



THE UPDATE

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GUILTY PLEAS - STRIKING OF GUILTY PLEA - FACTORS

R. v. McKinnon - June 27, 2007 ABQB 432 per Belzil, J:

Application to set aside guilty pleas entered in relation to charges of evading police and forcible confinement. Guilty pleas entered on opening day of trial. Accused was represented by counsel. Counsel testified that s. 606(1.1) CC complied with, and that his instructions were clear. Accused told author of the PSR that his lawyer "forced" him to plead.

Held: Application dismissed.

Legal principles involved in an application to withdraw guilty pleas set out in *Hoang* 2003 ABCA 251. Sentencing judge not required to "interrogate the accused" prior to acceptance of the plea, particularly where the accused is represented by counsel. No miscarriage of justice in dismissing the application. Authorities reviewed.

L. Trach - Defence Counsel

IMPAIRED DRIVING - "AS SOON AS PRACTICABLE"

R. v. Godin - June 18, 2007 ABPC 162 per Shriar, PCJ:

Impaired driving trial. Issue as to whether breath samples taken as soon as practicable. After arrest, police waited for a tow truck with the accused at the roadside for approximately 20 minutes. Officer testified that he was advised by dispatch that no other police unit was available to assist him.

Held: Conviction entered.

Test being whether or not samples were taken "within a reasonably prompt time under the circumstances". As per *J(CA)* 2004 ABQB 838, there was a prima facie delay, and an explanation was required. Police explanation was satisfactory. Although there was a passenger in the vehicle, defence led no evidence to show that this person could have driven the vehicle from the scene. Authorities reviewed.

L. Burgis - Defence Counsel

IMPAIRED DRIVING - SCREENING TEST - DELAY

R. v. Dunn; Bouvier - June 14, 2007 ABPC 160 per Meagher, PCJ:

Two accused charged with impaired driving under identical circumstances. Screening demand in both cases arose from an admission of consumption alone (no indicia). Also, in both cases there was a very short delay (1 and 2 minutes) between the forming of the suspicion and the making of the demand.

Held: No s. 8 or 10(b) breach.

As per *Gilroy* [1987] AJ No. 1260 (CA) reasonable suspicion test is "consumption alone and not its amount or behavioural consequence". Regarding the delay, there was no violation of the forthwith requirement as defined by *Woods* [2005] 2 SCR 205. Delay was so that the police could walk the accused to the police vehicle and read the demand in a safe environment. A very short delay to walk back to the police vehicle is "acceptable police action".

I. Savage - Defence Counsel

IMPAIRED DRIVING - CARE OR CONTROL - RISK

R. v. Bettencourt - June 15, 2007 ABPC 161 per Lamoureux, PCJ:

Impaired care or control trial. Accused found asleep in a running vehicle. Advanced signs of impairment. Readings of 190 mg%.

Held: Conviction entered.

Accused’s evidence regarding intent not accepted. Further, de facto care or control proven. “The acts in question clearly fall within the ambit of risk of putting the vehicle in motion so that it could become dangerous. The Court does not have to evaluate the degree of dangerousness, it is enough if the acts in question involve a risk of putting the vehicle in motion so that it could become dangerous”: *Gent* [1997] AJ No. 72 (CA); *Ogrodnick* [2007] AJ No. 514 (CA).

A. Wilson - Defence Counsel

IMPAIRED DRIVING - APPROVED SCREENING TEST

R. v. Gamble - June 12, 2007 ABPC 158 per Barley, PCJ:

Impaired driving trial. Issue as to whether screening sample provided into an approved device. “The officer testified that he had an approved screening device with him. He said that he believed it to be an Intoxilyzer 400D, but he was not sure of the exact characters in the model number. It was the model he was trained on, and it was the only model that the City of Calgary Police Service uses.”

Held: Conviction entered.

As per *Kosa* 42 MVR (2d) 290 (Ont CA) and *Yurechuk* 1 WWR 460 (Alta CA), in the absence of evidence to the contrary, it is “enough for an officer to claim that he was using an approved screening device, without a description of the model.” Authorities reviewed.

R. Snukal - Defence Counsel

SENTENCE - JOINT SUBMISSIONS - TEST

R. v. McCorquodale - July 4, 2007 ABCA 223 per Slatter, Sulyma, Verville, JA - Trial Judge: Norheim, PCJ:

Accused originally pled guilty to theft of a motor vehicle. There was a joint submission for 30 days jail in addition to 14 days pre-trial custody. Lengthy record. Trial judge overruled joint submission and imposed a 9 month sentence.

Held: Appeal allowed, joint submission restored.

“It is clear that the trial judge is not required to rubber stamp a joint submission. However, unless the joint submission is outside the appropriate range for the offence, trial judges should not readily impose a different sentence.”

K. Teskey - Defence Counsel

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