



THE UPDATE

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IMPAIRED DRIVING - 10 - 254(2) CC - FORTHWITH

R. v. Spiry 2010 ABPC 61 per LeGrandeur, PCJ:

Impaired driving trial. Checkstop. Officer formed suspicion upon first speaking with accused. Prior to making the screening demand however, the officer directed the accused to park his vehicle, then escorted him to the police vehicle, and looked at his license.

Held: Demand unlawful, 10(a) and 10(b) breach.

No public safety concerns or other exigencies justified the delay in making the screening demand. 254(2) requiring that the demand be made forthwith, or immediately: *Woods* (2005) 197 CCC (3d) 353. Where the demand is not made forthwith, the section 1 justification for the right to counsel limitation does not apply: *George* (2004) 187 CCC (3d) 289. Telling the accused that the reason for detention was a “checkstop for purposes of identifying impaired drivers” was insufficient compliance with 10(a).

L. Heidinger - Defence Counsel

IMPAIRED DRIVING - 10(B) - POLICE DIALLING PHONE

R. v. Wolbeck 2010 ABCA 65 per Watson, Slatter, Rowbotham, JA:

Crown appeal from new trial ordered at QB appeal following conviction at trial on 253(b) charge. Accused asserted 10(b) right. Police officer dialled Legal Aid number at accused’s request. Accused spoke to counsel. Accused did not testify on voir dire.

Held: Appeal allowed, conviction restored.

QB appeal court relied upon *Rath* [2003] AJ No. 1659 – standing for the proposition that the police ought not to participate in the dialling of the phone. “This statement does not correctly reflect the law. There is no Charter prohibition on the police assisting an accused in contacting counsel, only a prohibition on the police interfering with the right to contact counsel. That the police provided some assistance (whether requested or not) is a neutral factor unless there is evidence of interference in the right to contact counsel.”

R. Prithipaul - Defence Counsel

IMPAIRED DRIVING - 254(2) - REASONABLE SUSPICION

R. v. Krishnappa 2010 ABQB 144 per LoVecchio, J:

Crown appeal from acquittal on charge of refusing to provide a screening sample. Checkstop. Odour of alcohol and accused admitted consumption. Regarding grounds to make a screening demand, officer testified: “I felt he had alcohol – had consumed alcohol ... and admitting to consuming alcohol, I felt I had enough to proceed with – with the next step.”

Held: Appeal allowed, conviction entered.

Reasonable suspicion test met. Test being suspicion of consumption alone: *Gilroy* (1987) 79 AR 317. “While the police officer did not use those exact words in describing his suspicion, he did not need to. He had already made several other statements indicating he held the correct suspicion.”

M. Bates - Defence Counsel

MEDIA RIGHTS - 539 - SCOPE OF PUBLICATION BAN

C.B.C. v. Rae 2010 ABQB 148 per Thomas, J:

Judicial review application regarding publication ban imposed with respect to a change of venue application for a preliminary inquiry. Prov. Ct. judge found that s. 539 CC applied, banning publication.

Held: Application granted, matter remitted to Prov. Court.

“The specific opening words of s. 539(1) are ‘...the justice holding the inquiry ... may ... make an order directing that the evidence taken at the inquiry ...’. These words expressly refer to ‘the justice holding the inquiry’ in conjunction with the words ‘the evidence taken at the inquiry’. These words do not refer to any setting other than the specific inquiry where evidence is being taken.” Correct approach was an application for a common law ban with notice to the media.

K. Starkie - Defence Counsel

SENTENCE - 743.6 CC - PAROLE ELIGIBILITY ORDER

R. v. Laing 2010 ABCA 70 per Berger, O’Brien, Rowbotham, JA - T. Judge: Clark, J:

Defence appeal from 11 year global sentence imposed regarding offences including discharge of a firearm with intent to wound and obstruction of justice. Accused shot his estranged girlfriend. Sentencing judge granted a 743.6 CC order, compelling the accused to serve at least half of his sentence prior to parole.

Held: 11 year sentence upheld, 743.6 order quashed.

Sentencing judge “made clear that his parole ineligibility order was to sate the appetite of the public and the press for longer jail time for serious offences ... We agree with the appellant that section 743.6 of the Code ought not to be invoked to send a message to the citizens of Alberta regarding policy issues that properly are addressed by the Parliament of Canada.”

A. Sanders - Defence Counsel

YOUTHS - SENTENCE - MURDER - ADULT SENTENCE

R. v. Estacio 2010 ABCA 69 per McFadyen, Ritter, Martin, JA - T. Judge: Koshman, PCJ:

Defence appeal from order that 17 year old be sentenced as an adult regarding second degree murder charge. Stabbing death during a group attack upon the victim. Psychological testing revealed a “disturbing portrait” of a young man who was proud of his involvement in gangs and drug trafficking.

Held: Appeal dismissed.

As per s. 72 YCJA, issue as to whether a youth sentence would be of sufficient length to hold offender accountable. Factors to be weighed include: circumstances of offence, age, maturity, previous record, and the sentencing principles set out in ss. 3 and 38 YCJA. “One might reasonably ask, if an adult sentence was not called for in the circumstances of this case, when would it ever be appropriate.”

P. Royal - Defence Counsel

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