

# **Report on James Michael Roszko**

## **Prosecution History**

**Prepared by  
Gordon K. Wong, QC**

**September 23, 2005**

## **Reasons for Report**

Shortly after the tragic events in Mayerthorpe occurred, many questions were asked as to how such a tragedy could occur. As a result of this horrific and unprecedented event, the Minister requested a review of James Roszko's criminal prosecutions as a fact-finding exercise, to determine what happened in past prosecutions. This review took place independent from the ongoing investigation into the deaths of the Mayerthorpe RCMP officers.

## **Sources of Information**

Alberta Justice Crown prosecution files are archived and destroyed in accordance with a Records Retention and Disposition policy required under Records Management Regulation A.R. 224/2001 and the *Government Organization Act*. The policy is specific to the type of crime. Prosecution files relating to the crimes Roszko committed are retained for nine years after the close of the prosecution, after which they could be destroyed. Murder files for example, would have a different retention period. In the majority of the prosecutions, the material available for review was a transcript of court proceedings. In reviewing each prosecution, the sources of information will be described.

In addition to files and transcripts, Craig Krieger of the Edmonton Crown Prosecutors' Office was interviewed and provided his recollection of various prosecutions. Mr. Krieger had conducted many of the Roszko prosecutions.

Access to the prosecution files is preferred, as often there will be memoranda on file or other documentation that will explain decisions made. Although the prosecution files were not available in most cases, this did not prevent an analysis of what happened in the various prosecutions. Transcripts of court proceedings did provide a clear picture of what occurred in the prosecutions. Mr. Krieger's recollections also confirmed what could be gleaned from the court transcripts.

## **Prosecution History**

In the prosecutions where an acquittal, a withdrawal, or a stay of proceeding resulted, the facts stated in this report can be considered allegations only.

Pseudonyms will be used in this report in referring to witnesses, complainants, and third parties involved in the prosecutions. The Freedom of Information and Protection of Privacy Act places restrictions on the Department in the disclosure of personal information. Complainants and witnesses are entitled to expect that their public exposure will be restricted to the prosecution they are involved in. Finally, this report focuses on what happened to the charges Roszko faced. That can be accomplished without having specific names of witnesses and complainants made public.

*Highlighted dates denote conviction or acquittal date.*

**February 18, 1976**

Charge: Two counts of break, enter and theft.  
Result: Convicted on one count of break, enter and theft and one count of possession of stolen property. Fined \$150 on each charge and a one-year probation order imposed.  
Material available: Criminal record information.

As a first offence, the sentence is not unusual.

**November 19, 1976**

Charge: One charge of theft under \$200.  
Result: Convicted. Received a fine of \$250.  
Material available: Criminal record information.

**January 24, 1978**

Charge: One count of possession of stolen property and a further count of break, enter and theft.  
Result: Pled guilty to possession of stolen property and acquitted on the break and enter charge. Given a suspended sentence and a probation order of 18 months.  
Material available: Criminal record information and a Crown Counsel case report.

The facts from the Case Report are that Roszko, on April 28, 1977, drove around while an accomplice broke and entered a business in Mayerthorpe. Roszko shared in the proceeds of the crime, receiving \$40. The Crown accepted a guilty plea to the possession of stolen property and offered no evidence on the other charge. The accomplice had pled guilty to break, enter and theft and the case

report indicates “in these circumstances the plea of guilty to possession of stolen money seemed reasonable.” The Court suspended sentence and imposed a probation order of 18 months, again not an unusual sentence.

**April 5, 1979**

Charge: One count of making harassing telephone calls. Three counts of breaching conditions of his probation order.

Result: Convicted. Sentenced to thirty days jail on the harassing telephone calls charge. On one of the breach of probation order charges he received fifteen days jail to be served consecutively. On the other two breaches of probation order charges he received 15-day jail sentences to be served concurrent to the others.

Material available: Criminal record information.

**December 17, 1981**

Charge: One count of obstructing justice.

Result: Acquitted.

Material available: Crown Counsel case report.

The facts alleged were that Roszko appeared in Mayerthorpe Provincial Court on May 26, 1980 at a friend’s scheduled impaired driving charge trial. He told the Court that this friend was out of town and asked that the trial be adjourned. This friend was alleged to be in town on the day of trial. He is alleged to have acted as an agent for this friend who gave him no such instructions. According to the Crown Counsel case report, Roszko was acquitted at trial because the Crown could not establish the necessary intent to obstruct justice.

**December 5, 1990**

Charge: One count of uttering threats to cause death or serious bodily harm.

Result: Convicted after trial. Fined \$200.

Material available: Internal briefing note and a copy of the Information.

