



THE UPDATE

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APPEAL - REASONS - *W.(D.)* - BURDEN OF PROOF

R. v. Eastwood - May 13, 2008 ABCA 181 per Picard, O'Brien, Watson, JA - T Judge: LeReverend, PCJ:

Conviction appeal on charge of possession of stolen property. Accused denied knowledge. *W(D)* case. During argument the trial judge stated: "I have to believe his story, do I not?" In her Reasons the judge stated: "If I believe the accused, I must acquit, and the issue is, do I believe the accused?"

Held: Appeal allowed, new trial.

"In this case, the trial judge misstated the burden of proof twice, once during argument and once during her reasons ... The reasons do not make it clear that the trial judge correctly allocated the burden of proof."

S. Fix - Defence Counsel

CHARTER - 7 - DISCLOSURE - POLICE MANUAL - *O'CONNOR*

R. v. Tran - May 15, 2008 ABQB 287 per Yamauchi, J:

Trial on charges including possession of cocaine. Motor vehicle stop following a traffic violation. Because of police training in the Operation Pipeline Program, the stopping officer concluded that the accused was involved in criminal activity, but did not have reasonable grounds. Consent search performed. Defence sought disclosure of police manuals regarding Operation Pipeline. Portions of the manuals regarding consent searches had been disclosed.

Held: Application dismissed.

Given the type of disclosure sought, the Crown and RCMP were divisible. "The Manual is not 'sufficiently related' to the investigation of the applicant to warrant its disclosure under *Stinchcombe*." The likely relevance threshold as set out in *O'Connor* not met. The relevant portions of the manual had already been disclosed. Authorities reviewed.

S. Tarrabain - Defence Counsel

CHARTER - 10(B)- INFORMATION COMPONENT

R. v. Marston - June 6, 2008 ABQB 337 per Marceau, J:

Appeal from impaired driving conviction. Officer testified that he read 10(b) rights to accused from his card, but did not have the card with him in court and was not prepared to rely upon his memory as to what exactly was said. At the detachment, the officer (upon request) assisted the accused with making telephone calls, and confirmed that he had spoken to a lawyer.

Held: Appeal dismissed.

Trial judge erred in concluding that there had been no initial breach of the informational component of the 10(b) right. It is the Crown's onus to satisfy that the informational component has been satisfied. However, the court was entitled to come to the conclusion that the informational component was later satisfied by the detailed evidence of the officer regarding the phone facilities made available to the accused, and the steps taken by police to ensure a full opportunity to contact counsel.

S. Tarrabain - Defence Counsel

SENTENCE - ACCUSED'S CIRCUMSTANCES - ILLNESS

R. v. Coulson - May 9, 2008 ABPC 144 per Allen, PCJ:

Accused pled guilty to multiple fraud charges. Over \$600,000 stolen. Accused operated a vehicle consignment company, and did not remit sale proceeds. 55 year old accused with no record who suffered from a terminal illness, and was expected to die within 6 months.

Held: 2 years less 1 day CSO.

Accused was in a position of trust as defined by *Audet* (1996), 106 CCC (3d) 481 (SCC). Typical sentence would have been a lengthy jail term. Thorough review of sentencing case law re: illness. "The review of the jurisprudence reveals that courts have, on compassionate grounds, sentenced individuals to lesser sentences than they otherwise deserved ... Accused with terminal illnesses in some instances are sentenced to non custodial sentence for compassionate reasons."

W. Raponi - Defence Counsel

SENTENCE - PRE-TRIAL CUSTODY - CREDIT

R. v. Sooch - May 15, 2008 ABCA 186 per Martin, Mahoney, Hughes, JA - T Judge: Bascom, PCJ:

Crown appeal from 60 days sentence (after credit for pre-trial custody) in relation to an aggravated assault charge. Accused received 3:1 credit for time spent in pre-trial protective custody at Calgary Remand.

Held: Appeal allowed, 13 months added to sentence.

Pre-trial custody ought to have been credited on a 2:1 basis only. "The failure to apply for bail, where bail was a viable possibility, militates against awarding enhanced credit for the time spent in predisposition custody ... absent an unsuccessful bail application, it seems at least incongruous to allow the respondent to rely on the harsh conditions of predisposition custody to obtain a reduction in his sentence."

B. Popovic - Defence Counsel

SENTENCE - ROBBERY - 24 MONTHS JAIL

R. v. Gill - May 27, 2008 ABCA 205 per Watson, Clackson, Ross, JA - T Judge: Jacques, PCJ:

Defence appeal from 32 month sentence imposed following accused's guilty plea to robbery. Two accused entered the victim's hotel room at night with "an uncomplicated plan to steal." Entry to the room was facilitated through one of the complainant's friends who also occupied the room. When the complainant woke up he was struck in the face and tied to a chair.

Held: Appeal allowed, 24 months jail imposed.

Sentencing judge erred in drawing too close an analogy with a home invasion robbery. "In our view there are as many distinctions between this case and the home invasion authorities as there are similarities."

In person

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