

CANADA / JUDGMENT

R. v. Goudreau

2015 BCSC 1227

COURT

Supreme Court of British Columbia

DECIDED

25 June 2015

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2015 BCSC 1227 R. v. Goudreau

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

R. v. Goudreau,

2015 BCSC 1227

Date: 20150625

Docket: 41010-2-C, 40598-1

Registry: Prince George

Regina

v.

Sebastian Gordon Goudreau

Before: The Honourable Mr. Justice Tindale

On appeal from: A decision of the Provincial Court of British Columbia, December 4, 2014 (R. v. Goudreau, Prince George Files 41010-2-C and 40598-1)

Oral Reasons for Judgment

Counsel for Crown:

T. Gamble

Counsel for Defence:

J.C. LeBlond

Place and Date of Hearing:

Prince George, B.C.

June 25, 2015

Place and Date of Judgment:

Prince George, B.C.

June 25, 2015

- [1] THE COURT: Sebastian Gordon Goudreau, by way of a notice of application filed April 23, 2015, seeks an order pursuant to s. 525(1) of the Criminal Code of Canada that his continued detention in custody is not justified. Mr. Goudreau is charged on Information Number 41010-2-C with a number of weapons offences as well as a charge of obstructing a peace officer in the execution of his duty. These charges stem from allegations surrounding a November 6, 2014, incident.
- [2] On December 4, 2014, Mr. Goudreau applied for his judicial interim release in front of The Honourable Judge W.G. MacDonald of the Provincial Court of British Columbia. Judge MacDonald detained Mr. Goudreau on the primary and secondary grounds. At the time of the bail hearing in the Provincial Court of British Columbia, Mr. Goudreau had three separate informations relating to him before the court. Information Number 40598-1 was an allegation that on April 17, 2014, Mr. Goudreau was found in possession of a prohibited weapon, which in this case was pepper spray, as well as some prohibited drugs, which were cocaine. Mr. Goudreau was released from custody on a promise to appear. In May of this year, Crown counsel directed a stay of proceedings with regard to those charges.
- [3] On May 20, 2014, Mr. Goudreau was arrested for theft under \$5,000. He was released on an undertaking with regard to that charge. On January 6, 2015, Mr. Goudreau pled guilty to the theft-under charge. That was Court File Number 40495-1.
- [4] The circumstances of Court File Number 41010-2-C are that Mr. Goudreau was seen riding a bicycle in the early morning hours of November 6, 2014, in a residential area. He was riding the bike without a helmet and on the wrong side of the road, and it appeared to the RCMP officer that he had something bulky in the waistband of his pants. The officer described that Mr. Goudreau was steering the bicycle with one hand and holding something near his waistband with the other. The officer attempted to stop Mr. Goudreau and noticed him trying to adjust a bulge in his waistband. Mr. Goudreau ran away, holding his arm to his waistband, and the constable pursued him.
- [5] At some point, the constable lost sight of Mr. Goudreau briefly. When he next saw Mr. Goudreau, Mr. Goudreau was not holding his hand near the waistband, nor did it appear that there were a bulge in that area of the waistband any more.
- [6] Mr. Goudreau was arrested. The police maintained the scene, and a dog team was called in.

