SUPREME COURT OF CANADA

CITATION: R. *v.* Ste-Marie, 2022 SCC 3

APPEAL HEARD: February 10, 2022
JUDGMENT RENDERED: February 10, 2022
DOCKET: 39381

BETWEEN:

Her Majesty The Queen
Appellant

and

Mélanie Ste-Marie, Michel Ste-Marie, Dax Ste-Marie and Richard Felx
Respondents

- and -

Attorney General of Ontario, Criminal Lawyers' Association (Ontario) and Association québécoise des avocats et avocates de la défense
Interveners

OFFICIAL ENGLISH TRANSLATION

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

UNANIMOUS JUDGMENT READ BY: Kasirer J.
(paras. 1 to 14)

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Her Majesty The Queen *Appellant*

v.

Mélanie Ste-Marie,
Michel Ste-Marie,
Dax Ste-Marie and
Richard Felx *Respondents*

and

Attorney General of Ontario,
Criminal Lawyers' Association (Ontario) and
Association québécoise des avocats et avocates de la défense *Interveners*

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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 — Re-examination of unreasonableness of delays on appeal — Transitional exceptional circumstance — Trial judge holding that accused's right to be tried within reasonable time had been infringed but that stay of proceedings was not appropriate remedy because accused had not been prejudiced by delay — Court of Appeal setting aside convictions and entering stay of proceedings after declining to review trial judge's assessment of delays — Stay of proceedings set aside.

Cases Cited

Referred to: *R. v. Jordan*, 2016 SCC 27, [2016] 1 S.C.R. 631; *R. v. Rahey*, [1987] 1 S.C.R. 588; *R. v. Morin*, [1992] 1 S.C.R. 771; *R. v. Bryant*, 2021 QCCA 1807; *R. v. Askov*, [1990] 2 S.C.R. 1199; *R. v. Cody*, 2017 SCC 31, [2017] 1 S.C.R. 659; *R. v. Rice*, 2018 QCCA 198.

Statutes and Regulations Cited

Canadian Charter of Rights and Freedoms, ss. 11(b), 24(1).
Criminal Code, R.S.C. 1985, c. C-46, s. 655.

APPEAL from a judgment of the Quebec Court of Appeal (Levesque, Healy and Hamilton JJ.A.), 2020 QCCA 1118, 394 C.C.C. (3d) 18, [2020] AZ-51705891, [2020] Q.J. No. 5730 (QL), 2020 CarswellQue 8863 (WL Can.), setting aside the convictions of the accused and ordering a stay of proceedings. Appeal allowed.

Magalie Cimon, Émilie Robert and Geneviève Gravel, for the appellant.

Marie-Pier Boulet and *Marie-Ève Landry*, for the respondents Mélanie Ste-Marie, Dax Ste-Marie and Richard Felx.

Sherif Foda and Frank Addario, for the respondent Michel Ste-Marie.

Michael Fawcett, for the intervener the Attorney General of Ontario.

Erin Dann and *Daniel Goldbloom*, for the intervener the Criminal Lawyers' Association (Ontario).

Louis Belleau and *Antoine Grondin-Couture*, for the intervener Association québécoise des avocats et avocates de la défense.

English version of the judgment of the Court delivered orally by

[1] KASIRER J. — The Crown appeals from a judgment of the Quebec Court of Appeal quashing four convictions and entering a stay of proceedings in favour of the respondents because of a violation of their right to be tried within a reasonable time. The appellant asks that the stay of proceedings be set aside and that the case be remanded to the Court of Appeal for a decision on the nine grounds of appeal that it chose not to address, as it found it unnecessary to do so in the circumstances.

[2] On September 14, 2009, the respondents were charged with laundering proceeds of crime, conspiracy and criminal organization offences. In 2014 and 2015, they filed motions for a stay of proceedings under ss. 11(b) and 24(1) of the *Canadian Charter of Rights and Freedoms*. On September 17, 2015, before this Court rendered its decision in *R. v. Jordan*, 2016 SCC 27, [2016] 1 S.C.R. 631, the Court of Québec dismissed the motions, finding that a stay of proceedings was not an appropriate remedy. Because the judge found a 77-month delay between the charges and the anticipated end of the trial, he held that s. 11(b) of the *Charter* had been infringed. However, he declined to enter a stay of proceedings on the ground that the accused had not been prejudiced by the delay. On this point, the judge held that [TRANSLATION] "there is as much prejudice resulting from the charge, and not from the unreasonable delay", and that there was a "clear and compelling" societal interest in having the accused stand trial (Court of Québec reasons, A.R., vol. I, at p. 60). The judgment of conviction was rendered on June 22, 2016.

[3] In the Court of Appeal's view, the judge had no choice but to enter a stay of proceedings after finding an infringement of s. 11(b) (citing *R. v. Rahey*, [1987] 1 S.C.R. 588). The Court of Appeal declined to review the trial judge's reasons concerning the infringement of s. 11(b), finding that the appeal record was not sufficiently complete to permit it to determine whether the judge's assessment of the delays was inadequate or wrong.

[4] In this Court, the Crown acknowledges that the trial judge made an error, but it takes the view that the error was not determinative of the outcome. It argues that the Court of Appeal erred in entering a stay of proceedings in reliance on the trial judge's erroneous and premature conclusion that s. 11(b) had been infringed.

