

Case Name:
R. v. Rajroop

Between
Her Majesty the Queen, and
Kristian Rajroop

[2010] O.J. No. 6112

Ontario Court of Justice
Toronto, Ontario

J.C. Moore J.

Heard: February 3, 2010.
Oral judgment: February 3, 2010.

(38 paras.)

Charges: Drive over .08, Careless Driving, Fail to Remain

Counsel:

J. Smith Joy: Counsel for the Crown.

P. Aubin: Articling Student for the Accused.

RULING ON APPLICATION

1 J.C. MOORE J. (orally):-- As a result of an encounter with the police on November 23rd 2008, the applicant, Mr. Kristian Rajroop, was charged with the criminal offence of over .80 and the offences of careless driving and fail to remain, contrary to the Highway Traffic Act.

2 A trial date for this matter has been set for February 22nd 2010, some 15 months after the alleged event. An application has been filed on his behalf, alleging a breach of his s. 11(b) right to be tried within a reasonable time, and the remedy sought is a stay of proceedings pursuant to s.

24(1) of the Charter. The application was heard January 22nd 2010, and I adjourned the matter to today's date, February the 3rd 2010 for judgement. Both Ms. Smith Joy, on behalf of the Crown, and Mr. Aubin, on behalf of Mr. Rajroop, filed material with the court and made submissions. In addition, Mr. Rajroop was cross-examined on his affidavit. It is conceded on behalf of the Crown that the delay of 15 months is such that an examination of the cause of the delay is called for in this case.

3 The factors to be considered are well-known and were expressly set out in the Supreme Court of Canada's decisions of Askov and Morin in 1990 and 1992 respectively.

4 Section 11(b) of the Charter states:

"Any person charged with an offence has the right to be tried within a reasonable time".

5 Section 24(1) of the Charter states:

"Any one whose rights or freedoms as guaranteed by this Charter have been infringed or denied may apply to a court of competent jurisdiction to obtain such remedy as the court considers appropriate and just under the circumstances".

6 So far, the only remedy that is regularly sought and granted for a finding of a s. 11(b) breach is a stay of proceedings. And, it is well-settled law that the onus rests with the applicant to show on a balance of probabilities that an unreasonable delay has occurred, such that his s. 11(b) right has been breached. However, it is also incumbent on the Crown at times faced with uncontroverted facts to justify, explain, and at times adduce evidence to account for the delay.

7 Mr. Rajroop is facing three charges as a result of an incident that is alleged to have occurred on November 23rd 2008. It is alleged that he:

- (1) On or about the 23rd day of November in the year 2008 in the City of Toronto, having consumed alcohol in such a quantity that the concentration thereof in his blood exceeded 80 milligrams of alcohol in 100 millilitres of blood, did operate a motor vehicle, contrary to the Criminal Code.
- (2) That he, on or about the 23rd day of November in the year 2008 in the City of Toronto, did commit the offence of careless driving, to wit: northbound Don Valley Parkway, contrary to the Highway Traffic Act, s. 130.
- (3) That he, on or about the 23rd day of November in the year 2008 in the City of Toronto, did commit the offence of fail to remain, to wit: northbound Don Valley Parkway, contrary to the Highway Traffic Act, s. 200(1)(a).

8 A one-day trial date to hear this matter has been set for February 22nd 2010, thus the total delay in this matter between the date of the alleged offence and the trial date would be some 15 months.

In order to ascertain whether or not the delay is reasonable, the following factors are to be considered:

- 1) The length of the delay.
- 2) Waiver of time periods.
- 3) The reasons for the delay, including:
 - (a) Inherent time requirements of the case.
 - (b) Actions of the defendant.
 - (c) Actions of the Crown.
 - (d) Limits on institutional resources.
 - (e) Other reasons for the delay.
- 4) Prejudice to the defendant.

9 Each case, of course, is driven by its particular circumstances and unique facts. The following is a chronology of events as outlined in the applicant's factum and supported by documentation and transcripts:

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November 23rd 2008: defendant arrested, charged, and released on a promise to appear.

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December 5th 2008: the Information is sworn.

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January 8th 2009: the first appearance, disclosure provided and matter adjourned to arrange Crown pre-trial.

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January 29th 2009: second court appearance and matter adjourned to arrange for a Crown pretrial.

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February 26th 2009: third court appearance and matter adjourned for the purpose of arranging a Crown pre-trial.

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March 26th 2009: fourth court appearance and trial date set for February 22nd 2010, one day.

