



THE UPDATE

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CHARTER - 8 - VEHICLE SEARCH - s. 107(1) GLA

R. v. Ponech - Sept. 12, 2008 ABPC 265 per Sully, PCJ:

Trial on charge of possession of marihuana. Vehicle search. Vehicle stopped for a red light violation. There were 4 males in the vehicle, but the passengers could not easily be seen by police due to window tint. For officer safety reasons the police opened the rear driver's side door. Upon opening the rear door, wine bottles were visible and an odour of alcohol was noted. After the occupants were removed, a cursory search located marihuana under the driver's seat.

Held: No breach of s. 8.

The opening of the driver's door was reasonable, and similar to the shining of a flashlight into a vehicle. The warrantless search ... was authorized by s. 107(1) of the Gaming and Liquor Act and was carried out in a reasonable manner.

L. Trach - Defence Counsel

IMPAIRED DRIVING - 254(2) CC - 10(B) - CELL PHONE

R. v. Harper - Sept. 26, 2008 ABCA 325 per Slatter, J:

Application for leave to appeal from conviction under 253(b). Issue as to whether accused ought to have been afforded his 10(b) rights at the roadside, as police waited 15 minutes to administer the screening test due to recent alcohol consumption. Accused had a cell phone at the time of arrest.

Held: Leave denied.

"The Summary Conviction Appeal Court judge concluded that this issue is determined by ... *Mitchell* (1994), 162 AR 109 (CA). The applicant may be correct that there are cases from other jurisdictions that recognize the ubiquitousness of cell phones, and that the rights of a motorist with a cell phone are subtly different. This is not, however, the right record on which to explore that issue."

T. Kantor - Defence Counsel

SENTENCE - AGGRAVATED ASSAULT - 18 MONTHS JAIL

R. v. Gorman - Sept. 19, 2008 ABCA 311 per Slatter, Belzil, Thomas, JA - T. Judge: Graesser, J:

Crown appeal from 2 year less 1 day CSO imposed following accused's conviction for aggravated assault. Accused (taxi driver) stabbed the complainant with a prohibited butterfly knife. The complainant had broken a window on the cab. The wound was life threatening.

Held: Appeal allowed, 18 month jail sentence imposed.

"This Court has repeatedly stated that in assault cases involving weapons, denunciation and deterrence are the paramount principles of sentencing" (see: *Bazinett* 2005 ABCA 388, *Rusksys* 2006 ABCA 270). Given the serious nature of the assault and injuries, a conditional sentence was unfit.

In person

SENTENCE - FLIGHT FROM POLICE - CSO

R. v. Mitchell - Sept. 23, 2008
ABCA 320 per Slatter, Belzil, Thomas, JA - T. Judge: Chromka, PCJ:

Defence appeal from 9 month jail sentence imposed in relation to a charge of flight from police. Prolonged police chase in a stolen vehicle. Accused reached speeds of 130 km/hr. At times, accused's headlights were turned off, and he drove on the wrong side of the road. Accused narrowly missed two police officers who were trying to lay down a spike belt.

Held: Appeal allowed, 18 month CSO imposed.

Sentencing judge failed to consider that a properly crafted conditional sentence was capable of achieving the need for denunciation and deterrence. Accused had served over 6 weeks in jail prior to the original sentencing.

B. Parker - Defence Counsel

YOUTHS - SENTENCE - ADULT SENTENCE - MURDER

R. v. Williams - Sept. 22, 2008
ABCA 317 per Watson, Slatter, Belzil, JA - T. Judge: Franklin, PCJ:

Defence appeal from adult sentence of life in jail with 10 years of parole ineligibility following from 17 year old accused who pled guilty to first degree murder. Youth was sentenced as an adult. Accused played an active role in a brutal group sexual assault and murder of 13 year old girl.

Held: Appeal dismissed.

The standard of review for a decision under s. 72 YCJA to sentence as an adult is deferential: *B(D)* 2008 SCC 25. Sentencing judge correctly rested the onus with the Crown to prove that a youth sentence would not be of sufficient length to hold the accused accountable for his actions.

P. Yuzwenko - Defence Counsel

YOUTHS - SENTENCE - MAXIMUM SENTENCE

R. v. T.W.T. - Sept. 22, 2008
ABCA 306 per Slatter, Belzil, Thomas, JA - T. Judge: Goss, PCJ:

Defence appeal from the maximum youth court sentence for second degree murder (4 years jail plus 3 years of community supervision). 15 year old accused with a significant record ran over the victim with a car.

Held: Appeal allowed, sentence reduced to 3 years jail.

“The maximum sentences set out in the YCJA are intended by Parliament to be true maximums ... They are not truncated adult sentences, that have already been discounted against comparable maximum sentences for adults .. As true maximum sentences they are to be applied as set out in *L.M.* 2008 SCC 31 having regard to the specific context of the YCJA.”

W. Raponi - Defence Counsel

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