



THE UPDATE

Issue #13 May 28, 2010

ASSAULT - INTENT - PROOF - REFLEX ACTION - 265 CC

R. v. Moore 2010 ABPC 171 per Semenuk, PCJ:

Accused charged with assault against his common law girlfriend. Allegation that while they were sleeping together, the complainant awoke as a result of a bad dream, waking the accused in the process. He became angry, and hit her. Accused testified that although he pushed the complainant's face, he did so absent an intent to assault.

Held: Acquittal.

"The Accused having admitted to inadvertently pushing the complainant once in the face with his hands after being woken up by her pushing him, is this an intentional application of force within the meaning of s. 265(1)(a) CC? In my view it is not ... the Accused's application of force in pushing the complainant in the face was not reckless, and was in the nature of a reflex action: *R. v. Wolfe* (1974), 20 CCC (2d) 382 (Ont CA)."

D. Andrews - Defence Counsel

IMPAIRED DRIVING - 9 - POST BREATH SAMPLE DETENTION

R. v. Glubish 2010 ABPC 174 per Rosborough, PCJ:

Impaired driving trial. Accused described by police as being severely intoxicated. Accused testified that he was held in custody after breath sampling for approximately 9 hours. When accused was first lodged, he was asked whether he knew anyone who could come and get him, to which he responded "no".

Held: No s. 9 breach.

No evidence as to when the accused sobered up. Only evidence was that he was sober when released. Police had no duty to find a sober person in order to facilitate release, or to find transportation for the accused from the detachment: *Simms* 2009 ABCA 260. It was the officer's belief that the accused presented a potential danger to himself, and either needed to be released to the care of someone else, or held until sober. These beliefs were reasonable.

B. Parker - Defence Counsel

SENTENCE - AGGRAVATED ASSAULT - 12 MONTHS JAIL

R. v. Grewal 2010 ABQB 346 per Burrows, J:

Accused convicted after trial of aggravated assault. 19 year old accused assaulted a father of an opponent following a soccer game. The complainant made racial slurs toward the accused prior to the assault. Assault included kicks to the head. Injuries included 5 facial fractures. Accused had no record, was enrolled at NAIT, and was an active member of the Sikh community.

Held: 12 months jail and 12 months probation.

Mitigating factors included: no record, youthful accused, and provocation. "I view provocation as the most significant of the several mitigating factors ... That a man a generation older than these 18 and 19 year old soccer players would say such a taunting thing to them was very far beyond foolish. It was contemptible."

C. Millsap - Defence Counsel

SENTENCE - DRUGS - CSO - COCAINE TRAFFICKING

R. v. Nishikawa 2009 ABPC 179 per LeGrandeur, PCJ:

Accused pleaded guilty to two charges of trafficking in cocaine. The first was an \$80 sale of .5 grams to an undercover officer. Three months later the accused was found in possession of \$47,000 worth of cocaine. 26 year old accused with no record who was severely addicted to cocaine and was indebted to drug dealers. Accused had undertaken counselling. Positive PSR.

Held: 2 years less 1 day CSO.

Rehabilitation can play a significant role in achieving a proportional sentence for serious drug offences: *Prokos* (1998) 127 CCC (3d) 190 (Que CA). “One should not ... as noted in *R. v. Watkinson* 2001 ABCA 83, underestimate the denunciatory effect of forcing an individual to live in his community under tight restriction of his liberty.”

S. Wood - Defence Counsel

SENTENCE - PROCEEDS OF CRIME - \$106,755 - 18 MONTHS

R. v. Ngo 2010 ABPC 161 per Semenuk, PCJ:

Accused pleaded guilty to possession of the proceeds of crime. Money was the product of drug related activity. Total sums of currency seized were \$106,755 CND and \$190 US. 34 year old accused with a record for offences including assault and drug trafficking.

Held: 18 months jail.

Denunciation and deterrence paramount. Conditional sentence inappropriate given aggravating factors, including: seriousness of offence of money laundering in general, accused’s record, amount of money involved, accused’s apparent failure to recognize the serious nature of the crime, and the negative PSR.

P. Fagan - Defence Counsel

SOIRA - POSSESSION OF CHILD PORNOGRAPHY

R. v. Slapak 2010 ABPC 177 per LeGrandeur, PCJ:

18 year old accused with no record pleaded guilty to possession of child pornography and was sentenced to 90 days jail. Crown sought a 10 year SOIRA order.

Held: Application dismissed.

As per 490.012(4) CC, onus on accused to demonstrate why SOIRA order not required. Accused having to demonstrate that the impact of the order “clearly and substantially” outweighs the public interest: *Redhead* 2006 ABCA 84. Little risk of re-offending, therefore only a slight impact on the public interest: *GEW* 2006 ABQB 317. “Although he did not testify as to the specific impact upon himself of a SOIRA order, I am satisfied that the stigma attached to him in his small community as a consequences of this offence is significant.”

A. Larson - Defence Counsel

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