[5] With respect, the trial judge erred in assessing the prejudice suffered by the accused at the remedy stage rather than considering it in determining whether s. 11(b) had been infringed, in accordance with the criteria applicable at the time set out in *R. v. Morin*, [1992] 1 S.C.R. 771. Despite that error, however, a functional analysis of his reasons shows that he considered the relevant factors and reached the correct conclusion, namely that the motions for a stay of proceedings should be dismissed. Although he was mistaken about the stage of the analysis at which prejudice had to be considered, his refusal to enter a stay of proceedings nonetheless makes it possible to conclude that s. 11(b) was not infringed based on the *Morin* criteria. The Court of Appeal failed to make this finding (paras. 17-18).

[6] In the circumstances, we are all of the view that the Court of Appeal erred in entering the stay of proceedings that the judge had himself denied.

[7] With respect, the Court of Appeal erred in refusing to re-examine the unreasonableness of the delays on the ground that the record before it was incomplete. On appeal, the Crown filed a statement of admissions by the parties — filed by the parties at trial under s. 655 of the *Criminal Code*, R.S.C. 1985, c. C-46 — that contained a detailed chronology of events, the content of which was not analyzed at all by the Court of Appeal. In our opinion, the evidence in the record allowed the appeal judges to carry out that analysis. It should be noted that a statement of admissions by the parties was not part of the appeal records in the cases on which the Court of Appeal relied, at para. 14 of its reasons, to justify its refusal to re-examine the delays in this case. Although a court is not bound by admissions of law, a joint statement may be useful on appeal and may help reduce the delays leading to the infringement alleged by an accused (see, e.g., *R. v. Bryant*, 2021 QCCA 1807, at para. 3).

[8] The evidence in the record shows that the respondents directly caused most of the delays of which they complain and that they attempted to derail the trial by filing multiple applications, motions and interlocutory appeals, which were unsuccessful for the most part. These delays are largely but not exclusively attributable to the defence and must be subtracted from the total delay.

[9] The respondents also caused additional delays by insisting that a certain lawyer represent them despite a clear conflict of interest. In 2011, the preliminary inquiry judge found that Mélanie and Dax Ste-Marie could not be represented by the same lawyer. As a result, they represented themselves. Despite the conflict of interest, they continued to insist that the lawyer retained by their father, Michel Ste-Marie, represent all three of them. They maintained that position for more than two years. That course of conduct was of course untenable and caused additional delay.

[10] We reach the same conclusion with respect to Richard Felx. Although the conflict of interest did not directly involve him, he never expressed concern about the delays caused by his co-accused. Moreover, the prosecution offered him his own preliminary inquiry several times, but he always refused.

[11] *Jordan* reaffirmed the principle, which is applicable in this case, that the defence should not be allowed to benefit from its own delay-causing conduct or from its tactics aimed at causing delay (paras. 60 and 63; see *Morin*, at p. 802; *R. v. Askov*, [1990] 2 S.C.R. 1199, at pp. 1227-28).

[12] The appellant argues that once the deductions are made, the net delay is 35 months at the most (A.F., at para. 41). The respondents Mélanie Ste-Marie, Dax Ste-Marie and Richard Felx refer to this same calculation in their factum (R.F., at para. 37).

[13] Assuming for the sake of argument that the residual delay exceeds the ceiling set in *Jordan*, the presumption of unreasonableness may be rebutted on the basis of the transitional exceptional circumstance (*Jordan*, at paras. 96-97). The transitional exceptional circumstance may apply where it is shown that "the time the case has taken is justified based on the parties' reasonable reliance on the law as it previously existed" (*R. v. Cody*, 2017 SCC 31, [2017] 1 S.C.R. 659, at para. 68). In *R. v. Rice*, 2018 QCCA 198, at para. 202 (CanLII), Vauclair J.A. noted that, for this purpose, the court may examine the conduct of the accused: [TRANSLATION] "[t]he absence of haste is an indicator of the lack of concern the accused has for delays and may be helpful in assessing prejudice". This is in line with the factual determination made by the trial judge in this case, who found that the prejudice complained of by the respondents did not result from delay. In this situation, in light of the transitional exceptional circumstance identified in *Jordan*, it should be concluded that s. 11(b) of the *Charter* was not infringed and that the trial judge was right to dismiss the motions for a stay of proceedings.

[14] For these reasons, we would allow the appeal, set aside the stay of proceedings and remand the case to a new panel of the Quebec Court of Appeal for consideration of the other grounds of appeal that remain outstanding.

Judgment accordingly.

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

Solicitors for the respondents Mélanie Ste-Marie, Dax Ste-Marie and Richard Felx: BMD Avocats inc., Laval.

Solicitors for the respondent Michel Ste-Marie: Sherif Foda, Toronto; Addario Law Group, Toronto.

Solicitor for the intervener the Attorney General of Ontario: Attorney General of Ontario, Toronto.

Solicitors for the intervener the Criminal Lawyers' Association (Ontario): Embry Dann, Toronto; Goldbloom Law, Toronto.

Solicitors for the intervener Association québécoise des avocats et avocates de la défense: Louis Belleau Avocat, Montréal.