- [7] Ultimately, a loaded .22 calibre handgun was found in a yard in the vicinity of where the constable had briefly lost sight of Mr. Goudreau. Also, a facemask and cell phone were found on the person of Mr. Goudreau. There were a number of text messages on the phone. Starting at 2116 hours, there were a number of messages that were sent and received from the phone. First sent were the following: Bro, we need the strap right away. Received message was: WRU. Sent message was: Upland. Received message was: K. Sent: I'm going Robbin n Mobbin. Received: Nice. Who? Sent: Crusoe. Received: Cool. Sent: Skinner. Goof.
- [8] The Crown's position is that the word strap refers to a gun or handgun. The term robbin and mobbin requires little explanation.
- [9] Mr. Goudreau has a previous criminal record which begins in 2008. He has convictions for possession for the purpose of trafficking in a narcotic, assault, theft-under, failing to appear in court, and two convictions for breach of probation. He also has two convictions for weapons-related offences that he pled guilty to on November 23, 2011.
- [10] The trial of these offences was originally scheduled for July 14, 15, and 17, 2015. These dates were scheduled in front of the judicial case manager on December 16, 2014.
- [11] In February 2015, Crown counsel made application to adjourn the trial as one of their witnesses was unavailable. That application was opposed by Mr. Goudreau. However, the Crown was successful, and a new trial date was fixed. Currently, this matter is scheduled to be heard September 3, 4, and 8 of this year.
- [12] Mr. LeBlond, on behalf of Mr. Goudreau, argues that there has been an unreasonable delay in this matter as well as a material change in the circumstances since the original bail hearing on December 4, 2014. In terms of the material change in circumstances since the original bail hearing, Mr. LeBlond notes that Mr. Goudreau's father and brother had initially been put forward as sureties for his release. However, as noted by Judge MacDonald, neither of these individuals could have qualified as a surety because of their own criminal backgrounds. Mr. LeBlond has provided an affidavit in support of this application from Brandy Fulljames, who is a long-time friend of Mr. Goudreau. She deposes that she is prepared to be a surety for Mr. Goudreau, including posting \$2,000 cash bail. She further deposes that Mr. Goudreau can live with her and her father, Michael Fulljames, at XXXX Dezell Drive in Prince George.
- [13] Ms. Fulljames deposes that she does not have a criminal record, and she is currently unemployed as she is assisting her father who has health problems. That is to say that she would be at the residence on a regular basis.
- [14] Also attached to Ms. Fulljames' affidavit is a letter from her father who is prepared to offer Mr. Goudreau employment.

- [15] Mr. LeBlond submitted that Mr. Goudreau is 27 years of age and has been a lifelong resident of the city of Prince George. He does not have a grade 12 education. However, at 18 years of age he joined the Ironworkers Union and he holds a second-year status in his apprenticeship as an ironworker. He has two children ages three and eight who also live in Prince George, and he has child support obligations for these children.
- [16] Mr. LeBlond, while he argues there has been an unreasonable delay, cites the recent decision in *R. v. Haleta*, 2015 BCSC 850, which deals with the statutory interpretation of s. 525 and whether or not a determination of the existence of unreasonable delay is a precondition to the court's determination as to whether or not the accused should be released from custody. The court said the following at paragraph 37:
- [37] In my view, whether or not unreasonable delay exists under subsection (3), the Court must move directly to the application under subsection (1) to determine whether or not the accused should be released from custody.
- [17] In my view, that is the correct approach. Crown concedes, in any event, that there has been a delay; however, they do not concede that it is an unreasonable delay.
- [18] Section 525(1) - (4) states as follows:
525. (1) Where an accused who has been charged with an offence other than an offence listed in section 469 and who is not required to be detained in custody in respect of any other matter is being detained in custody pending his trial for that offence and the trial has not commenced
- (a) in the case of an indictable offence, within ninety days from
- (i) the day on which the accused was taken before a justice under section 503, or
- (ii) where an order that the accused be detained in custody has been made under section 521 or 524, or a decision has been made with respect to a review under section 520, the later of the day on which the accused was taken into custody under that order and the day of the decision, or
- (b) in the case of an offence for which the accused is being prosecuted in proceedings by way of summary conviction, within thirty days from
- (i) the date on which the accused was taken before a justice under subsection 503 (1), or
- (ii) where an order that the accused be detained in custody has been made under section 521 or 524, or a decision has been made with respect to a review under section 520, the later of the day on which the accused was taken into custody under that order and the day of the decision,
- the person having the custody of the accused shall, forthwith on the expiration of those ninety or thirty days, as the case may be, apply to a judge having jurisdiction in the place in which the accused is in custody to fix a date for a hearing to determine whether or not the accused should be released from custody.