10 Other facts are not in dispute:

- (1) The applicant, Kristian Rajroop, had retained counsel prior to his first court appearance.
- (2) Faxes were sent to the Crown's office on January 8th and March 20th 2009 requesting a date for a Crown pre-trial.
- (3) In the interim, a Crown pre-trial request form was filled out by a representative of the defendant.
- (4) The Crown's office contacted the office of the applicant on March 20th 2009 and a Crown pretrial was arranged for March 23rd 2009. Also, there is some dispute as to whether an attempt was made by the Crown's office on January 23rd 2009 to arrange a Crown pre-trial by leaving a telephone message.
- (5) Other than the dates of February 8th and 10th 2010, when counsel was not available, the earliest date available and offered for a one-day trial was February 22nd 2010.

11 In this case, the total length of delay is some 456 days. Both parties were in a position as of March 26th 2009 to set a trial date, and the date offered and agreed upon was some 11 months in the future.

Waiver

12 The Crown concedes that at no time did the applicant waive his s. 11(b) right to be tried within a reasonable time.

Reasons for the Delay

13 The period of time between November 23rd 2008 and January 8th 2009 is one of 46 days; i.e. six and a half weeks. The Crown submits that the whole period should be categorized as intake time and neutral.

14 On behalf of the applicant, his counsel, Mr. Aubin, argues that there is no justification or explanation to account for such a lengthy period of time to occur between charge and first appearance, especially in such a simple and straightforward case such as this. Mr. Aubin suggests a more reasonable time would be one month at most, not six and a half weeks.

15 Ms. Smith Joy disagrees and submits that that time is required but offers no information to back up that claim. So Mr. Aubin submits that somewhere around three weeks of that time be seen as institutional, not inherent delay.

16 The next period of time is between January 8th 2009 and March 26th 2009. On behalf of the applicant, Mr. Aubin points out that on the first appearance date of January 8th 2009 disclosure was

provided. Counsel was retained and in a position very soon thereafter to set a trial date. It is as a result of Crown policy that a Crown pre-trial had to be held prior to the setting of a trial date. This did not take place until March 23rd 2009. Mr. Aubin argues that a Crown pre-trial should have taken place and could have taken place prior to January 29th 2009; i.e. the second court appearance, so that on that date a trial date could have been set. The extra 56 days should be categorized as Crown delay.

17 On behalf of the Crown, Ms. Smith Joy argues one must look at that overall time period; i.e. two and a half months, and see what was accomplished. Full disclosure was provided, a Crown pre-trial held, and a trial date was set. She submits that the pre-trial is a necessary and integral event in the overall process that is recognized for the most part by all to make for a more efficient and fair system. Ms. Smith Joy submits that the two and a half month period should be categorized as intake or inherent delay, and therefore, neutral.

18 The final period of time consists of 333 days; i.e. from March 26th 2009 to February 22nd 2010. It is Mr. Aubin's position that this is nothing more and nothing less than institutional delay and is unacceptable, and hence unreasonable, for a simple, straightforward, one-day trial such as this.

19 Ms. Smith Joy submits that in fact this case involved not only allegations of drinking and driving but also an accident, and it falls just outside the eight to ten month Askov timeframe. Ms. Smith Joy submits that when one looks at the overall picture here; i.e. two and a half months between the first court appearance and the date when both parties were in a position to set a trial date, the allegations pertaining to the event, the fact that the 11 months is just outside the eight to ten month guideline, and the need to be somewhat flexible in the application of time requirements, that the total delay is within the acceptable range for this particular matter and not unreasonable.

Actions of the Accused and Crown

20 The Crown concedes and the applicant submits that no blame can attach to Mr. Rajroop or his counsel for any delay in this matter. If anything, his actions are that of an accused who takes the matter seriously, and rather than attempt to delay this matter, even in any subtle manner, he and counsel have attempted to move this matter along as quickly as the system allows. Within all three stages of this matter Mr. Aubin points out that the applicant had retained counsel prior to the first appearance, requested disclosure almost immediately, and was in a position to set a trial date by January 29th, had conducted the required pre-trial within three days of being notified, and then set a trial date within three days of that pre-trial. As well, other than the dates of February 8th and 10th 2010, the first available date offered was accepted; i.e. February 22nd 2010.

21 Ms. Smith Joy submits that the Crown cannot be faulted for insisting on a Crown pre-trial in this matter. As well, the fact that it took some time before the Crown pre-trial was conducted was the product of miscommunication, not to be blamed on the Crown.

22 Mr. Aubin points out that it took three requests and two court appearances on the part of the applicant before the Crown took the necessary steps in arranging for a Crown pre-trial, and that much of the two and a half month delay must lie at the feet of the Crown.

Prejudice to the Accused

23 On the issue of prejudice, an affidavit of the applicant was filed on the application and he was cross-examined on that affidavit by Ms. Smith Joy. It is submitted on his behalf that he has suffered prejudice, both actual and inferred, that has been exacerbated by the additional and unwarranted delay in this case.

