



SUPREME COURT OF CANADA

CITATION: R. v. Boulanger, 2022
SCC 2

APPEAL HEARD: February 9,
2022

JUDGMENT RENDERED:
February 9, 2022

DOCKET: 39710

BETWEEN:

Her Majesty The Queen
Appellant

and

Marc-André Boulanger
Respondent

OFFICIAL ENGLISH TRANSLATION

CORAM: Wagner C.J. and Moldaver, Karakatsanis, Côté, Brown, Rowe, Martin, Kasirer and Jamal JJ.

UNANIMOUS Kasirer J.

JUDGMENT READ

BY:

(paras. 1 to 13)

NOTE: This document is subject to editorial revision before its reproduction in final form in the *Canada Supreme Court Reports*.

Her Majesty The Queen

Appellant

v.

Marc-André Boulanger

Respondent

Indexed as: R. v. Boulanger

2022 SCC 2

File No.: 39710.

2022: February 9.

Present: Wagner C.J. and Moldaver, Karakatsanis, Côté, Brown, Rowe, Martin, Kasirer and Jamal JJ.

ON APPEAL FROM THE COURT OF APPEAL FOR QUEBEC

Constitutional law — Charter of Rights — Right to be tried within reasonable time — Framework set out in Jordan for determining infringement of s. 11(b) of Canadian Charter of Rights and Freedoms applied — Characterization of two particular delays — Stay of proceedings entered by trial judge upheld.

Cases Cited

Applied: *R. v. Jordan*, 2016 SCC 27, [2016] 1 S.C.R. 631; **referred to:** *R. v. G.F.*, 2021 SCC 20; *R. v. Rice*, 2018 QCCA 198; *R. v. Cody*, 2017 SCC 31, [2017] 1 S.C.R. 659; *R. v. K.G.K.*, 2020 SCC 7; *R. v. K.J.M.*, 2019 SCC 55.

Statutes and Regulations Cited

Canadian Charter of Rights and Freedoms, s. 11(b).

APPEAL from a judgment of the Quebec Court of Appeal (Chamberland, Moore and Cournoyer JJ.A.), 2021 QCCA 815, [2021] AZ-51766617, [2021] J.Q. n° 5447 (QL), 2021 CarswellQue 6162 (WL Can.), affirming a decision of Garneau J.C.Q., 2019 QCCQ 16135, [2019] AZ-51770107, [2019] J.Q. n° 27825 (QL), 2019 CarswellQue 18799 (WL Can.). Appeal dismissed.

Jason Vocelle Lévesque and Jade Coderre, for the appellant.

Nicholas St-Jacques and Lida Sara Nouraie, for the respondent.

English version of the judgment of the Court delivered orally by

[1] KASIRER J. — The Crown appeals from a majority decision of the Quebec Court of Appeal upholding, in favour of the respondent, a stay of proceedings entered because of the violation of his constitutional right to be tried within a reasonable time. The majority found a net delay of 35 months and 2 days (1,066 days), which exceeds the ceiling set in *R. v. Jordan*, 2016 SCC 27, [2016] 1 S.C.R. 631.

[2] The issue in the appeal is whether two particular delays — a first period of 84 days and a second of 112 days — must be attributed to the defence because of its conduct.

[3] *With regard to the period of 84 days*, we agree with Chamberland J.A., dissenting in the Court of Appeal, that the delay between March 1 and May 24, 2018 resulted from illegitimate defence conduct and must therefore be attributed to the respondent.

[4] It is true that the characterization of delay is a question of law and that the trial judge was not bound by the respondent's admission in this regard. However, the trial judge did not provide any explanation, even an implicit one, to clarify why he was rejecting the admission for this period (reasons of Chamberland J.A., at para. 173). Since he chose to go against the parties' suggestion, and in the absence of submissions by them on this specific point, it was especially important that the trial judge provide reasons explaining what he had decided and *why* (see *R. v. G.F.*, 2021 SCC 20, at paras. 71-74). With respect, he did not do so.

[5] Moreover, as the dissenting judge suggested, it is not sufficient that the step taken by the respondent be legitimate for the delay not to be attributable to him. In this case, it is the *manner* in which the defence conducted itself with respect to its motion for an unredacted copy of the information that was illegitimate, particularly because of how late that motion was brought. It was not until 15 months after being given the redacted document that the defence decided to bring its motion, even though the parties had already been debating the redaction of other documents for several months (reasons of Chamberland J.A., at paras. 179-84, properly relying in particular on *R. v. Rice*, 2018 QCCA 198, at para. 60 (CanLII); see also *R. v. Cody*, 2017 SCC 31, [2017] 1 S.C.R. 659, at para. 32).