The offence date is April 18, 1989. Internal briefing note indicates that the uttering threats occurred in Mayerthorpe and arose over an argument between Roszko and an individual involved in supervising school bus routes.

*In a number of next prosecutions there was late reporting of offences by the complainants. Highlighted dates now denote when prosecutions were launched for ease of reporting.*

**March 3, 1993**

Charge: Two traffic violation tickets. One for not wearing a seat belt and one for having tinted windows. On the same day, charged with causing a disturbance by use of obscene language.

Result: Pled guilty to the two violation tickets and to a violation ticket for failing to wear a seatbelt on October 18, 1992. Fined \$25 for each. The Crown called no evidence on the cause disturbance charge, resulting in acquittal.

Material available: The Information on cause disturbance charge, Queen's Bench Civil court file and transcript of the disposition of these charges.

Circumstances of the cause disturbance charge are found in a Queen's Bench Civil court file where Roszko sued Her Majesty the Queen and an RCMP officer for "abuse of public office, false imprisonment, detention and malicious prosecution." From the documents filed in the civil action, the cause disturbance allegation appears to be a result of Roszko swearing at the police officer when the traffic violation tickets were issued to Roszko. Roszko had told the police officer that he was going home to tend to a pregnant cow where birth of the calf was imminent. He apparently swore over the delay in having the tickets issued.

The manner in which these charges were dealt with in Court suggests to me that calling no evidence on the cause disturbance charge was a result of a plea negotiation. Roszko was fined the specified penalty of \$25 for each of the three traffic violation tickets. Roszko commenced his civil action on June 17, 1993 and it was dismissed for want of prosecution (not taking the necessary next steps in the civil action) on May 16, 2000.

**September 28, 1993**

Charge: One count of assault.

Result: Stayed.

Material available: Transcripts of the preliminary inquiry and interview with Crown prosecutor.

Roszko allegedly assaults Arthur in Mayerthorpe. Arthur was in the back passenger seat of a friend's car at the time of the assault. The car was parked beside Roszko's vehicle. Roszko walked to the passenger side of this car and without warning struck Arthur in the face with either a punch or a slap. Arthur suffered minor scrapes to the face and had his glasses broken in this incident. There were three witnesses to this assault. Evidence at the preliminary inquiry suggested that Roszko was upset at Arthur because he had been spreading rumours around town about Roszko's homosexuality.

The Crown proceeded by indictment on this charge, which is unusual for a simple assault given Roszko's record at that time. However, by December 14, 1993, when the Crown's election was entered, Roszko was facing a number of other charges that had accumulated (see September 28, 1993 and December 1, 1993). The Crown prosecutor assigned to the Mayerthorpe circuit point took this into account when he proceeded by indictment on the assault.

Roszko was ordered to stand trial after a June 27, 1994 preliminary inquiry. The Crown entered a stay of proceedings at the scheduled December 11, 1995 Queen's Bench trial. Transcripts of the preliminary inquiry and the Queen's Bench appearance, when the stay was entered, were reviewed. As well, the assigned Crown prosecutor provided the circumstances behind his decision to stay the charge.

The Crown prosecutor discovered on the day of trial that there was an error in the issuance of subpoenas for the witnesses. The witnesses had been issued subpoenas for the wrong date. This was discovered only when the witnesses did not attend for court as expected. As well, the Crown had experienced difficulties with Arthur attending court on another trial in June of 1995 that will be referred to later in this report (see March 27, 1994). Given these circumstances and the minor nature of the offence, the Crown had no reasonable grounds to apply for an adjournment and properly entered a stay of proceedings.

### **September 28, 1993**

Charge: One count of impersonating a peace officer.

Result: Acquitted.

Material available: Trial transcript and interview with Crown prosecutor.

This offence was reported to have taken place late in the evening, after the alleged assault on Arthur. Roszko received a telephone call from a local resident about the trouble that had occurred in the town earlier. Roszko then contacted

an AGT security clerk, asking for a trace to be conducted on the call he just received. Roszko allegedly identified himself as an RCMP officer in this call to justify the requested trace.

A trial was conducted on June 29, 1994 that resulted in an acquittal. An essential witness did not attend and was to testify as to who called the AGT security clerk. Without this identification evidence, an acquittal was unavoidable.

### **December 1, 1993**

Charge: Between May 24, 1993 and May 29, 1993 point a firearm at Bradley.  
Between June 15, 1993 and July 15, 1993 point a firearm at Bradley.  
Between October 1, 1993 and November 15, 1993 counseling Bradley to commit murder.  
December 1, 1993 unlawful confinement of Bradley.  
December 1, 1993 possession of a weapon for a purpose dangerous to the public peace.  
December 1, 1993 assaulting Bradley with a weapon.  
December 1, 1993 breach of a condition of a recognizance (have no contact with Conrad).  
December 2, 1993 obstructing justice charge added at preliminary inquiry.

