



THE UPDATE

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APPEAL - DUTY TO GIVE REASONS - *SHEPHERD*

R. v. Adams 2010 ABQB 254 per Greckol, J:

Conviction appeal on a obstruction charge, contrary to s. 129 CC. Vehicle stop involving an unsuspecting grandmother who was asked by police to move her truck, but refused to do so because she was afraid. Trial judge gave limited reasons, and no factual findings were made regarding whether the accused's actions actually effected the police in the carrying out of their duties.

Held: Appeal allowed, new trial.

It was incumbent upon the trial judge to make the factual findings. Test in *REM* 2008 SCC 51 met: "to justify appellate intervention ... there must be a functional failing in the reasons. More precisely, the reasons, read in the context of the evidentiary record and the live issues on which the trial focussed, must fail to disclose an intelligible basis for the verdict, capable of permitting meaningful appellate review".

N. Rauf - Defence Counsel

APPEAL - REASONS - *W.(D)*. - REVIEW OF EVIDENCE

R. v. Popham 2010 ABCA 114 per Berger, O'Brien, Bielby, JA - T. Judge: Le Reverend, PCJ:

Appeal from break and enter convictions. ID trial. Accused testified and denied wrongdoing. Crown evidence revealed that a red bike was stolen. Accused was apprehended in the neighbourhood very close in time to the break and enter. He was riding a different bike. Trial judge disbelieved the accused, but her reasons never examined the inconsistent bike evidence.

Held: Appeal allowed, new trial.

"Although no formalistic incantation is required, in her reasons for judgment the trial judge makes no reference to *W.D.* nor to the dangers of dock identification. The reasons make clear that the trial judge disbelieved the Appellant, but she failed to turn her mind to an important aspect of the case as set out above. She should have evaluated the testimony of the Appellant in the light of all the evidence at trial."

P. Royal - Defence Counsel

CHARTER - 7 & 12 - POLICE USE OF FORCE - S. 25 CC

R. v. Gangl 2010 ABPC 105 per Matchett, PCJ:

Dangerous driving and flight from police trial. Defence sought a stay of proceedings on the basis of an allegation of excessive force used by police during arrest. Aggressive accused who refused to comply with police efforts to arrest. Police force included: biting by police dog, kicks and stun blows to the accused's head and thigh, all in an effort to subdue the accused and handcuff him.

Held: No breach of ss. 7 and 12.

As per *Nasogaluak* [2010] SCC 6, the use of force by police must be "constrained by the principles of proportionality, necessity and reasonableness ... It must be remembered that the police engage in dangerous and demanding work and often have to react quickly to emergencies." The accused "seemed absolutely determined" to avoid arrest. He ignored all police warnings. There was no gratuitous violence, and no serious injury. The police actions fell under the protections afforded by s. 25 CC.

E. Norheim - Defence Counsel

**IMPAIRED DRIVING - 8 -
BREATH DEMAND - ASAP**

R. v. Ference 2010 ABPC 99 per
Henderson, PCJ:

Impaired driving trial. No breath demand was read at the scene. Breath demand read 20 minutes later at the detachment. Section 8 breach, as demand not read “as soon as practicable.” Issue regarding 24(2).

Held: Certificate admitted.

Grant 2009 SCC 32 analysis. Serious breach, as the delay in the reading of the demand was largely the product of the officer’s failure to understand his statutory obligations. However, regarding the impact on the Charter protected interests branch, there was little to no impact on the accused. Finally, society’s interest in adjudication on the merits also favoured admission of the evidence.

E. O’Neill - Defence Counsel

**IMPAIRED DRIVING - MENS
REA - INVOLUNTARY
INTOXICATION**

R. v. Lefebvre 2010 ABPC 108 per
Johnson, PCJ:

Impaired driving trial. Grossly intoxicated accused found operating a virtually demolished vehicle. Accused testified that she had gone out with friends and had a few drinks, she then accepted a shooter from a person in the group that she did not know, and remembered nothing after that.

Held: Acquittal entered.

As per *King* [1962] SCR 746, a rebuttable presumption arises that intoxication was voluntarily induced. Accused rebutted the presumption by raising a reasonable doubt. Accused not required to prove non-insane automatism as suggested by the Crown. While accused’s actions (taking a drink from someone she didn’t know) may have been foolish, she was not reckless and did not wilfully put herself in a situation where she knew, or ought to have know, that she would become intoxicated.

D. Slaferek - Defence Counsel

**SENTENCE - IMPAIRED
CAUSING DEATH - 5 YEARS**

R. v. Coupal 2010 ABQB 229 per
Hughes, J:

Accused pled guilty to impaired causing death, two counts of impaired causing bodily harm and failure to remain at the scene, and drive while disqualified. Accused left a bar in a highly intoxicated state. He made it only 1 km before striking three pedestrians at a bus stop. 37 year old accused with a prior impaired driving conviction in 2005.

Held: 5 years jail.

Deterrence and denunciation paramount. Wide range of sentencing authorities, from conditional sentences to lengthy penitentiary terms. Primary aggravating factors included: high level of intoxication, prior record, multiple victims, and that the accused was a disqualified driver.

S. Wojick - Defence Counsel

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