



THE UPDATE

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APPEAL - LEAVE TO APPEAL - LICENSE REINSTATEMENT ARREST - LAWFULNESS - EXECUTION OF POLICE DUTY CHARTER - 9 - IMPAIRED DRIVING - RANDOM STOPS

R. v. Richardson - June 18, 2007
ABCA 196 per Watson, JA:

Application for stay of conditional sentence and reinstatement of driving privileges pending leave to appeal to Supreme Court. Accused's conviction for dangerous driving causing death upheld by Court of Appeal. Accused lost control of his Corvette, mounted a sidewalk and killed a pedestrian. Trial judge found that the accused's degree of acceleration constituted the marked departure required by *Hundal*.

Held: Applications dismissed.

Trial judge and Court of Appeal did not err in their application of the *Hundal* test. Trial judge did not find that the accused's driving was presumptively suspicious due to the fatal consequences. Accordingly, *Beatty* (2006) BCCA 229 distinguished. No issues of national importance.

B. Beresh - Defence Counsel

R. v. Sandy - June 22, 2007 ABPC
173 per Wheatley, PCJ:

Accused charged with assaulting a police officer and obstruction. Accused seen in a shopping mall parking lot at 1:50 am jumping on the bed of a truck. Accused refused to comply with police instruction to get off of the truck, and lied about owning the truck. Accused also lied about his identity. Upon arrest for obstruction, accused became physically resistant. Issue regarding whether arrest violated ss. 7 and 9.

Held: No Charter breach.

Lawful investigative detention established as per *Mann* (2004), 185 CCC (3d) 308 (SCC). Test for arrest without a warrant as set out in *Moore* [1979] 1 SCR 195 satisfied. Because the arrest was lawful, the accused had a duty to identify himself. "The arresting officer was acting precisely on the basis examined in *Moore*. He found the accused committing what he concluded was a criminal offence".

J. Snowdon, B. Leebody -
Defence Counsel

R. v. Smith - June 1, 2007 ABPC
148 per Allen, PCJ:

Impaired driving trial. Alleged s. 9 breach. Police initiative "Target All Drunk Drivers". Accused stopped leaving a bar. Nothing unusual about accused's driving. Admission of consumption followed by failed screening test.

Held: No s. 9 breach.

Nyal (2005) ABPC 132 followed. *Simpson* (1993), 79 CCC (3d) 482 (Ont CA) not applicable where the purpose of the random stop is to enforce traffic safety or impaired driving related laws. *Ladouceur* (1990), 56 CCC (3d) 22 (SCC) is still good law. "The applicant's right to circulate on the road was interfered with. The overall reasonableness of the stop was justified in view of the officer's intended action. He intended to stop the vehicle to check the driver's sobriety; indeed, his first words to the applicant indicated that intent 'Alberta check stop'". Authorities reviewed.

P. Shipanoff - Defence Counsel

**OBSTRUCTION OF JUSTICE - SENTENCE - ROBBERY - 11
PROOF OF OFFENCE OFFENCES - 7 YEARS JAIL**

**SENTENCE - SEXUAL
ASSAULT - 3 YEARS JAIL**

R. v. Barros - June 25, 2007
ABQB 428 per Veit, J:

Accused charged with obstruction of justice and other offences. Directed verdict application. Accused was a former police officer now retained as a private investigator by defence counsel. Accused took steps to attempt to determine the identity of a police informant.

Held: Directed verdict granted on obstruction charge.

“The doing of a lawful act, here identifying a police informant, does not in itself constitute an obstruction of justice; at most, it might constitute preparation for an attempt to obstruct justice if the information concerning the police informant is used in a way which tends to obstruct the administration of justice. Without more, the mere taking of investigative steps to determine the identity of an informant cannot result in an injustice or an affront to the system of justice”.

H. Wolch - Defence Counsel

R. v. Lavorato - June 15, 2007 ABPC
159 per Stevens-Guille, PCJ:

Accused pled guilty to 11 charges of robbery and other related offences. Convenience store / gas station robberies while armed with a knife. 20 year old accused with no prior record. Robberies committed to fund a serious cocaine addiction. Positive psychological assessment. Accused confessed to police and entered relatively early guilty pleas.

Held: 7 years jail global.

Johnas (1982), 2 CCC (3d) 490 (Alta CA) followed. 3 year starting point for an individual robbery to be balanced against the totality principle and the need to avoid excessive consecutive sentences. “A just and fit sentence for multiple robberies of convenience stores, late at night, involving the use of a weapon, here a pair of scissors and a knife, must emphasise the statutory factors of denunciation and deterrence as paramount considerations.” Authorities reviewed.

P. Royal - Defence Counsel

R. v. Law - June 18, 2007 ABCA
203 per Watson, Clackson, Gill, JA -
Trial Judge: Veit, J:

Crown appeal from 2 years less one day conditional sentence imposed following accused’s post trial conviction for sexual assault. Accused had sexual intercourse with a “totally passed out” victim. Accused was not intoxicated. Positive pre-sentence report.

Held: Appeal allowed, 3 years jail imposed.

Sentence reduced by 6 months due to partial completion of CSO. 3 year starting point set out in *Sandercock* [1985] AJ No. 817 confirmed. “The decisions in *Kain* [2004] AJ No. 447 and *Nicholson* [2004] AJ No. 1205 do not show that the guidance offered by *Sandercock* ... has lost its edifying value ... All trial judges have to start their sentencing reasoning somewhere. If there were no rationale tariffs, ranges or starting points ... then there would be no rational manner for the Courts to effectuate the will of Parliament”.

K. Teskey - Defence Counsel

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