Result: At preliminary inquiry: discharged on the counseling to commit murder charge, and discharged on the breach of recognizance charge at the invitation of the Crown.  
At trial on the remaining charges, the Crown called no further evidence, resulting in the trial judge directing an acquittal on all counts.

Material available: Transcript of preliminary inquiry and trial and Crown appeal file.

Bradley made a complaint to the RCMP of a number of crimes allegedly committed by Roszko between May 24, 1993 and December 1, 1993. RCMP laid an information alleging seven counts against Roszko.

Bradley considered himself a close friend to Roszko in May of 1993. He became acquainted with Roszko by first working at Roszko's farm.

Bradley told police that, between May 24, 1993 and May 29, 1993, he accompanied Roszko on a trip to the United States. They were denied entry at the border crossing because of Roszko's criminal record. Roszko crossed the border illegally and traveled to Utah where he purchased a Beretta 9mm handgun. They returned to Canada by the same route. During the trip back, near Drayton Valley, Roszko repeatedly asked to see Bradley's penis. When he refused, Roszko pulled out the 9mm handgun, loaded and cocked the gun, and pointed it at Bradley's head. This continued for some time until Roszko was pulled over for speeding. At that time, he hid the handgun from the view of the police officer. Bradley said nothing to the police about what had just happened.

Bradley reported that Roszko again pointed a firearm at him in early July 1993. Bradley testified at the preliminary inquiry that Roszko offered explanations for his conduct in May that resulted in Bradley seeing Roszko again. On July 12, 1993 Roszko went to Bradley's home and without warning pulled out the same handgun. Roszko threw Bradley onto a bed, held him down and pointed the gun at his head. Roszko allegedly said he "had a job to do" which was interpreted by Bradley to mean that Roszko was going to kill him. A friend of Bradley arrived at the home and Roszko was interrupted in whatever he was planning. When this friend left the home, the two wrestled, which resulted in Bradley getting a knife and stabbing Roszko in the jaw. Bradley took Roszko to the hospital. This is not reported at the time to police or to his friend that had attended at the home. Again, according to Bradley, Roszko explained away his conduct to his satisfaction.

In early October 1993, Bradley reported that Roszko offered him \$10,000 to kill Conrad. This happened while Bradley was helping Roszko put a replacement bumper on Roszko's truck. Roszko told Bradley that Conrad was the main cause of Roszko's problems in life. All Bradley could say was that there was hostility between Roszko and Conrad. This offer was brought up two further times. In these conversations, Bradley indicated that Roszko suggested using a rifle owned by Roszko and that Roszko could be Bradley's alibi. Bradley refused these offers.

After these talks, Bradley testified that he saw little of Roszko during the month of November. On December 1, 1993, there was what appeared to be a chance meeting between the two in Whitecourt. Roszko persisted in wanting to speak to Bradley, who did not want this. After lengthy persuasion, Bradley agreed to visit Roszko's farm to inspect a vehicle, so long as Bradley's friend followed in another vehicle. Roszko drove Bradley to his farm and on the way managed to lose the friend who was following.

At the farm, Roszko drove to a field, purportedly to check on his cattle. He returned with a shotgun and produced a set of handcuffs that Bradley was told to put on. Bradley complied only because Roszko loaded and worked the action on the shotgun in front of Bradley. Roszko was angry over Bradley avoiding him over the past month. He questioned Bradley as to what he was telling people or the police about Roszko and their relationship. Roszko hit Bradley when he denied saying anything about their relationship. According to Bradley, Roszko released him from the handcuffs after a few hours so they could have a "fair" fight. After the fight, the two went to Roszko's house, where Roszko said he still did not trust Bradley and "needed something" to keep him from talking. Roszko decided to take pictures of a sexual nature of the two of them that Roszko would have to hold over Bradley to prevent him from talking. Some of these pictures were of Bradley alone. Others were of the two together, where a camera timer was used. This night ended with Bradley performing oral sex on Roszko. Bradley testified that he agreed to the photographs and the oral sex.

