



THE UPDATE

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CHARTER - 8 - DRUGS - VEHICLE SEARCH

R. v. Down - July 18, 2006 ABPC
166 McDonald, PCJ:

Accused charged with possession of marihuana for purpose of trafficking. Vehicle search. Accused's vehicle stopped because of excessively loud music being played on the stereo. Police then noticed fresh marihuana flakes on accused's lap and smelt a heavy odour of unburned marihuana. Accused then detained, and a pat down search for weapons resulted in the finding of a bag of marihuana. Alleged s. 8 breach.

Held: No Charter breach.

Initial stopping of vehicle authorized by s. 166 TSA. As per *Yague* [2005] AJ No. 982 (CA), "once the initial stop had been lawfully made, a further search on the suspicion of illegal drugs does not taint the stop". Police in present case had reasonable grounds to arrest and to search incidental to the arrest.

P. Stopa - Defence Counsel

CHARTER - 11(B) - DELAY - SEXUAL ASSAULT - STAY

R. v. Y.E. - July 19, 2006 ABPC
187 per Mandamin, PCJ:

Sexual assault trial. Alleged offence date: May 30, 2003. Trial first set to proceed on March 9, 2004, but was adjourned because the complainant was out of the country. Trial then re-scheduled for October 24, 2004, but was again adjourned due to the unavailability of the requested Arabic interpreter. Trial then set for June 25, 2005. *Askov* application.

Held: Stay of proceedings.

"The s. 11(b) Charter rights serves ... to minimize anxiety, concern and stigma; to minimize restrictions on liberty; and to ensure proceedings take place while evidence is fresh ... This prosecution proceeded by summary conviction procedure. It was not presented as a complex case. At no time did the accused waive his right to a trial within a reasonable time".

L. Ross - Defence Counsel

IMPAIRED DRIVING - 254(2) DEMAND - "FORTHWITH"

R. v. Muirhead - July 21, 2006
ABPC 183 per Fradsham, PCJ:

Accused charged with refusing to provide a screening sample. Accused stopped at a Checkstop at 1:09 am. Reasonable suspicion formed and accused then taken to the Checkstop bus (which was a few car lengths away) and at 1:10 am the screening demand was made. Accused failed to provide an adequate sample.

Held: 10(b) breach, evidence of failure excluded.

To be valid, a s. 254(2) breath demand must be made "immediately upon the officer reasonably suspecting that the person ... has alcohol in his body": *Woods* [2005] 2 SCR 205. The demand made in the Checkstop bus did not meet this immediacy requirement. Accordingly, accused was entitled to 10(b) rights upon initial detention at the roadside. Authorities reviewed.

J. Bascom - Defence Counsel

**OBSTRUCTION OF JUSTICE -
139(2) CC - TEST TO APPLY**

R. v. McIntyre - July 14, 2006
ABPC 184 per Allen, PCJ:

Two accused charged with obstruction of justice, by attempting to dissuade a fellow prisoner from testifying at their preliminary inquiry on a murder charge. Confrontation in the prisoner's cell. In the presence of other prisoners, accused McIntyre called the witness a "rat", and made comments about his cooperation with police. Accused Speare punched the witness. Crown not alleging a joint enterprise.

**Held: McIntyre convicted,
Speare acquitted.**

139(2) CC is a specific intent offence; i.e. wilfully attempting to obstruct, pervert, or defeat the course of justice. Wide range of actions may constitute the actus reus, however, Crown must prove that the means used by accused were "corrupt". Reasonable doubt as to the purpose of Speare's assault. Authorities reviewed.

P. Royal, J. Sinclair -
Defence Counsel

**SENTENCE - SEXUAL
TOUCHING AND CHILD
PORNOGRAPHY - CSO**

R. v. T.L.B. - July 14, 2006 ABQB
533 per Moreau, J:

Accused pled guilty to transmitting and distributing child pornography and sexual touching. 38 year old female accused, afflicted with cerebral palsy and wheelchair bound. No record. Accused met "Thomas" through a bondage-discipline internet chat room. At Thomas' request, accused on one occasion placed her 6 year old son's penis in her mouth, and also sent naked pictures of her son to Thomas. 80 pornographic images seized from accused's computer.

Held: 2 years less one day CSO.

Serious sexual assault and breach of trust. Deterrence and denunciation paramount. Unique case: (1) physical infirmities and psychological vulnerabilities of accused; (2) inculpatory statement to police ; (3) single incident sexual assault; (4) the distribution of pornography not being for profit or trade. Authorities reviewed.

L. Anderson - Defence Counsel

**SENTENCE -
MANSLAUGHTER - LIFE**

R. v. Piche July 17, 2006 ABCA
220 per Hunt, Veit, Perras, JA -
Trial Judge: MacCallum, J:

Appeal from life sentence. Accused originally convicted of murder, but a manslaughter conviction was substituted on appeal. Matter then sent back to trial judge for sentencing, and life sentence imposed. 29 year old accused with serious record, including a 1988 conviction for manslaughter. Present case involved the beating death of a 60 year old victim.

Held: Appeal dismissed.

As per *Cheddesingh* [2004] SCR 433, maximum sentence should be imposed only if the offence is of sufficient gravity and the offender displays sufficient blameworthiness. Psychiatric evidence established that preventative detention necessary to prevent further offences and to protect the public from the dangerousness of the offender: *Hastings* (1985) 58 AR 108 (CA). Justice Veit dissented, and would have imposed an 18 year sentence.

C. Davison - Defence Counsel

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