
CANADA / JUDGMENT

Roberts v. HMTQ

2006 BCSC 1185

COURT

Supreme Court of British Columbia

DECIDED

5 June 2006

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2006 BCSC 1185 Roberts v. HMTQ

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Roberts v. HMTQ,

2006 BCSC 1185

Date: 20060605

Docket: 61563

Registry: Kelowna

Between:

Patrick Tyrone Roberts

Applicant

And

Her Majesty the Queen

Respondent

Before: The Honourable Madam Justice Beames

Oral Reasons for Judgment Re: Ruling on Applications

June 5, 2006

Counsel for the Applicant:

J.D. Jevning

Counsel for the Respondent:

P.E. Eccles

Date and Place of Hearing:

June 2, 2006

Kelowna, B.C.

[1] THE COURT: In 1999, Patrick Roberts was charged with a number of conspiracy and drug-related charges. One of his alleged co-conspirators was Colin Martin. On November 26, 2004, I heard Mr. Roberts' second application to have the charges against him stayed on the basis of unreasonable delay. After setting out the facts and dealing with the legal tests to be applied, I concluded as follows:

[36] ...I am satisfied that the delay in this case has finally become such that Mr. Roberts has established that his right to be tried within a reasonable time has been breached, and that, on balance, the interests of the accused and society in a prompt trial outweigh the interests of society in bringing the accused to trial.

[37] Consequently, Mr. Roberts' application for a stay of proceedings is granted.

(R. v. Roberts, 2004 BCSC 1762).

[2] The trial of Colin Martin on the conspiracy charges, which allege that he conspired to traffic in marijuana and to export marijuana with a number of named and unnamed co-conspirators, including Patrick Roberts, starts today with jury selection at 10:00 and trial to follow.

[3] Mr. Roberts applied on Friday last week, in this new action, for several types of relief. In his notice of motion, he sought six heads of relief but, on hearing, not all of the heads of relief were pressed. What Mr. Roberts seeks is an order compelling the Crown to remove his name as an alleged co-conspirator from the Indictment against Colin Martin; and an order compelling the Crown not to lead any evidence to attempt to prove that he was one of Colin Martin's co-conspirators, through a number of measures, including requiring the removal of his name from all transcripts of intercepted communications to be tendered at trial, ordering the destruction of the originals and any copies of his private communications, returning all items and documents seized from him, and destruction of any copies of said documents.

[4] The foundation for Mr. Roberts' application and claims for relief is his assertion that the judicial stay of the charges against him amounts to a declaration that Mr. Roberts was innocent of the charges. Based on that assertion, Mr. Roberts submits that no evidence can be tendered at trial to prove the existence of a conspiracy between Colin Martin and Patrick Roberts, because Mr. Roberts is innocent.