Bradley testified at a preliminary inquiry that was conducted on June 27-29, 1994. The transcript is the only material available for review. At the end of the preliminary inquiry, Roszko was discharged on the counseling to commit murder charge. The judge found insufficient evidence to characterize what was said between the two as "counseling". Roszko was also discharged on the breach of recognizance charge at the invitation of the Crown. The reason is unclear as the Crown file is not available and very little was said at the preliminary inquiry. Either Conrad was not available as a witness or the charge was incorrectly worded. There is no information available to indicate what the facts of the alleged breach of recognizance were. Roszko was ordered to stand trial on the two pointing a firearm charges, the December 1, 1993 offences involving Bradley, and an additional count of attempt to obstruct justice that occurred on December 2, 1993.

The attempt to obstruct justice had to do with Roszko contacting a cousin to have him conceal the shotgun and film after his arrest. Evidence of this charge had been led at the preliminary inquiry, although it was the subject of a separate information.

The trial on these matters commenced on June 3, 1996 in Queen's Bench before a judge and jury. On June 4, 1996, the Crown sought a mistrial or, in the alternative, an adjournment, as Bradley did not attend court as anticipated. The

circumstances surrounding Bradley's non-attendance at trial are described below.

In the week before the trial, Crown was advised that Bradley had gone to British Columbia and was not coming back for the trial. The Crown made an application in Queen's Bench to get a witness warrant, as his whereabouts for the week before the trial was known. Bradley was arrested and transported to Edmonton Remand Centre the weekend before the trial commenced. The Crown Prosecutor's recollection is that he met with Bradley at the Remand Centre before court commenced on June 3, 1996. Bradley convinced the Crown that the information police provided was a misunderstanding and that he was prepared to testify. As a result, the Crown agreed to have the trial judge release Bradley. He advised Bradley who to contact in order to secure a hotel room for the night. The trial commenced with other witnesses on June 3, with Bradley scheduled to testify the next day. Bradley did not attend and had not phoned to get overnight accommodations.

The trial judge refused the Crown's requests for a mistrial and adjournment on June 4, 1996. The trial judge cited Bradley's failure to attend court for his own charges and the lack of certainty that Bradley could be located in a timely fashion to allow the trial to continue. The Crown had no choice but to call no further evidence resulting in the trial judge directing an acquittal on all counts.

The Crown initiated an appeal from the trial judge's decision not to grant a mistrial or adjournment. Ultimately, that appeal was abandoned on September 4, 1996, as service of the Notice of Appeal was not completed within the 30 day time period. Appellate counsel was not hopeful of an extension on service, as there was no good explanation provided as to why the police were unable to effect service. As well, by late August 1996 Bradley was still nowhere to be found, with warrants outstanding in B.C. and Alberta.

**March 11, 1994**

Charge: Speeding ticket.  
Result: Convicted. Conviction appealed. Convicted again at second trial. Second appeal unsuccessful.  
Material available: The Information and appeal file.

After numerous adjournments, Roszko was forced to proceed to trial on November 24, 1994 and was convicted. His application for an adjournment on November 24, 1994 was not granted. Roszko appealed his conviction at Queen's

Bench and was successful in obtaining a new trial on June 30, 1995. The conviction is overturned, on the grounds that the trial judge erred in not granting Roszko's adjournment request.

The Crown sought a further appeal from the Queen's Bench decision at the Court of Appeal. Because this was a summary conviction matter, the Crown had to show that this appeal was of sufficient importance before leave to appeal to the Court of Appeal would be granted. The Crown was unsuccessful in its application on September 14, 1995.

Roszko was ultimately convicted on the retrial on October 10, 1996. He unsuccessfully tried to appeal this second conviction.

Although the speeding ticket is of no great importance, it is interesting to see the degree to which even a minor matter involving Roszko was litigated.

#### **March 27, 1994**

Charge: Breach of a condition of a recognizance. Two counts of obstructing justice.

Result: Discharged on counts of obstructing justice at preliminary inquiry. Acquitted on breaching condition.

Material available: Transcripts of preliminary inquiry and trial.

RCMP charge Roszko with breach of a condition of a recognizance to have no contact with Arthur and Duncan. Duncan was a witness with respect to the assault against Arthur. The actual recognizance was a release document on the charges relating to Bradley. Additional charges were laid on September 21, 1994, alleging two attempts to obstruct justice.

The allegations were that Arthur (once), and Duncan (twice), attended at Roszko's farm to party with other friends and were not asked to leave by Roszko. As well, Roszko met with Arthur to discuss payment for the glasses that were broken in the assault described earlier. The breach of recognizance was alleged to have occurred between February 17, 1994 and March 27, 1994.

The attempt to obstruct justice charges related to each of these individuals. The charge involving Arthur alleged that Roszko offered to pay Arthur for the broken glasses so that Arthur would seek to have the assault charge withdrawn. The charge involving Duncan alleged that Roszko told Duncan not to speak to the police about being in contact with him and offering a bribe so that Duncan

would retract statements he had made to the police about Roszko committing an offence.