- (2) On receiving an application under subsection (1), the judge shall
 - (a) fix a date for the hearing described in subsection (1) to be held in the jurisdiction
 - (i) where the accused is in custody, or
 - (ii) where the trial is to take place; and
 - (b) direct that notice of the hearing be given to such persons, including the prosecutor and the accused, and in such manner as the judge may specify.
 - (3) On the hearing described in subsection (1), the judge may, in deciding whether or not the accused should be released from custody, take into consideration whether the prosecutor or the accused has been responsible for any unreasonable delay in the trial of the charge.
 - (4) If, following the hearing described in subsection (1), the judge is not satisfied that the continued detention of the accused in custody is justified within the meaning of subsection 515(10), the judge shall order that the accused be released from custody pending the trial of the charge on his giving an undertaking or entering into a recognizance described in any of paragraphs 515(2)(a) to (e) with such conditions described in subsection 515(4) as the judge considers desirable.
- [19] Mr. LeBlond argues that Mr. Goudreau should be released because he does not pose a threat on the primary ground, his trial has been delayed, he now has a suitable release plan which was not in existence at the time of his original bail hearing on December 4, 2014, and the Crown has a weak circumstantial case against him.
- [20] Mr. LeBlond argues that with regard to the primary ground, Mr. Goudreau has lived in Prince George all of his life, and he has children and family here which would mitigate any risk of his absconding before the trial of this matter.
- [21] Mr. LeBlond notes that the Crown has submitted the .22 calibre handgun for testing; however, he is not aware of any fingerprint or DNA evidence linking Mr. Goudreau to the handgun. Also, there was a point that the officer lost sight of Mr. Goudreau, and in any event, he did not, that is, the officer, did not specifically see Mr. Goudreau toss the handgun.
- [22] The Crown submits that they have a strong case. This is to a large degree based on the text messages found on the phone in the possession of Mr. Goudreau at the time of his arrest. The Crown also argues that this is a serious offence involving a handgun, and as such, the tertiary grounds should apply.
- [23] I am not satisfied in this particular case, despite the fact of a loaded handgun being involved, that it is one of those rare cases where the public confidence in the administration of justice would be diminished if Mr. Goudreau were released from custody. I therefore would not continue to detain him on the tertiary grounds.

- [24] I am also not satisfied that Mr. Goudreau's continued detention on the primary ground is necessary. While he does have a conviction for failing to attend court, the proposal that Ms. Fulljames act as a surety and that she would deposit \$2,000 cash bail alleviates any concern on this ground.
- [25] My main concern is on the secondary ground. In the decision of *R. v. Abdel-Rahman*, 2010 BCSC 189, the court, at paragraph 23, summarizes the considerations in detaining someone on the secondary ground as follows:
- [23] In my opinion, the decisions that a judge must necessarily make in order to reach the conclusion that detention is justified on the secondary ground, are the following:
- a) First, that there is a risk that the accused will either commit an offence, or will interfere with the administration of justice, if he is released;
 - b) Second, that this risk is of such magnitude that it amounts to a "substantial likelihood;"
 - c) Third, that the said risk would constitute a danger to public safety (in general, or to a specific victim or witness) if the accused is released; and
 - d) Fourth, that the detention of the accused is "necessary," because the identified danger to public safety cannot be prevented or reduced to an acceptable level by bail conditions (such as reporting to authorities, curfew, no-contact, mobility restrictions, sureties or cash bail).
- [26] Mr. LeBlond submits that these concerns can be alleviated by Mr. Goudreau being placed on house arrest at the residence of Ms. Fulljames. This would include reporting conditions, weapon prohibitions, and abstinence conditions from alcohol or non-prescription drugs.
- [27] There has been a delay in this matter; however, it is, in my view, not an unreasonable delay. The Crown had a legitimate reason to adjourn the trial. They made the application in a timely manner, and the delay amounts to less than two months. The Crown's case is circumstantial in nature; however, the strength of the Crown's case is only one factor to consider. In any event, given the text messages, I would not come to the conclusion, at this point, that the Crown has a weak case.
- [28] The real issue is whether or not there is a substantial likelihood that Mr. Goudreau would commit further offences or interfere with the administration of justice if he is released. Is there an identifiable danger to the public safety that cannot be prevented or reduced to an acceptable level by bail conditions?
- [29] Mr. Goudreau has a record of violence, weapons offences, and drug offences. Perhaps, most notably, he has convictions for breaching court orders and was on a form of judicial interim release at the time that it is alleged he committed the offences at bar.
- [30] This is a serious charge involving a loaded firearm and a mask. There is also an indication that an individual by the name of Crusoe may have been the target of some form of criminal offence. That individual has not been identified.

[31] In my view, there is a substantial likelihood that if released, Mr. Goudreau will commit further offences and is a risk to the public safety. Despite Mr. LeBlond's able submissions, I am not satisfied that there are any conditions that would alleviate that risk, and quite frankly, I am not satisfied that Mr. Goudreau would abide by any of those conditions. Mr. Goudreau's application is dismissed.

"R.S. Tindale, J."

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