



THE UPDATE

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CHARTER - 9 - ARBITRARY DETENTION - FACTORS

R. v. Pereira - April 25, 2007
ABPC 141 per Meagher, PCJ:

Accused charged with possession of weapons including a handgun. Vehicle stopped and searched. Issue regarding alleged s. 9 breach. Police dispatched to the scene of a disturbance involving a possible stabbing. Police had the description of a small red car being involved. Suspect vehicle stopped by police a few blocks away from incident location. Occupants searched and weapons found.

Held: No s. 9 breach.

As per *Mann* (2004), 185 CCC (3d) 308, "reasonable grounds to detain" existed. Given the serious nature of the complaint, police conduct, including a high-risk vehicle stop, found to be justifiable and necessary. "Reasonable necessity" test met regarding the scope and purpose of the search. Authorities reviewed.

R. Snukal - Defence Counsel

EVIDENCE - CONFESSIONS - VOLUNTARINESS - PROOF

R. v. Enright - April 17, 2007
ABQB 254 per Burrows, J:

First degree murder trial. Shooting death. Issue regarding voluntariness of statement to police. Accused's Charter rights fully respected. In the course of a lengthy police interview, accused said to police: "And you have to help me okay" and "It was an accident please tell me you will help me". Officer responded by saying "I will do what I can for ya".

Held: Statement voluntary.

Interviewing officer told accused more than once that he could not offer any favours and that he couldn't make any promises. Officer did not offer an inducement. "He offered no more than to receive Mr. Enright's explanation as to how the shooting was an accident with an open mind and to not dismiss the possibility out of hand. That was not a *quid pro quo* ... It was no more of an inducement to give a statement than asking the suspect to tell the truth".

L. Stevens - Defence Counsel

IMPAIRED DRIVING - 10(B) - OBSERVATION EVIDENCE

R. v. Portela - April 30, 2007 ABCA
150 per Cote, JA:

Application for leave to appeal from care or control conviction. Breath readings excluded at trial due to 10(b) breach. Officer initially served Certificate upon accused (a few days after the incident) at his home. Observations made by police at accused's home (i.e. the absence of indicia consistent with the night of arrest) led in part to the impaired care or control conviction at trial. On appeal defence sought to exclude the doorstep observation evidence, given the trial judge's finding that the breath sampling violated s. 10(b).

Held: Leave denied.

Issues involved a factual analysis inconsistent with being a question of law alone as required by s. 829(1) CC. Further, "the Court of Appeal has consistently refused to consider Charter grounds which were not clearly raised at trial". Authorities re: exclusion of impaired indicia reviewed.

S. Tarrabain - Defence Counsel

SENTENCE - DRUGS - CONSPIRACY - 10 YEARS

R. v. Nguyen - April 20, 2007 ABCA 138 per Costigan, Smith, Binder, JA - T. Judge: Belzil, J:

Defence appeal from 10 year global jail sentence imposed in relation to offences including conspiracy to traffic in cocaine. "The appellant was the controlling mind, sole decision maker and main financial beneficiary of a sophisticated conspiracy to traffic in multi-kilo quantities of cocaine over a 4 month period between Edmonton and Yellowknife.

Held: Appeal of 10 year sentence dismissed.

Sentence not excessive. No guilty pleas and no mitigation. Similar sentences for multi-kilogram inter-provincial cocaine trafficking have been upheld: **Chung** (1999), 232 AR 193 (CA).

K. MacDonald - Defence Counsel

SENTENCE - THEFT - CREDIT CARD DATA - 16 MONTHS

R. v. Marano - April 11, 2007 ABPC 102 per Van de Veen, PCJ:

Accused pled guilty to theft of credit/bank card data, contrary to s. 342.01(1) CC. Accused employed as a clerk at a gas station, and assisted in the installation of a debit card skimming device. The installation was discovered after card data had been captured, but before any of it was used. 714 account files were skimmed. 26 year old accused with a significant property related record.

Held: 16 months jail.

Sentence reduced to 3 months given 13 months credit for pre-trial custody. Prevalent offence. In 2004, \$60 million had to be reimbursed to over 48,000 cardholders due to fraud. General and specific deterrence paramount.

A. Iovinelli - Defence Counsel

SOIRA - 490.012(A) CC - TEST - SEXUAL INTERFERENCE

R. v. T.L.B. - April 20, 2007 ABCA 135 per Hunt, Watson, Slatter, JA - T. Judge: Moreau, J:

Crown appeal from trial judge's decision to exempt accused from the provisions of SOIRA. Accused pled guilty to sexual interference and distribution of child pornography. 36 year old accused confined to a wheelchair. To satisfy a dominant partner in an internet relationship, accused engaged in sexual contact with her young son, and transmitted sexually exploitative photos.

Held: Appeal dismissed.

No error in principle and decision not unreasonable: **Redhead** 2006 ABCA 84. Parliament enacted the exception in s. 490.012(4) CC, as "in some situations the public interest could be overcome by individual circumstances".

S. Eadie - Defence Counsel

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