A preliminary inquiry was held September 22, 1994. Roszko was ordered to stand trial on the breach of recognizance charge but discharged on the two attempt to obstruct justice counts. The judge at the preliminary inquiry indicated the evidence was insufficient on those two charges to warrant an order to stand trial. In reviewing the transcript, Arthur was ambiguous as to why Roszko paid him \$200 in that it was either to facilitate a withdrawal of the assault charge or because Roszko was simply acknowledging his liability for breaking the glasses. There was no evidence led of a bribe to Duncan and all that was said to Duncan was that he shouldn't tell anyone about being out on Roszko's property.

The trial of the breach of recognizance was scheduled for June 26, 1995. The transcript reveals that only two witnesses out of six attended. Duncan and a corroborating witness attended court. Two important witnesses, including Arthur, had been served but did not attend. The trial judge did not grant an adjournment request, stating as part of his reasons that the nature of the breach was not serious. This was a case where Arthur and Duncan voluntarily attended at Roszko's premises and the Crown's case was based on Roszko not ordering them off his property. There were no threats or intimidation of the two alleged during the contact. The Crown elected not to call evidence as the seriousness of the allegations, without the missing witnesses, was greatly diminished.

#### **March 29, 1994**

Charge: One count of sexual assault. One count of sexual touching.

Result: Found guilty at trial, sentenced to five years. Conviction appealed, new trial ordered. Found guilty at second trial, sentenced to two and a half years.

Material available: Transcripts, Crown prosecution file, appeal file.

Between January 1, 1983 and December 31, 1989, Roszko sexually assaulted Edward on multiple occasions.

Edward was approximately 11 years old and the accused approximately 24 years old when the sexual assaults started. The initial sexual assaults consisted of the accused having the victim fondle his penis and the accused masturbating the victim. These acts occurred approximately once a week. This progressed over time to the accused performing fellatio on the victim and one time where the

accused attempted anal intercourse on the victim. The accused was unsuccessful in that instance because the victim resisted.

The victim did not report these acts to authorities until March 26, 1994 when he provided a statement to Mayerthorpe RCMP. Roszko was charged with two counts arising out of these incidents: sexual assault and sexual touching of a young person while being in a position of trust. A trial was conducted on September 28, 1995 and Roszko was convicted of sexual assault. Roszko was also found guilty of the sexual touching but the charge was conditionally stayed by the trial judge because of the legal principle preventing multiple convictions arising out of one set of facts. Roszko was sentenced to a five-year jail term.

Roszko successfully appealed his conviction and a new trial was ordered on June 6, 1997. The basis for overturning the conviction involved a defence mistrial application that the trial judge denied. The mistrial application had to do with the victim and one other Crown witness repeatedly adding gratuitous comments in their answers during testimony, straying into areas the trial judge had already ruled to be inadmissible. The Court of Appeal was of the view that the trial judge, if correct in dismissing the mistrial motion, did not cure the prejudice this testimony produced in his charge to the jury.

A new trial resulted in a conviction on April 12, 2000. He was sentenced to two and one half years imprisonment on the sexual assault and a conditional stay was entered on the sexual touching charge for the same reasons expressed earlier. Why the difference in sentencing between the two trials? In reviewing the sentencing transcript for the second trial the Crown sought a five to six year sentence. The Court found circumstances existed, in the reporting of the offence and in the victim's conduct towards the Roszko after the sexual acts had stopped, to conclude that the victim had not suffered long term harm. As a result, the Court considered a three-year sentence less 90 days of pre-trial custody on a 2:1 basis to be appropriate. The sentencing judge in the first trial made no such findings, nor did the defence argue it.

The Crown launched no appeal of the sentence. This is understandable given the Court's findings concerning long-term harm. In addition, a sentence of three years is not demonstrably an error that would support a successful appeal. The Appeals Branch Director was consulted on this issue.

Roszko filed a notice of appeal against conviction. His appeal was dismissed due to want of prosecution (not taking steps to advance the appeal) on October 16, 2001.

**January 1, 1995**

Charges: Assaulting Edward with a weapon (pepper spray).  
Possession of a prohibited weapon (pepper spray).  
Possession of a weapon for a purpose dangerous to the public peace (pepper spray).  
Causing a disturbance.  
One count of breach of recognizance.

Result: Assault and possession of prohibited weapon were stayed at trial, the remainder were withdrawn as arising from the same facts.

Material available: Preliminary inquiry transcript, interview with Crown, memo from Crown.

Roszko is charged with a number of offences arising out of a New Year's Eve function in Whitecourt.