[6] In the circumstances, the entire 84-day delay between March 1 and May 24, 2018 is attributable to the defence. The motion for an unredacted copy of the information in support of the search warrant and the motion challenging the warrant itself were intrinsically connected, since, according to the defence, it was not possible to hear the challenge to the warrant without settling the debate over redaction. By delaying the filing of the motion for an unredacted copy of the information, the respondent necessarily delayed the hearing on the challenge to the warrant. He must therefore be held responsible for the delay between the day he raised the issue of an unredacted copy of the information (March 1, 2018) and the day the motion challenging the warrant was finally to be heard (May 24, 2018).

[7] *With regard to the second period in issue, namely the period of 112 days between May 21 and September 10, 2019*, the Crown's ground of appeal must be dismissed. The majority was correct to intervene, because this delay could not be attributed entirely to the respondent despite the fact that his counsel was unavailable on certain dates.

[8] This Court did of course explain in *Jordan* that where the court and the Crown are ready to proceed but the defence is not, the resulting delay is attributable to the defence (para. 64). All participants in the criminal justice system, including the defence, must take a proactive approach in order to prevent unnecessary delay by targeting its root causes (*Cody*, at para. 36). That being said, in some cases, the circumstances may justify apportioning responsibility for delay among these participants rather than attributing the entire delay to the defence.

[9] Here, the parties had asked the judge as early as November 2018 to add a third trial date to the two dates already scheduled in January 2019. Their request was denied. On the first day

of the trial in January 2019, it became clear that the two scheduled dates would not be enough, in part because of the prosecution's changes in strategy. Even though they discussed potential dates for the continuation of the trial and counsel for the respondent informed the judge and the prosecution that she would be unavailable on certain dates in May 2019, the judge proposed and insisted on a date in September 2019 without considering the possibility of continuing the trial on an earlier date when both parties were available. The judge had therefore known since November 2018 that an additional day would be needed, and in January 2019, when he was assessing potential availability for the continuation of the trial, proximity to the *Jordan* ceilings had to be taken into consideration (*R. v. K.G.K.*, 2020 SCC 7, at para. 61). That being said, it was not until August 7, 2019 that the respondent informed the prosecution of his intention to file a motion under s. 11(b) of the *Canadian Charter of Rights and Freedoms*. Therefore, in addition to the conduct of defence counsel and the prosecution's changes in strategy, it was because of institutional delay and the court's lack of initiative that no other date was offered sooner (reasons of Cournoyer J.A., at para. 148).

[10] In the particular circumstances of this case, we are of the view that it is "fair and reasonable" to apportion responsibility for the 112-day delay and to attribute up to half of the delay between June 1, 2019 (the day after the last date on which counsel for the respondent was unavailable) and September 10, 2019 (the actual date on which the trial continued) to the defence (*R. v. K.J.M.*, 2019 SCC 55, at para. 96). Even calculating from this premise, since the total delay between these two dates is 101 days, we attribute 51 days (June 1 to July 22, 2019) to the defence. A delay of 10 days (between May 21 and 31, 2019) should also be attributed to the respondent given the concession he made in the Court of Appeal (reasons of Cournoyer J.A., at para. 150, fn. 83).

[11] In the end, in addition to the period identified by the majority of the Court of Appeal, a delay of 84 days (period of March 1 to May 24, 2018) and a delay of 61 days (from May 21 to 31, 2019 and from June 1 to July 22, 2019) are attributable to the defence. This brings the total number of days attributable to the defence to 225, and the net delay to 950 days, or more than 31 months. The 30-month *Jordan* ceiling has therefore been exceeded and the delay is presumed to be unreasonable. No exceptional circumstance has been raised to justify exceeding the ceiling.

[12] It should be noted that the respondent was charged in June 2016, close to the date on which the decision in *Jordan* was rendered. The expectation today is that such a situation would not happen again.

[13] For these reasons, the Court dismisses the appeal and upholds the stay of proceedings entered by the trial judge.

Judgment accordingly.

Solicitor for the appellant: Director of Criminal and Penal Prosecutions, Joliette,

Que.

Solicitors for the respondent: Joncas, Nouraie, Roy, Massicotte, Montréal.