



THE UPDATE

Issue #21 August 27, 2010

DRUGS - TRAFFICKING - PROOF OF SUBSTANCE

R. v. Paquette 2010 ABQB 519
per Macleod, J:

Trial on charges including possession of cocaine for the purpose of trafficking. Various packages of drugs found at different locations, but only a few of the packages were analyzed.. Issue as to whether possession for the purpose proven.

Held: Conviction entered.

In accordance with *Grant* 2001 ABCA 252 and *Cao* 1998 ABQB 25, "... there is not sufficient scientific evidence upon which to conclude that all of the substances which looked like cocaine is actually cocaine ... While I can speculate with some confidence that more than three bags of the seized product was cocaine that is not the same as being satisfied beyond a reasonable doubt." However, trafficking proven on the basis of expert evidence that established that the only rational explanation as to why some of the packaged product might not be cocaine, was that it was being held out and sold as cocaine.

D. Chow - Defence Counsel

IMPAIRED DRIVING - 8 - REASONABLE GROUNDS

R. v. Kehoe 2010 ABPC 255 per
Anderson, PCJ:

Impaired driving trial. Police arrived at an accident and found the elderly accused being attended to by paramedics. Police arrested the accused after noting glassy eyes and an odour of alcohol.

Held: Section 8 breach, Certificate excluded.

Court not satisfied that the arresting officer ever turned her mind to the time of driving. Officer did not testify to a subjective belief that the accident had occurred within the last 3 hours. Further, officer's evidence was "fuzzy" as to the standard applied to the arrest (ie, reasonable grounds vs. reasonable suspicion). Finally, unexplained 20 minute delay between arrest and breath demand resulted in demand not be made as soon as practicable. Serious breach given arrest and detention without reasonable grounds. Regarding delay in reading the demand, "Courts can not afford to tolerate inattentiveness to this statutory obligation."

R. Prithipaul - Defence Counsel

IMPAIRED DRIVING - 8 - REASONABLE GROUNDS

R. v. Piepers 2010 ABPC 263 per
Hougestol, PCJ;

Impaired driving trial. Police dispatched to a collision. Dispatch received at 1820 and police arrived at 1843 hrs. Both the accused and complainant were still present (as were the vehicles.) Issue as to reasonableness of officer's belief that the collision had occurred within 3 hours of the time of arrest.

Held: No section 8 breach.

"In point of fact the modern nature of complaint reporting along with instantaneous communication drive me to conclude that an officer is objectively on safe ground in believing that an accident is 'fresh' when he receives information on it unless the facts show it to be otherwise. This should be the state of affairs on any police accident call and not be limited to 'priority one' situations as in *R. v. Bergen* 2009 ABPC 106."

C. Banks - Defence Counsel

**LEAVING THE SCENE - 252
CC - PROOF OF OFFENCE**

R. v. Hoffman 2010 ABCA 245
per Slater, JA:

Application pursuant to s. 181 *TSA* for a stay of the accused's operator's licence suspension pending appeal of a conviction for leaving the scene, contrary to s. 252 CC. Accused ran over his passenger moments after she dismounted from his truck. Accused dropped the passenger at the hospital, telling nurses that "he found her in a snow bank." Passenger died. Issue regarding whether appeal had merit.

Held: Application denied.

No merit to argument that the accused was not required to provide his information, because his identity was known by the passenger. Being known by a "semi-conscious, unconscious, or deceased passenger would likely not fulfill the objectives of s. 252." A presumption of intention to avoid liability could arise from the false story given to the nurses.

C. Davison - Defence Counsel

**SENTENCE - CHILD
PORNOGRAPHY - 5 MONTHS**

R. v. Bejasa 2010 ABPC 249 per Fradsahm, PCJ:

Accused pleaded guilty to possession and accessing child pornography. Summary conviction. Videos on accused's computer of pre-teen and teenage boys involved in various sexual acts. 34 year old accused, no record, suffered from depression. Genuine remorse.

Held 5 months jail plus 3 years probation.

Denunciation and deterrence paramount in child pornography sentencing cases: *Hammond* 2009 ABCA 415. Important sentencing facts included: small number of videos found in accused's possession, the graphic nature of the videos, the continuing nature of the possession (over a 3 month period), and the guilty plea / remorse.

L. Burgis - Defence Counsel

**SENTENCE - DRUGS - CSO -
COCAINE TRAFFICKING**

R. v. Conyers 2010 ABQB 520
per Macleod, J:

Accused pleaded guilty to possession of cocaine for purpose of trafficking. Accused sold small amounts of cocaine to an undercover police officer on five occasions. 31 year old accused who had 2 young children. Positive PSR.

Held: 2 years less 1 day CSO.

Although it was not clear why the accused was involved in the drug trade, he did have substantial debt which operated as a stressor. The PSR painted a picture of a "hard working, reliable, law abiding and loving parent." Serving the sentence in the community would not endanger the public, and was consistent with the principles of sentencing.

D. MacLeod - Defence Counsel

Dawson Stevens Duckett & Shaigec
Suite 300, 9924-106 Street, Edmonton, Alberta, T5K 1C4
Tel: 780 424-9058 Fax: 780 425-0172

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