The allegations were that, after he launched his appeal from conviction on the sexual assault charge, Roszko was released on conditions to abide by a curfew, keep the peace and be of good behaviour, and have no contact with Edward. On December 31, 1994, Edward went to a Whitecourt local bar to celebrate the New Year. He saw Roszko at the bar and viewed his attendance at the bar as an intimidation tactic by Roszko. It was alleged that Roszko rarely went out to the local bars. Edward alleged that Roszko and one of his associates assaulted him and that during the assault Roszko used pepper spray on him. This turned into a disturbance as the pepper spray forced people to leave the bar to avoid its effects.

A preliminary inquiry was conducted on April 12, 1995 where Roszko was ordered to stand trial on the first two counts listed above. It was conceded by the Crown prosecutor that the bulk of the other charges arose out of the same situation as the first two and that adding those charges would be considered "piling on." Crown sought a committal to stand trial on the count of breaching the no contact provision. However, the trial judge discharged the accused on that count because the facts of that breach were all contained within the assault with weapon complaint.

The Crown ultimately stayed the charges. The assigned prosecutor provided a 1996 memo to file explaining the reasons for the stay of proceedings and provided an email concerning his recollection of this prosecution. The trial was first scheduled for January of 1996 but was adjourned, at the Crown's request, on the basis that an essential witness was evading service of the subpoena. This witness was an independent witness to the events. In late February of 1996, the RCMP advised the Crown that this witness had been personally served but told the police that he would not attend court and would not testify if he were made to. This witness was believed to have some association with a close associate of Roszko.

This left the Crown in a position where the only witness for the Crown was the complainant (another witness could not be found and another had moved to Manitoba) while it was anticipated that Roszko would have several witnesses. These defence witnesses had testified at the bail hearing in favour of Roszko saying that it was the complainant who was the aggressor and the one who had used the pepper spray. A decision was made that there was no reasonable likelihood of conviction, given this witness situation. A stay of proceedings was entered February 28, 1996.

#### **April 5, 1999**

Charges: Charged under the *Federal Employment Insurance Act*.  
Result: Acquitted.  
Material available: Trial transcript, correspondence between Justice Canada and Edmonton Crown office.

Roszko is alleged to have applied for a second social insurance number under another name when he had previously been assigned one. This is a charge under the Federal Employment Insurance Act. The Federal Prosecution Service prosecuted this matter. The charge was laid on August 18, 1999. A trial was conducted on May 26, 2000, where Roszko was acquitted; on the basis that the Crown did not prove he had been the applicant on the second request for a social insurance number. The case for the Crown was based on finding Roszko's fingerprint on the application form.

#### **September 9, 1999**

Charges: Aggravated assault on Gregory.  
Assault with a weapon on Gregory.  
Assault with a weapon on Harold.

Pointing a firearm at Gregory and Harold.

Use of a firearm while committing the indictable offense of aggravated assault.

Result: Crown called no evidence, resulting in acquittal.

Material available: Transcript of Roszko's preliminary inquiry, transcript of preliminary inquiry and trial for Gregory and Harold, Roszko Crown file, and Gregory and Harold Crown file.

Roszko was charged with these offenses arising out of a September 9, 1999 incident at his Mayerthorpe farm.

The allegations were that Gregory and Harold had been out drinking, to the point where both were intoxicated to some degree. They decided, late in the evening, to go to Roszko's farm to vandalize the property. Harold drove to the property and went on foot towards the buildings. Gregory claimed he "chickened out" at this stage and stayed in the truck. Their truck and Roszko's barking dog woke Roszko. An audible alarm on his Quonset hut alerted him that someone was approaching the buildings on the property.

Roszko went out to investigate, armed with a 12-gauge shotgun. He was able to apprehend Harold, tied his hands together with rope and took him back to the vehicle. When Gregory noticed someone coming towards the vehicle he left the vehicle and hid. Roszko knew there was someone with Harold. He had Harold call out to have Gregory surrender. Gregory did so. Roszko unsuccessfully attempted to tie Gregory's hands together. Roszko then ordered both to walk back towards Roszko's home, using the gun to intimidate them. A warning round was fired. On the way back to his home, Roszko was alleged to say words to the effect that "if Wiebo Ludwig can get away with it, then so can I...I got you where I want you".

