



THE UPDATE

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APPEAL - REASONS FOR JUDGMENT - NEW TRIAL

R. v. Zacher - Oct. 10, 2008
ABQB 616 per Park, J:

Defence appeal from conviction on sexual assault related charges. Credibility contest trial. Accused testified. Trial judge provided very brief reasons.

Held: Appeal allowed, new trial.

Reasons for judgment must be detailed enough to provide for meaningful appellate review: *Braich* 2002 SCC 27. "There is a duty on a trial judge to provide a credibility assessment. Here he did not explain whether he accepted all of the evidence of the Appellant. He certainly accepted parts of the evidence of the Appellant ... an explanation was required if he rejected the balance of the Appellant's evidence. No explanation was provided."

M. Dietrich, G. White -
Defence Counsel

IMPAIRED DRIVING - 254(2) CC - REASONABLE SUSPICION

R. v. Ogertschnig - Oct. 16, 2008
ABPC 293 per LeGrandeur, PCJ:

Trial on charges of impaired driving and refusal to provide a screening sample. Upon being stopped, accused admitted to consuming alcohol earlier in the evening. No time frame provided, and no odour of alcohol noted. Officer based the demand upon his suspicion that "he'd consumed alcohol."

Held: Acquittal entered.

Reasonable suspicion test not met. With respect to a screening demand, "although the threshold is low ... This does not mean simply that alcohol had been consumed at some point that day or the officer could detect alcohol in the vehicle or even on the person. The suspicion must be that the accused has alcohol in the body at the time and there must be objective evidence to support this conclusion": *Beechinor* [2004] SJ No. 187. Authorities reviewed.

G. White - Defence Counsel

SENTENCE - DNA DATA BANK - TEST TO BE APPLIED

R. v. Boskoyous - Oct. 22, 2008
ABCA 359 per Watson, Belzil,
Read, JA - T Judge: Anderson, PCJ:

Crown appeal from refusal to grant a DNA databank order. Trafficking in cocaine conviction. Trial judge stated (in part): "I am not satisfied that there is anything ... that would suggest he tends to leave DNA at crime scenes."

Held: Appeal allowed.

"Parliament has defined eligibility for DNA databank orders by categories of offences, not by a requirement of proof of present and individual forensic value ... Parliament's intentions could include the acquisition of statistical information; category offenders can be said to be volunteers for such research. Parliament did not stipulate a requirement that, before an order is made, the offender must be proven to likely be implicated in past or future crimes by DNA traces."

P. Royal - Defence Counsel

SENTENCE - ROBBERY - 9 MONTHS JAIL

R. v. Fontaine - Oct. 20, 2008 ABCA 352 per Watson, Belzil, Read, JA - T. Judge: Jacques, PCJ:

Accused pled guilty to numerous offences and received a global sentence of 26 months jail. 18 months was imposed in relation to a robbery charge. Accused, while intoxicated, got into an argument at his father’s residence, grabbed a female babysitter, demanded her cell phone and threatened to hurt her if she did not comply.

Held: Appeal allowed, robbery sentence reduced to 9 months.

“We are persuaded that the sentencing judge committed reviewable error in not appreciating that this was a so called low end robbery. The sentences for robbery obviously can vary widely but on these facts, clearly this was at a very low end of the scale.”

M. Duckett - Defence Counsel

SENTENCE - SEXUAL ASSAULT - CHILD VICTIM - 9 YEARS

R. v. W.D. - Oct. 10, 2008 ABPC 290 per Van de Veen, PCJ:

Accused pled guilty to numerous charges including sexual assault and the making of child pornography. Accused assaulted his daughter for a 3 year period while she was aged 11-14. Multiple incidents of touching, licking and inserting objects into the child’s vagina. Accused often video taped the assaults. The videos were not distributed. Accused had no record and was diagnosed with pedophilia and prominent schizoid personality traits.

Held: 9 years jail.

Sentence reduced to 7 years and 2 months given pre-trial custody. 4 year starting point for a single serious sexual assault upon a child. Aggravating factors included: breach of trust, multiple assaults, high degree of planning, the accused administered marihuana to his daughter prior to the assaults, severe psychological harm caused. Authorities reviewed.

T. Roulston - Defence Counsel

TRAFFIC SAFETY ACT - 94(2) - DRIVE WHILE SUSPENDED

R. v. Auigbelle - Oct. 16, 2008 ABQB 642 per Veit, J:

Crown appeal from acquittal on charge of driving while unauthorized, contrary to s. 94(2) TSA. Trial judge convicted accused of “included” offence of not producing a license (s. 167 TSA). Accused had been suspended due to maintenance enforcement arrears, but had resolved his matters before his trial, and as of the time of trial had received his license back.

Held: Appeal allowed, conviction under s. 94(2) entered.

The offence under s. 167 TSA is not an included offence. “A person with a subsisting driver’s license is not ‘unauthorized’ to drive ... Neither this court nor the trial court has jurisdiction to interfere with Crown discretion in relation to the withdrawal of charges when, on the trial date, the accused had regained his driver’s license.”

In Person

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