles at stake ... and none of them, including overarching fairness to the accused, can overcome hearsay evidence which has virtually no reliability".

N. Rauf - Defence Counsel

**IMPAIRED DRIVING -
BLOOD WARRANTS -
AMPLIFICATION**

R. v. Hobson - May 23, 2006
ABPC per Sully, PCJ:

Impaired driving trial. Blood warrant. Crown conceded that Information to obtain blood warrant on its face lacked the necessary detail, as the officer failed to disclose the source of the information for reasonable grounds. Issue as to whether Crown permitted to call evidence of amplification on voir dire.

Held: Application granted.

Police officer did not attempt to mislead JP, rather she erred in good faith due to inexperience. Test for amplification set out in *Araujo* (2000), 149 CCC (3d) 449 (SCC) – "... In looking for reliable information on which the authorizing judge could have granted the authorization ... Where the erroneous information results from a simple error and not from a deliberate attempt to mislead ... amplification maybe in order".

G. Johnson - Defence Counsel

**IMPAIRED DRIVING - 10(B) -
SCREENING TEST -
FORTHWITH**

R. v. Elder - May 10, 2006 ABQB
343 per Lee, J:

Appeal from acquittal. Impaired driving trial. Screening test demand made by one officer, while test performed by second officer who arrived within a minute of the vehicle stop. Trial judge found a 10(b) breach on the basis that the officer who made the demand did not know at the time of the demand that the sample would be provided forthwith.

Held: Appeal allowed, new trial.

As per *Bernshaw*, a flexible approach to be given to the term forthwith. No evidence of real delay in present case. Where a screening device "can be delivered ... within a few minutes, and the device is delivered within a few minutes ... there is not a reason to insist on the presence of a device in each vehicle": *Tinker* (1992) AJ 1054 (QB).

T. Kantor - Defence Counsel

**SENTENCE - DRUGS -
TRAFFICKING IN
METHAMPHETAMINE**

R. v. Legare - May 11, 2006
ABCA 156 per Hunt, Veit, Perras,
JA - Trial Judge: Wong, PCJ:

Crown appeal from conditional sentence imposed in relation to offences including possession of methamphetamine and marihuana for the purpose of trafficking. One of the offences occurred within the Edmonton Remand Centre. Drug amounts were: 6.5 and 1.4 grams of meth, and 28.7 grams of marihuana. 22 year old accused with very limited record who had made real efforts at rehabilitation. Very strict CSO including frequent court reviews.

Held: Appeal dismissed.

"Given the fact that the Respondent is in the middle of a rehabilitation program, appears to be doing well, and has employment prospects, we are very reluctant to interfere in the course upon which he has embarked."

D. Vigen - Defence Counsel

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