



THE UPDATE

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CHARTER - 8 - PAT-DOWN - PRE-ARREST SEARCH

R. v. Paquette 2010 ABQB 315 per Macleod, J:

Drug trial. Issue as to the extent to which police may search prior to arrest. Vehicle stop. Accused's vehicle was close in description to a vehicle reported to be leaving the scene of a shooting. Pat down search for weapons led to the discovery of a drug pipe and salt and pepper shakers. Police opened the salt shaker and found cocaine.

Held: No s. 8 breach.

Police had a reasonable basis to detain and to conduct an officer safety pat-down search as per *Mann* [2004] 3 SCR 59. The opening of the salt shaker did not extend beyond the proper scope of the search. "We ought not to second guess his decision to open a container unless on the evidence it was clearly unreasonable to do so." In accordance with *Chubak* 2009 ABCA 8: "the law must not become so complex that it prevents police officers from administering their duties."

D. Chow - Defence Counsel

IMPAIRED DRIVING - 8 & 24 - EXCLUSION OF CERTIFICATE

R. v. Dupras 2010 ABPC 138 per Kerby, PCJ:

Impaired driving trial. Reasonable grounds issue. Random vehicle stop. Reasonable grounds to arrest based upon: fumbling with licence; strong smell of alcohol on breath; and slightly red eyes. Court found s. 8 breach. Issue regarding exclusion of Certificate pursuant to 24(2).

Held: Certificate excluded.

Negligent disregard of accused's Charter rights. There was no evidence above a reasonable suspicion. "This was more than an error in judgment. In my opinion the officer did not act in good faith." As per *Haut* 2010 ABPC 2, significant intrusion upon accused's Charter protected interests. Society's interest in having the case adjudicated on the merits outweighed by the serious nature of the breach and the intrusion upon the accused's liberty occasioned by the unlawful arrest.

K. Haryett - Defence Counsel

IMPAIRED DRIVING - PROOF OF MOTOR VEHICLE

R. v. O'Reilly 2010 ABPC 153 per LeGrandeur, PCJ:

Impaired driving trial. Information alleged that "... while her ability to operate a motor vehicle was impaired by alcohol did operate a 1996 Chrysler Intrepid ...". Crown failed to prove that the vehicle was in fact a 1996 Chrysler Intrepid. Issue as to whether the vehicle description was mere surplusage.

Held: Conviction entered.

"In *R. v. Johnson* 2003 ABPC 43 surplusage was defined ... as follows: ' Surplusage in a count is that which need not be proved in order to establish the commission of the offence charged. However, the Crown may be required to prove that which is surplusage if its inclusion in the count has been relied upon by the accused to the prejudice to his or her defence' ... in the absence of demonstrated or potential prejudice, that the words specifying the year and make of the motor vehicle operated are surplusage."

K. Beyak - Defence Counsel

**IMPAIRED DRIVING - 258(7) -
PROOF OF SERVICE**

R. v. Buffalo 2010 ABQB 325
per Binder, J:

Appeal from conviction under 253(1)(b) CC. Issue regarding proof of service as required by 258(7) CC. Officer testified that his evidence of service stemmed from his standard practice as opposed to a present recollection.

Held: Appeal dismissed.

No particular form of evidence is required and service may be proven by evidence of standard practice alone if there is a sufficient guarantee of reliability to the evidence of the standard practice: *Cunningham* 2006 ABCA 345. Regarding the standard of proof, “as a matter of law, the Crown would only have to establish on a balance of probabilities the occurrence of giving fair notice and reasonable notice within the meaning of the Criminal Code”: *MacKinnon* [2003] OJ No. 3896 (CA); *Nelson* 2006 ABQB 297.

S. Beaver - Defence Counsel

**SENTENCE - ASSAULT WITH A
WEAPON - DISCHARGE**

R. v. McKinney 2010 ABPC 167
per Brown, PCJ:

21 year old accused with no record pleaded guilty to assault with a weapon. Accused struck a close female friend on the head with an aluminum bat. Swelling, cuts and bruises caused. Accused was extremely intoxicated at the time and had little memory of the event.

**Held: Conditional discharge, 30
months probation.**

Medical evidence established that accused likely suffered Alcohol Intoxication Delirium at time of offence. Accused had taken many and prompt steps to address an alcohol problem and to make amends with the victim. Exceptional case justifying a conditional discharge.

J. Chevrefils - Defence Counsel

**SENTENCE - ANIMAL
CRUELTY - DISCHARGE**

R. v. Rabeau 2010 ABPC 159
per Semenuk, PCJ:

18 year old accused with no record pleaded guilty to killing a dog, contrary to s. 445(1)(a) CC. Accused was approached by a 4 month old 8 -10 lbs Huskey puppy who had escaped from his yard. The puppy appeared aggressive, and the accused felt that the dog was going to nip or bite him. Accused retrieved a wooden object from his car, hit the puppy once in the head, and killed him.

**Held: Conditional discharge, 12
months probation.**

Circumstances fell into the category of case where the offender had a *bona fide* fear of the animal, and then overreacted. Range of sentence includes a discharge: *Campbell Brown* (2004) AJ No. 162 (PC). Crown had sought a jail sentence in the range of 21-30 days.

W. DeWit - Defence Counsel

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