

R. v. Reybroek
Between
Her Majesty the Queen, and
Reybroek

[1998] O.J. No. 2586

Ontario Court of Justice (Provincial Division)
Babcock Prov. J.

March 4, 1998.
(3 pp.)

Motor vehicles — Regulation of vehicles and traffic — Rate of speed, evidence and proof — By radar equipment or other speed detection device — Disclosure of information.

This was a request by the accused for a stay of proceedings on this charge of speeding under the Highway Traffic Act. In September, 1997, the accused requested disclosure of 12 items he believed essential to prepare for his defence. The prosecutor forwarded the list to the enforcement agency. The accused believed that the prosecutor had failed to provide full disclosure.

HELD: The request for a stay was denied. The accused was not entitled to disclosure simply by asking for it. He had not laid a rational basis for the disclosure requested. Ten of the 12 items requested were frivolous, unreasonable and irrelevant to the preparation of a defence on a charge of speeding. The prosecutor was ordered to disclose the brand name, manufacturer, make, model and serial number of the radar device used for the incident before the court. Field notes of an officer for the particular incident before the court were also relevant.

Counsel: "

No counsel mentioned.

¶ 1 **BABCOCK PROV. J.:**— On Wednesday, December 17/98, the defendant requested a stay of the July 7, 1997 charge of speeding contrary to the Highway Traffic Act, section 128.

¶ 2 The defendant Todd Reybroek represents himself and Ms. Susan Landine represents the Crown. Mr. Larry Green is the Provincial Prosecutor.

¶ 3 The defendant's request for a Stay is a direct result of his belief that the prosecutor has failed to provide full disclosure.

¶ 4 The defendant, requested by a letter dated September 9/97, a list of twelve items of disclosure that he deemed essential to prepare for his defence. He assumed that the provincial prosecutor -- Mr. Green agreed that the request was relevant because Mr. Green had forwarded the request to the police officer and never responded directly to the defendant that the request was irrelevant. This assumption appears to be the central point where each side differs in opinion.

¶ 5 It is the defendant's belief that these twelve items of disclosure are vital for him to prepare a full answer and defence and further that this disclosure should be provided in its entirety by the provincial prosecutor.

¶ 6 The provincial prosecutor did not deem the list of twelve items to be relevant or irrelevant when the request was initially received. It is his position that any disclosure requests will be given to the enforcement agency for determination of what they will provide. Once the disclosure is received then the provincial prosecutor will vet what has been received to determine relevance.

¶ 7 The twelve items in question include the following:

- 1) the brand name, manufacturer, make, model, and serial number of the radar device used on the date in question;
- 2) a copy of radar manual and any amendments or addendum;
- 3) copies of any and all police manuals or other training documents for the devices or guidelines used particular to the radar device in question;
- 4) a written description of the course outline for any training courses used to educate or train officers in the use of the radar used in question including but not limited to the number of classes required, the length of the classes, the student size of the classes as well as the qualifications of the teachers/instructors;
- 5) in the event that the radar device used (or any parts, antennae or related equipment) are permanently mounted in the police cruiser in question, to provide a work order indicating that the radar or any of its related components were in fact installed in the police cruiser in question;
- 6) written confirmation that the radar itself or its components had not been removed, moved or otherwise tampered or interfered with between the time of manufacture and the time of installation and between the time of installation and the date in question;

- 7) any and all service records or maintenance logs with respect to the radar device or any of its components;
- 8) any and all service records or maintenance logs with respect to the cruiser or any of its components of the vehicle in question;
- 9) copies of the field notes of Officer No. 6498 for the day of July 7/97;
- 10) written confirmation of the courses attended by Officer No. 6498 with respect to training, education, instruction in the use, operation and maintenance of the radar device in question;
- 11) written confirmation of the number of tickets or offence notices written by Officer No. 6498 in the six months prior to July 7/97, one month prior to July 7/97, one week prior to July 7/97 (broken down on a day by day basis), the day of July 7/97, the week after July 7/97 (broken down day by day), the month following and six months following July 7/97;
- 12) copies of certificates, diplomas, report cards or course evaluation sheets with respect to Officer No. 6498 in the context of any courses he has attended as a police officer in the use, operation, training and maintenance of the radar device in question.

¶ 8 In reviewing the decision contained within *Regina v. Anutooshkin*, [1994] B.C.J. No. 1871:

... the accused was not entitled to disclosure merely upon demand. The right to have material disclosed is dependant upon whether it is relevant. The court must consider whether there is reasonable possibility that the material in question could assist the defence ...

¶ 9 In this case, the Court finds that the defendant, Mr. Reybroek is not entitled to disclosure simply by requesting it.

¶ 10 As in *Regina v. Longmire*, the defendant has not laid a rational basis or factual foundation for the disclosure requested.

¶ 11 In the case of *Regina v. Stinchcombe*, [1991] 3 S.C.R. 326, the following general principles are described:

the Crown must disclose everything in its possession that's relevant to the charges; the Crown has no duty to disclose that which is clearly irrelevant; and that the Crown cannot disclose what it doesn't have.

¶ 12 The Court finds that the Provincial Prosecutor did not deem the list of twelve items relevant simply by his action of forwarding the disclosure request to the enforcement agency. At no time did the Provincial Prosecutor admit to finding the list of

twelve items relevant. He was very direct in his response that he does not tell the enforcement agency what to disclose. The Provincial Prosecutor passes on to the enforcement agency all disclosure requests for their consideration of further disclosure which may be available to be provided to him. Once further disclosure is received then he vets this for relevance.

¶ 13 The Court agrees with both the defendant and the Crown that the Provincial Prosecutor did not respond directly and clearly to the defendant regarding the relevance of the disclosure request of additional items requested but not provided.

¶ 14 The Provincial Prosecutor is ordered to clearly disclose to Mr. Reybroek the brand name, manufacturer, make model, and serial number of the radar device used for the July 7/97 incident before the court.

¶ 15 The Court deems all other items numbered two through twelve (except item 9 the field notes of Officer No. 6498 for the particular incident which is before the court) to be frivolous, unreasonable and irrelevant. None of these items are required to prepare a defence to this charge of speeding.

¶ 16 The defendant's request for a stay is denied and the matter will proceed March 27, 1998 at 10:30 in courtroom No. 5.

BABCOCK PROV. J.