Gregory was convinced Roszko was planning to shoot him. He challenged Roszko to either shoot him or else he would leave in Harold's truck. Harold followed suit. Roszko fired another shot, missing Gregory, but pellets lodged in Gregory's face and left arm. Gregory feigned serious injury and tried to get to the truck. Roszko ordered the two into the box of the truck, saying he would drive them to the hospital. According to Gregory and Harold, Roszko instead drove further into the property. The two overpowered him when he stopped and took the shotgun away. Gregory and Harold then beat Roszko, using the shotgun to deliver blows to the point where the gun was broken into pieces. They left Roszko at his property and drove to the hospital. They took the pieces

of the shotgun and hid it in some bushes at the hospital. They told the attending police officer about the gun hidden at the hospital property.

The Roszko preliminary inquiry was held over a number of days, commencing on November 24, 2000 and concluding on March 23, 2001. Roszko was ordered to stand trial on all five counts. At the October 16, 2003 trial the Crown called no evidence, indicating in Court that the Crown was not satisfied that there was a reasonable likelihood of conviction.

Both Gregory and Harold had lied to the court during the preliminary inquiry as to why they went to the Roszko property on September 9, 1999. During the preliminary inquiry, both admitted on cross-examination to their lie. Harold's statement to the police, and initial testimony, was to the effect that they were on the property so he could talk to Roszko about a friend of Harold's who owed Roszko some money. Harold was going to offer him a way to pay off this friend's debt. At the preliminary inquiry, Harold said he had told Gregory that the reason for going there was to steal gas. Instead, he admitted that the motive for going there was to vandalize the property. Gregory testified that the purpose for going to the Roszko property was to get gas but, after cross-examination, admitted that the real reason was to break some windows.

These were the two critical witnesses for the Crown and their lies related to important issues. The Crown's case against Roszko was seriously weakened, to the point where the decision was made to call no evidence at trial.

Roszko also called the police, as well as his mother and stepfather, that night. The police testified at the trial of Gregory and Harold that the scene of the crime was altered by the time they attended, with the removal of any evidence of a gunshot. Roszko called police a week after this incident, asking them to search a particular location on his property, as he felt there might be a weapon there that had been overlooked in their earlier investigations. Roszko alleged that Harold was armed with a machete when he first confronted him. When police investigated, they found a large machete knife hidden on the ground 15 feet into some dense bush that Roszko had directed the officer to. On October 6, 1999, Roszko reported to police that he found an aluminum bat on his property and wanted the police to retrieve it for evidence. Gregory and Harold denied having any weapons with them that night.

Gregory and Harold were also charged out of this September 9, 1999 incident. They faced charges of aggravated assault and assault of Roszko with a weapon.

Harold was also charged with pointing a firearm at Roszko and uttering a threat. The allegations against these two bear some resemblance to the facts alleged against Roszko but with some significant differences. Roszko alleged Harold had a machete knife when Roszko first dealt with him. He said he had difficulties with his phone to explain why he did not call the police right away. Roszko said he fired a shot at Gregory only because Gregory was being aggressive and Roszko feared for his safety. He claimed that after he was beaten up, Harold took the shotgun, pointed it at the base of Roszko's skull and told him he was going to kill him. Harold pulled the trigger but it misfired. The gun was broken into pieces after that.

Their preliminary inquiry was conducted on March 24, 2000 and the two were ordered to stand trial on all counts. A trial was conducted on December 11 to 14, 2000. Gregory and Harold were acquitted of all counts. The trial judge specifically rejected the evidence of Roszko and instead found Gregory and Harold were acting in self-defence and feared for their lives when they struck Roszko in an effort to disarm him and to get away.

#### **December 29, 2004**

Charges: Two counts of mischief.  
Result: Withdrawn after his death.  
Material available: Prosecution file.

On August 19, 2004, a meter reader for Epcor drove to the front driveway of the Roszko property and drove over a hidden spike belt. Three tires were damaged as a result. On August 28, 2004, a census taker for Elections Canada pulled up to the Roszko residence gate. Seeing a no trespass sign, the driver backed out to find all four tires damaged by a hidden spike belt. These charges were scheduled to be in Mayerthorpe Provincial Court for plea on April 28, 2005 and were withdrawn on that date.

#### **Dangerous Offender Considerations**

The Criminal Code outlines the requirements before an offender may be declared a dangerous offender. A dangerous offender application may only be made after a finding of guilt on a serious personal injury offence and is made at the sentencing phase of that prosecution. In general terms, before one can be declared a dangerous offender, the offender must demonstrate a pattern of significant criminal conduct that would lead the Court to conclude that the offender cannot control his/her behaviour and that there is a future likelihood of

significant criminal conduct as a result. The pattern of significant criminal conduct required is generally proven by showing a history of violent offences.

The effect of finding an offender a dangerous offender is that the offender will then be sentenced on the serious personal injury offence to detention in a penitentiary for an indeterminate period. The National Parole Board on a review may grant the offender parole but only after the offender has been in custody for at least seven years.

