

The Round-Up: Top 10 Criminal Cases of the Past Year
Thunder Bay Law Association Fall Conference 2021, Criminal Law Program

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***R. v. Ahmad*, 2020 SCC 11 (CanLII)**

Police need objectively reasonable suspicion before they phone someone for a dial-a-dope investigation.

***R. v. G.F.*, 2021 SCC 20**

This case confirmed that capacity is a precondition for consent to sexual activity. The case clarified that incapacity prevents consent, it does not vitiate it. Only when subjective consent is established, or there is reasonable doubt as to its existence, will the court then determine whether it was vitiated by operation of law.

***R. v. Chouhan*, 2021 SCC 26**

This case confirmed that the abolition of peremptory challenges in the jury selection process is constitutional and *Charter* compliant. It also set out guidelines for the “vigorous” use of challenge for cause questions, and the s. 633 “stand-aside” power.

***R. v. Friesen*, 2020 SCC 9**

Here, the Supreme Court increased the sentencing ranges for sexual offences against children and “closely related offences”. Sentences for these offences must reflect the harm (including reasonably foreseeable harm) and wrongfulness of sexual violence against children. Sentences do not need to align with precedential sentences from before 2015, when maximum sentences were increased.

***R. v. Slatter*, 2020 SCC 36 (CanLII)**

Just because a witness is mentally disabled does not automatically mean the judge should assume an adverse finding of credibility or reliability, even if an expert advises that they should. Judge’s should assess the general characteristics of the individual.

***R v Sharma*, 2020 ONCA 48**

In this case, the Court considers the constitutionality of sections 742.1(c) and 742.1(e)(ii) of the *Criminal Code*, which limit the availability of conditional sentences. They determine that the impugned provisions of the Code infringe Ms. Sharma's ss. 7 and 15 *Charter* rights, and the Court strikes down these provisions as a result.

R v T.J.M., 2021 SCC 6

The Supreme Court endeavours to answer the following question in this case: which court(s) have the jurisdiction to grant bail when the accused is a young person? They hold that Superior Court justices have the jurisdiction to grant bail, and this jurisdiction is held concurrently with designated youth court justices.

R v Esseghaier, 2021 SCC 9

In this case, the accused requested to have his jury selected via rotating triers, and the trial judge denied this request in favour of static triers. The Supreme Court invoked a curative proviso to cure the trial judge's error, while narrowing the concept of fairness in jury selection.

R v C.P. 2021 SCC 19

The SCC majority dismissed the appeal of a youth convicted of sexual assault where consent and credibility was at the core of trial (intoxicated youths). The accused argued the TJ's verdict was unreasonable and also that YCJA s. 37(10) was inconsistent with s. 7 and s. 15 of the Charter. Appeal was dismissed because the TJ's reasons were rigorous and thoughtfully explained and the YCJA section under scrutiny, and as a whole, serves as a balanced ameliorative scheme -- it is not inconsistent with Charter values. Cote J's dissent is interesting.

R v W.M. 2020 SCC 42: The SCC majority allowed the Crown's appeal and restored the conviction of a parent convicted of sexually assaulting his daughter. SCC agreed with the dissenting ONCA Judge that said the TJ's error (a date of sex offender treatment completion) was not central (and not material) to the overall assessment of the similar fact evidence or the accused's credibility when considered as a whole. It did not meet the "stringent standard" test as set in *Morrissey* to result in a miscarriage of justice.

Finally, the Program Chair cannot resist the urge to add this one, as Number 11 – not just because of the amazing name alone (and it's a murder case, of course it is).

R. v. Khill, 2021 SCC 37

New(ish) self-defence provision, requires that your act be "reasonable" in consideration of a few factors, one being your "role in the incident," s. 34(2)(c). Quietly approaching a trespasser in your driveway, saying "hands up," and then shooting him twice with the loaded shotgun you were carrying, bears mentioning in the charge to the jury, since you had a bit of a "role" in the incident.