

2013-07 — Segal’s Motor Vehicle and Impaired Driving Newsletter

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Case Law Highlights

1. — ***Failing to remain knowing bodily harm caused; Pedestrian hit and rendered quadriplegic; Driver not at fault; Driver panicked and fled; No record; Good background; 90 days intermittent; Criminal Code, s. 252(1.2).***

R. v. Sriranjani, 2013 CarswellOnt 1133, 2013 ONCJ 35 (Ont. C.J.), Rutherford Prov. J.: The accused, age 51, was hardworking and without a record. His vehicle hit a pedestrian in the roadway. His driving was not at fault. The victim was rendered a quadriplegic. The injuries resulted from the initial collision. The accused panicked and drove to his apartment garage where he was found by police an hour later. He pleaded guilty. The sentence was 90 days intermittent, 12 months probation on terms, and a 12 month prohibition order.

2. — “Over 80”; Reasonable and probable grounds; Absence of reasonable and probable grounds not condition precedent to admissibility; Rilling; Rilling still good law; Criminal Code, ss. 233(1)(b), 254(3), 258(1)(c), (g); Charter of Rights, s. 24(2).

R. v. McCarthy, 2013 ONSC 599, 2013 CarswellOnt 1158 (Ont. S.C.J.), MacDonnell J.: The respondent was acquitted of “over 80”. The trial judge held that the absence of reasonable and probable grounds was a condition precedent to the admissibility of the breathalyzer samples. The Supreme Court of Canada case of *R. v. Rilling* remains good law, a position endorsed by the Ontario Court of Appeal. A new trial was granted to the Crown.

3. — Drinking and driving; Disclosure; Review of disclosure questions provided to Crown; Whether “have you disclosed everything of relevance that my client said to the investigators?” a valid question; Whether “did the investigating officers have audio recorders available to them?” a valid question; First question inappropriate; Second question required Crown to ask police; Duty of Crown to make reasonable inquiries of police; Crown ordered to respond to second question; Criminal Code, s. 253(a), (b); Charter of Rights, s. 7.

R. v. Bachelet, 2013 ABPC 11, 2013 CarswellAlta 151 (Alta. Prov. Ct.), Allen Prov. J.: The accused was charged with drinking and driving. The defence sought a review regarding the Crown’s failure to ask the police two questions. The first one was “Have you disclosed everything of relevance that my client said to the investigators?” The second question was “Did the investigating officers have audio recorders available to them?” The accused was provided with police notes. While the notes are brief, they contained the accused’s responses. The first question was vague and need not have been asked. The second question ought to have been put to the officers. While a stay was not warranted an order requiring the answers was granted.

4. — Sentencing; Criminal negligence causing bodily harm; Guilty plea; Driver in argument with acquaintance; Driving off with her hanging on to window; Victim fell off suffering broken nose and rib and abrasions; Criminal record; 47 days pre-trial custody; 4 month additional sentence, 16 month prohibition; Criminal Code, s. 221(b).

R. v. Draskoczi, 2013 CarswellNWT 7, 2013 NWTSC 7 (N.W.T. S.C.), Charbonneau J.: The accused pleaded guilty to criminal negligence causing bodily harm. He had a record including for misuse of motor vehicles. He pleaded guilty after 47 days in pre-trial custody. He had an argument with a friend who was asking for money back. He drove off with her hanging by the window. She fell and suffered a broken nose and rib and abrasions. Taking into account credit for time served he was sentenced to an additional 4 months in prison and a 16 month prohibition order.