24 As stated in his affidavit, Mr. Rajroop is 24 years of age with no criminal record. In April 2008 he completed an Honours degree in Criminology at York University. He has written his LSATs and hopes to enter law school in September of this year. He was employed as a correctional officer from July 2008 to September 2009 at the York Detention Centre, when the facility closed. He had applied for and was on a training list for possible employment through the Ministry of Correctional Services; however, in a letter dated November 27th 2009, this offer to attend the training session was rescinded and his application put in abeyance pending the outcome of his outstanding charges.

25 He did acknowledge under cross-examination that any stress, hardship, anxiety, family problems, legal fees, Law Society consequences, et cetera, for the most part flowed from being charged and would have existed regardless.

26 On behalf of the Crown Ms. Smith Joy argues that any actual prejudice suffered by the applicant has been shown to flow from his being charged and not from any additional delay, and that it cannot be inferred in this case that Mr. Rajroop has suffered prejudice due to any delay.

27 Mr. Aubin counters by saying that additional appearances were caused by the Crown, that whatever prejudice is suffered by being charged is only enhanced by the additional delay, and had the matter been favourably disposed of prior to mid-November 2009, then the applicant may very well have remained in the training program.

28 I am being urged by Ms. Smith Joy to conclude that the applicant has not shown on the balance of probabilities that his right to be tried within a reasonable time has been breached. She submits that the cases, starting from Askov, Morin, etc., provide a guideline and framework that must be applied with some degree of flexibility, taking into consideration both the law and the unique circumstances of each case. She asks, therefore, that the application be dismissed.

29 On behalf of the applicant, Kristian Rajroop, Mr. Aubin argues that it has been shown that this is a clear case of unexplained, unjustified and unwarranted delay caused by the actions of the police, the Crown and the overall system. He submits that the extra delay has exacerbated an already bad situation in light of the overall circumstances of the applicant. By his calculation, the total delay is

121 to 131 months, well beyond the eight to ten month guidelines established by Askov. Taken as a whole, that delay is unreasonable and, he submits, that a finding that the applicant's right to be tried within a reasonable time, as per s. 11(b), has been breached. As the only remedy that flows from that breach is a stay, then pursuant to 24(1) he is seeking a stay of the proceedings.

30 I have reviewed the relevant case law, considered the submissions of counsel, and taken into account the particular circumstances of this matter in coming to a decision in this matter. To my mind, this is a pretty simple and straightforward matter. The process from the beginning; i.e. the arrest, to the end; i.e. the trial date, can be described as uncomplicated with very few complaints or difficulties experienced by either the Crown or the defence. It is simply the length of time that it has taken and will take that is the cause for concern.

31 This matter is simplified when one breaks it up into the three time periods laid out by Mr. Aubin:

- 1) Time of arrest to the first appearance.
- 2) First appearance to date upon which the trial date is set.
- 3) Time between the date the trial date is set and the trial date.

32 As indicated above, the overall delay is one of 15 months. The guidelines established by Askov and following set eight to ten months in Provincial Court as an acceptable timeframe within which a matter such as this should be disposed. It is not a rigid and ironclad timeframe but is flexible depending upon each case and its particular circumstances. On the other hand, the Crown cannot necessarily rely upon the excuse that the lapse of time is just beyond the guidelines and therefore find as acceptable and reasonable a timeframe that extends beyond that guideline. As well, it has been held in many cases that the times to disposition should be decreasing not increasing, and it is all about prioritizing within the justice system as a whole.

33 In this matter I agree with the submissions of Mr. Aubin, that on its face the first time period is overly long and no explanation or justification has been proffered by the Crown. I would think that at most three or four weeks is a reasonable timeframe within which Mr. Rajroop would have first appeared.

34 As well, when one looks at the second period, I find that the Crown has to be faulted for approximately one month of extra delay in the time required to set and have a Crown pre-trial.

35 Looking at the third period, no explanation is proffered to explain the 11 months, other than that the system could not accommodate an earlier date. Trial counsel cannot be expected to be available on each and every day offered, so the fact that counsel was not available on February 8th or 10th is not helpful to the Crown.

36 So what we have in this case is a situation whereby the total delay that can be attributed to the Crown and the system is 12 to 13 months.

37 We have an accused and his counsel who have done nothing but attempt to move this matter along. The matter appears to be a normal over .80 and fail to remain case, with no Charter applications, save and except for the 11(b) application. On the issue of prejudice, Mr. Rajroop did lose possible employment, and the longer a matter takes to complete with additional appearances, the greater the anxiety, stress and cost.

38 I find, therefore, taking into consideration all of the circumstances of this case, the applicable case law and submissions, that the 12 to 13 month delay is not reasonable, I find that the applicant's right to be tried within a reasonable time, pursuant to s. 11(b), has been breached, and the only appropriate remedy would be to stay the proceedings pursuant to s. 24(1) of the Charter.

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Email Request: Current Document: 1

Time Of Request: Tuesday, March 27, 2012 18:18:00