

Errata, 2001

Lucinda Vandervort, "MISTAKE OF LAW AND OBSTRUCTION OF JUSTICE: A "BAD EXCUSE"... EVEN FOR A LAWYER!"

Page

- 173, line 6 Delete "to discuss."
- 173, line 35 Replace "adopts" with "proceeds."
- 180, line 7 After "The Crown's plea bargain," insert footnote:
"See CRIM doc 66 (Q.L)."
- 180, line 37 Insert "the" before "administration."
- 181, line 3 Replace "would" with "may."
- 181, line 35 Delete "There was no equivalent public examination of why a
"thorough" criminal investigation had not led to recovery of the
videotapes even though the house in question had been under
police control and carefully searched pursuant to a warrant. Nor
was there any official public examination of the bargain with
Homolka . . ."

Insert "There was also a review of the Bernardo criminal investigation. There was no equivalent official public examination of the plea bargain with Homolka . . ."

After "the Bernardo criminal investigation," (above) insert footnote:

In December 1995 the Ontario government appointed Justice Archie Campbell to review the Bernardo investigation and provide a written report to the Solicitor General and Minister of Correctional Services by March 31, 1996, identifying issues and recommending policies or procedures that would improve the responses of the police, the Centre of Forensic Sciences and the Coroner's Office to crimes by serial predators. In Chapter 9 of the review report (CRIM document 94-Q.L.) Justice Campbell considers the failure of police to find the video-tapes in the Bernardo/Homolka residence. He notes that the criminal investigation into Murray's conduct in relation to the tapes had been on-going since

November 1994 and that, at the request of the O.P.P., none of their potential witnesses had been questioned. Nonetheless, on the basis of information which was publically available Justice Campbell observed that:

The house was under police surveillance when Murray left the house on May 6. Although the police have been criticized for letting him leave with the tapes, they had no grounds to stop and search Murray on his way out of the house. They never considered doing so. They had no reason to believe the tapes were still in the house when Murray went in. In any event, they had no grounds to believe that an officer of the court would remove from a murder scene real physical evidence hidden by the accused.

The search produced very significant evidence and was generally a model of painstaking and detailed thoroughness. Notwithstanding this success, the critical issue hanging over the entire search is that it failed to produce the crucial videotapes of the rape and torture of Leslie Mahaffy and Kristen French and the rape of Tammy Homolka.

There is much to be said for the police point of view expressed by Sergeant Beaulieu in his paper prepared for the FBI academy at Quantico and reproduced in Appendix 13:

“Unfortunately for the personnel who conducted this search, it is not their dedication, tenacity and professionalism that is remembered by most, but rather the regrettable misfortune of the missed videotapes.”

The failure to find the tapes had a critical impact on the course of the prosecution because the plea bargain with Homolka would not have been made if the police had found the tapes.