After his first conviction on the sexual assault Roszko was “flagged” as a potential dangerous offender. Flagging someone as a potential dangerous offender is an internal process that takes place within the prosecution service of Alberta Justice. Personnel are tasked with identifying offenders whose most recent conviction and criminal history disclose the possibility of a dangerous offender application in the event of a future conviction. When someone is flagged as a potential dangerous offender efforts are made to collect and store prosecution files as they will be needed for any future application. As well, a databank of flagged offenders is maintained to alert prosecutors that they are dealing with a potential dangerous offender.

Roszko was identified as a potential dangerous offender on the basis that his sexual assault conviction was of a nature that fit within the criteria for flagging. However, actually proceeding on a dangerous offender application against Roszko was never a possibility. The only time that an application could have been launched was at the time of his sexual assault conviction. At that time there was no history of proven criminal conduct that would amount to a successful application. If he were to be convicted of another serious personal injury offence, particularly one of a sexual nature, the feasibility of a dangerous offender application would have been examined. A psychiatric assessment supporting a dangerous offender application would have been necessary.

Although a dangerous offender application may be launched with another serious personal injury offence conviction, the Crown must meet a high standard for a dangerous offender application to succeed. The Supreme Court of Canada has stated that the dangerous offender legislation is targeted to apply to “a very small group of offenders whose personal characteristics and particular circumstances militate strenuously in favour of preventative incarceration.”

Our Court of Appeal has stated in *R. v. Neve*,

“Not everyone who is a criminal or for that matter a danger to the public is a dangerous offender. In the spectrum of offenders, the dangerous offender legislation is designed to target—and capture—those clustered at or near the extreme end.”

## **Conclusions**

Although Roszko faced just under forty criminal charges during his life, it should be noted that a large number of his charges involve only three prosecutions. The prosecution involving Bradley had eight, all reported at one time to the police. The January 1, 1995 incident involving Edward resulted in five charges. Five charges were laid arising out of the incident involving Gregory and Harold. It is not the case that Roszko was in court on an annual basis on new criminal charges.

Also important to note, given the tragic events of March 3, 2005, that after the January 1, 1995 incident involving Edward there were only three reports of criminal activity concerning Roszko. There is the alleged attempt to obtain a second social insurance number, the incident involving Gregory and Harold (where Gregory and Harold attend at his residence precipitating the events), and the most recent mischief charges.

Aside from one prosecution, the cases where there was an acquittal, a withdrawal or a stay of proceedings all involved witness issues that were largely outside the control of the Crown prosecutor. Many cases did not proceed because witnesses did not attend. In one, the two key witnesses lied about important issues. On the prosecution involving Bradley, the Crown prosecutor made a judgment call to agree to release Bradley after speaking with him. The prosecutor cannot be faulted for making that decision. He had articulable reasons to make the decision and the correctness of that decision cannot be assessed based on the eventual result.

The only case where an acquittal could be categorized as an error on the part of the prosecution service is the Arthur assault, where witnesses were subpoenaed for the wrong date and this was not discovered until the day of trial. This is an unusual occurrence in my experience.

There were numerous other witnesses who did not attend court as required, but there is no evidence in the material reviewed to suggest that their non-attendance was due specifically to threats or intimidation. This was never suggested in court. The Crown prosecutor who conducted the majority of these prosecutions indicated that, although there were suspicions of threats or intimidation of witnesses, what was reported was too nebulous to allow for any action on the part of the Crown or police.

The only concrete suggestion of intimidation of a witness is the January 1, 1995 incident involving Edward, where Edward claimed Roszko was attempting to intimidate him by attending at a Whitecourt bar. However, several witnesses testified at Roszko's bail hearing, saying that Edward was the aggressor. Roszko was already at the bar when Edward arrived. There was no evidence led in that case that Roszko went to the bar with a view towards intimidating Edward.

The Crown vigorously prosecuted Roszko to the fullest extent possible. There are a number of examples in these prosecutions where the Crown took extra or unusual steps to pursue the prosecution. They include:

- Proceeding by indictment on the simple assault of Arthur.
- Seeking leave to appeal to the Court of Appeal when a new trial was ordered on the March 11, 1994 speeding ticket.
- Obtaining a witness warrant for Bradley the week before trial, anticipating his non-appearance.
- Attempting an appeal to the Court of Appeal from the trial judge's refusal of an application for a mistrial or adjournment on the Bradley trial.

At no time did Roszko meet the criteria to be considered for a dangerous offender application.

My review of transcripts revealed that the trials or preliminary inquiries that were conducted were all hard fought contests.