



THE UPDATE

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CHARTER - 9 - ARBITRARY DETENTION - VEHICLE STOP

R. v. Barrett - Mar. 15, 2007 ABQB 174 per Murray, J:

Accused charged with possession of a weapon (bear spray) and drug trafficking. Vehicle stop. Police determined that the vehicle occupants did not match the description of the registered owner after they ran the license plate. Vehicle stopped "to see if [it] had been stolen". A can of bear spray was then seen near the centre console. Driver then arrested for possession of a weapon, and subsequent searches revealed drugs.

Held: Breach of ss. 9 & 10, evidence excluded.

Accused arbitrarily detained upon being told to exit from his vehicle. Reasonable grounds to suspect the commission of a crime not present as per *Mann* [2004] 3 SCR 59. "At best, we have a hunch". Bear spray is not illegal. Search not necessary to ensure officer safety. "The Charter breaches are such that I am concerned that the admitting of evidence in the circumstances of this case may encourage similar police conduct in the future".

A. Fong - Defence Counsel

EVIDENCE - KGB STATEMENT - ADMISSIBILITY - TEST

R. v. Devine - Mar. 14, 2007 ABCA 49 per Conrad, McFadyen, Berger, JA - T. Judge: Norheim, PCJ:

Appeal from conviction on charges of robbery and assault. **KGB** statement provided by Crown witness who then recanted at trial. Trial judge admitted the **KGB** statement for its truth and convicted. Defence argued both that threshold reliability, and ultimate reliability, were lacking, due to factors including: drug use by the witness and the passage of time between the event and the making of the statement.

Held: Appeal dismissed.

"The trial judge correctly stated the law with respect to the admissibility of **KGB** statements ... While he did not specifically refer to the balancing of probative value against the prejudicial effect of admission, it is not clear that the matter was a live issue at trial and, in any event, the **KGB** statement was key evidence identifying the accused. Nothing in the statement suggested any undue prejudice". Berger, JA dissented, and would have entered an acquittal.

N. Sissons - Defence Counsel

IMPAIRED DRIVING - 10(A) - PROMPT CHARTER ADVICE

R. v. Koppang - Mar. 8, 2007 ABPC 76 per Lefever, PCJ:

Impaired driving trial. Alleged 10(a) breach. Traffic stop due in part to a slightly wide turn. Police approached driver and noticed glassy eyes and a "slight smell of alcohol". No grounds to make screening demand. Accused then asked to accompany officer to the police vehicle, a sterile environment in which the officer could determine the source of the smell of alcohol. After being in the cruiser for a brief period, a screening demand was made.

Held: Breach of s. 10(a).

Police "request" that accused accompany them to the cruiser constituted a demand or direction within the meaning of *Thereens*. 15 minutes passed before accused told of the reason for the detention. The circumstances had changed from a traffic stop to a potential criminal investigation. Accused had the right to promptly be informed, in clear and simple language, for the new basis for his continued detention: *Borden* [1994] 3 SCR 145.

P. Shipanoff - Defence Counsel

**SENTENCE - DRUGS -
PRODUCTION - 2 YEARS LESS
1 DAY JAIL**

R. v. Ta - Mar. 21, 2007 ABPC 74
per McDonald, PCJ:

50 year old accused with no prior record convicted of production of marihuana and possession for the purpose of trafficking. No mitigating factors. Aggravating factors included: accused was the crop sitter for a sophisticated grow operation; 653 marihuana plants with a retail value in the range of \$510,000 - \$816,000. Also, police found 419 clones in a refrigerator destined for another grow operation.

Held: 2 years less 1 day jail.

18 month jail sentence upheld in **Brooks** 2006 ABCA 285 where the individual who had pled guilty had control over 424 plants. Conditional sentence inconsistent with the fundamental principles of sentence. "The accused became involved in a commercial criminal enterprise for her own personal monetary gain".

A. Ouellette - Defence Counsel

**SENTENCE - ROBBERY -
CONDITIONAL SENTENCE**

R. v. Grunerud - Mar. 16, 2007
ABPC 82 per Bascom, PCJ:

Accused pled guilty to robbery. Seven-Eleven robbed of cigarettes and some money. Accused told the clerk that he had a weapon. Accused arrested shortly thereafter in the area and confessed to police. 18 year old accused with a very limited and minor record. Accused suffered from a cocaine addiction, but had made efforts to stop using.

Held: 2 years less 1 day CSO.

3 year starting point as set out in **Johnas** is still the guide. However, several mitigating factors justified a conditional sentence: no weapon was used, no actual violence, only \$45 and cigarettes taken, guilty plea, cooperation with police, youthfulness, family support, and impulsive nature of offence committed.

J. Blumer - Defence Counsel

**SENTENCE - SEXUAL
ASSAULT - CHILD VICTIMS - 5
YEARS JAIL**

R. v. M.E.G. - Mar. 16, 2007 ABPC
62 per Semenuk, PCJ:

Accused pled guilty to sexual assault and sexual interference. Over a 6 year period the accused committed numerous sexual acts upon his 2 daughters. The acts ranged from fondling to vaginal and anal intercourse. The girls were aged 11-15 over the relevant period. 41 year old accused with no record.

Held: 5 years jail.

Serious breach of trust. 4 year starting point. PSR indicated that accused assumed very little responsibility and attempted to minimize his behaviour. Accused deemed to be of a low risk to re-offend. Authorities reviewed.

J. Ruttan - Defence Counsel

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