



THE UPDATE

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APPEAL - REASONS FOR JUDGMENT - *W.(D)*.

R. v. Stamp - April 20, 2007 ABCA 140 per McFadyen, Berger, Martin, JA - T. Judge: Read, J:

Appeal from conviction on sexual assault charge. Identification was sole issue at trial. Complainant was asleep and under the influence of alcohol at the time of the alleged assault. Accused testified and denied offence. Trial judge gave very brief reasons, believing the complainant's evidence, and never engaged in a *W.(D.)* analysis.

Held: Appeal allowed, new trial.

As per *Maharaj* (2004), 186 CCC (3d) 247 (Ont CA), the duty to give reasons applies to credibility assessments. "A mere conclusory statement of rejection of an accused's testimony may hide erroneous legal reasoning". Accused entitled to an explanation as to why his evidence failed to raise a doubt. "Without such an explanation, 'the road to conviction' in this case cannot be ascertained or effectively reviewed". Authorities reviewed.

D. Bottos - Defence Counsel

APPEAL - REASONS FOR JUDGEMENT - CREDIBILITY

R. v. A.B.Z. - May 8, 2007 ABCA 156 per Conrad, Ritter, Ross, JA - T. Judge: Franklin, PCJ:

Appeal from conviction on charge of assault causing bodily harm. Issue regarding adequacy of trial judge's reasons. Trial judge commented briefly on the defence witnesses in general as being "evasive or untrustworthy".

Held: Appeal allowed, new trial.

Trial judge failed to address the accused's evidence individually. "Moreover, the ... reasons do not indicate how she arrived at her decision that this appellant was guilty ... Having found that she could not discount the evidence of one witness over another, the trial judge must be taken to have a doubt as to whether the appellant was stepping in to stop the fight, she should have analysed how, if that were the case, the appellant could have been a party to the offence". Reasons did not allow for a meaningful review of the correctness of the trial decision as required by *Sheppard* [2002] 1 SCR 869.

D. Bottos - Defence Counsel

IMPAIRED DRIVING - NECESSITY - TEST TO APPLY

R. v. Sekhon - May 14, 2007 ABQB 315 per Belzil, J:

Crown appeal from acquittal on charges of impaired driving and blowing over. Necessity defence succeeded at trial. Accused testified that he was chased from a wedding after dancing with a married woman. He fled in his car, and believed that he was pursued. After driving a few blocks he was stopped by police.

Held: Appeal allowed, conviction entered.

Three part test: (1) there must be an urgent situation, "imminent peril"; (2) there must be no reasonable legal alternative; (3) there must be a proportionality between the harm inflicted and the harm avoided: *Latimer* [2001] 1 SCR 3. Trial judge never addressed the issue of imminent peril at the time of arrest. By the time of arrest, the accused had travelled a few blocks, had an operable cell phone and was in full public view on a major arterial roadway.

S. Tarrabain - Defence Counsel

MANSLAUGHTER - CAUSATION - TEST

R. v. Anderson - May 11, 2007
ABCA 157 per Costigan, O'Brien,
Watson, JA - T. Judge: Macklin, J:

Appeal from manslaughter conviction. Accused struck two blows to victim, who shortly thereafter died. Pathologist testified that death was caused by a basal subarachnoid hemorrhage. However, during the autopsy, one of the blood vessels at the base of brain tore and was not recovered or examined. The pathologist testified that the victim suffered a berry aneurysm, and that this could have happened spontaneously, without trauma. However, it was his opinion (for a number of reasons) that the rupture in the present case was not spontaneous.

Held: Appeal dismissed.

Standard of proof is not to an absolute certainty. Trial judge properly enunciated and applied the test for causation set out in *Nette* [2001] 3 SCR 488. After careful review, the trial judge accepted the medical evidence. "The conclusion reached by the trial judge was based upon logical inferences".

C. Davison - Defence Counsel

MURDER - INTENTION - ABANDONMENT OF INTENT

R. v. S.R.B. - May 7, 2007 ABQB
289 per Ross, J:

Youth charged with first degree murder, kidnapping and sexual assault, and was one of five accused. Accused, who was an aider or abettor, was involved in luring a young girl to a golf course, where she was then sexually assaulted and killed. Before the completion of the sexual assault, the accused walked away. Issue regarding defence of abandonment (i.e. a change of heart relieving accused of criminal liability).

Held: Guilty of included offence of manslaughter.

Accused also convicted of sexual assault and kidnapping. Reasonable doubt regarding accused's communication to all of the others that she was no longer a part of what was occurring on the golf course. As per *Whitehouse* (1940), 55 BCR 420, the accused's notice of abandonment was unequivocal. Finally, the abandonment was timely in relation to the murder. "The real issue regarding timeliness is whether the abandonment took place at a time when it **could** have had a real effect". Authorities reviewed.

C. Connolly - Defence Counsel

SENTENCE- POLICE CHASE - BODILY HARM - 10 YEARS

R. v. Kobelka - April 25, 2007
ABPC 112 per Wheatley, PCJ:

Accused pled guilty to a number of offences including dangerous driving causing bodily harm. Long police chase through Edmonton. Stolen car. Accused's driving pattern included: speeds as high as 120 km/hr in a 60 zone, running red lights and stop signs, driving on the wrong side of the road, and travelling over sidewalks and medians. Chase ended with a serious collision. A pregnant woman was badly injured, and the baby was born premature with severe and permanent brain damage. Accused was 19 at the time of the offence, with a minor unrelated record.

Held: 10 ½ years jails.

Sentence reduced to 8 years and 8 months given pre-trial custody. Aggravating factors included: serious injury caused, foreseeability of harm, total disregard for the law, ample opportunity to stop the flight, flight terminated only when the vehicle was rendered inoperable by collision, and the accused did not have a driver's license. Authorities reviewed.

A. Attia - Defence Counsel

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