



Session 25

Criminal Law

Case studies 2

Case 1: R v Gillis

A warrant was successfully applied for by a peace officer to search the premises of a fraud suspect. The validity of the warrant was challenged. The officer swore an information to obtain a search warrant which referred to a document entitled “Annex A” outlining offence and objects sought. The reasonable grounds set out in the information included a statement by the victim, an examination of documents, and police investigation. The grounds set out in the information differ from those appearing in Annex A.

Was the information sufficient to obtain a search warrant?

Case 2: R v Bigelow

Bigelow and his wife were separated and his wife had custody of their child. The appellant was entitled to access every second weekend as well as for two weeks during the summer and for a specified period at Christmas. On July 10, 1981 he flew to London from Alberta (where he was living) and requested access for the weekend which his wife refused and subsequently notified the police. The police advised the wife to give the child to the appellant as the order granted him weekend access. Bigelow was also advised that he would be liable for contempt of court or abduction if he did not return the child by 7:00pm on Sunday.

The wife spoke to the appellant the following day and discovered he had returned to Calgary with the child and stated that he was not going to return the child but that he intended to keep him. On July 24 the wife travelled to Calgary and returned to Ontario with the child who had been picked up by the Calgary police.

Case 2: R v Bigelow

Bigelow was convicted under s. 250(1)(a) of the *Criminal Code* (now [s. 282](#)), which he appealed on the basis that an Ontario court did not have sufficient jurisdiction.

Do Ontario courts have jurisdiction to entertain a charge under s. 250(1)(a) (now [s. 282](#)) when the child had been taken from Ontario to Alberta?

Case 3: R v Caslake

Caslake had been seen in a field where a garbage bag containing marijuana had been found. He was taken to the police station and his car was towed to a garage across the street. Six hours after the arrest an RCMP officer unlocked the garage and conducted an inventory search of vehicle which was required by RCMP policy. The officer found \$1,400 cash and two individual packages of ¼ grams of cocaine each.

Caslake was convicted of possession of marijuana for the purposes of trafficking and possession of cocaine. He appealed the conviction for possession of cocaine on the basis that the search of his vehicle had been unlawful pursuant to [s.8 of the Charter](#) and thus should have been excluded under [s.24\(2\)](#).

Was the search of the vehicle lawful as a search incident to arrest?

Case 4: R v Tomaso

Tomaso was involved in a motor vehicle collision and was taken to hospital unconscious. A police officer on the scene noticed broken beer bottles in his vehicle. At the officer's request, a breathalyzer technician came to the hospital and collected a sample of blood which was flowing from a wound on Tomaso's ear without his consent. The appellant was arrested approximately two weeks later and charged with impaired driving, driving over 80, and criminal negligence in operation of a motor vehicle. At trial he was convicted of the lesser offence of dangerous driving.

Tomaso appealed stating that the collection of blood was a violation of his rights under [s. 8 of the Charter](#) and the evidence should have been excluded under [s. 24\(2\)](#).

Is the collection of blood incident to arrest reasonable?