- [5] Further, counsel for Mr. Roberts asserts that Mr. Roberts' s. 7 Charter rights, the right to life, liberty and security of the person, would be violated because evidence led to the effect that he was a co-conspirator would tarnish his reputation and dignity, by allegations by the Crown which he will be unable to defend and of which, by operation of law, he has been found innocent.
- [6] Mr. Martin was invited by me to attend and make submissions, if he chose, on this application. He appeared, by counsel, and his position is essentially that if the fundamental principle submitted by Mr. Roberts, namely that he has been declared innocent, is a sound one, then Mr. Martin supports the application for the removal of Patrick Roberts' name from the Indictment. Counsel for Mr. Martin raised potential implications both with regard to the admissibility of certain evidence, or the limit for which it could be used, and with regard to eventual instructions to the jury.
- [7] The basis for the submission that a judicial stay is equivalent to a declaration of innocence is drawn from *R. v. Regan*, [1998] N.S.J. No. 546, and other cases cited by counsel for Mr. Roberts. In the Nova Scotia Supreme Court, Mr. Regan was facing numerous sex-related charges. The trial judge stayed some of the charges. The Crown sought to tender, as similar act evidence, the evidence of a number of witnesses whose allegations founded the charges which had been stayed. The accused sought to exclude that evidence on the basis of the stays.
- [8] The Associate Chief Justice of the Nova Scotia Supreme Court reviewed a number of cases dealing with the legal effect of an acquittal, including the Supreme Court of Canada decisions in *R. v. Grant* (1991), 67 C.C.C. (3d) 268 and *Grdic v. The Queen* (1985), 19 C.C.C. (3d) 289, the Ontario Court of Appeal in *G.(K.R.)*, (1991) 68 C.C.C. (3d) 268 and *R. v. Cullen* (1989), 52 C.C.C. (3d) 459, and the British Columbia Court of Appeal decision in *R. v. Singh* (1996), 108 C.C.C. (3d) 244, the essence of which decisions is that the Crown cannot lead "evidence of events forming the basis of a criminal charge of which the appellant was acquitted" (*R. v. Cullen* at pp. 461-2) in a subsequent trial against that accused as similar fact or similar act evidence, as the acquittal, in those circumstances, is equivalent of a finding of innocence.
- [9] In *Regan*, the accused had not been acquitted; rather, certain charges had been judicially stayed. The Associate Chief Justice framed the issue before him in this way:
- 13 A judicial stay is not based on a declaration of innocence or even on the merits of the case. Nonetheless, the accused is placed in jeopardy and the Crown is subsequently prevented from securing a conviction. Therefore, as with the acquittal, should the presumption of innocence not become a declaration of innocence? Again, as with an acquittal, should not this declaration of innocence be all encompassing? After all, neither disposition is necessarily based on the merits of the case. Therefore, should a judicial stay not have the same effect as an acquittal?
- [10] In conclusion, the Associate Chief Justice said:

20 Thus, I find that regardless of the label used, when a person is charged and "the court effectively brings the proceedings to a final conclusion in favour of an accused," (R. v. Jewitt, *supra*) then the accused should be entitled to have the presumption of innocence become a declaration of innocence with all the resultant ramifications, including the right not to have the allegations subsequently raised as similar act evidence.

and concluded that the Crown could not call the evidence of "similar act" witnesses whose allegations have been the subject matter of an earlier judicial stay (para. 23).

- [11] Considerable emphasis is placed by counsel for Mr. Roberts on the word "including" used in Regan and the other authorities cited. Mr. Roberts' position is that the judicial stay I granted amounts to a declaration of innocence, not just in other criminal proceedings against him, but for all purposes, or at least for the purposes of any and all criminal proceedings, including those in which he is not an accused.
- [12] Although I accept that the law in Canada is that in criminal proceedings against an accused, the accused is deemed to be innocent of any prior criminal charges of which he has been acquitted or which have been judicially stayed, I do not accept that that legal principle has the broader application urged upon me by Mr. Roberts.
- [13] That the principle is not of universal application is made most obvious by the irrefutable fact that an acquittal or a judicial stay of criminal proceedings is no answer to a civil action against a former accused with regard to the same events which were the subject of the criminal proceedings.
- [14] Indeed, but for the narrow circumstances of a subsequent trial against an accused where the Crown seeks to lead evidence about an event for the basis of a prior criminal charge, which charge resulted in an acquittal, an acquittal is not, in fact, a declaration of innocence. It is simply a determination that the Crown has not proved its case beyond a reasonable doubt.
- [15] I did not ever hear the Crown's case against Patrick Roberts on his merits, as I granted his application for a judicial stay based on unreasonable delay. I certainly did not ever find him to be innocent of the charges he faced. I simply found that his right to a trial within a reasonable time had been breached. Should he have occasion in the future to be before this or any other court facing criminal charges, the Crown will not be entitled to lead any evidence with regard to the events that led to the charges which were before me and which I stayed, and Mr. Roberts will be entitled, according to the law in Canada, to say that those charges were stayed, which is the equivalent of a finding of innocence.
- [16] However, he is not entitled to the relief he seeks, namely, in effect, a declaration of innocence in a criminal proceeding against another individual. For the purposes of the Indictment, which will be before the triers of fact in R. v. Martin, Mr. Roberts has not been found innocent of being a co-conspirator. He stands in the position of any other named co-conspirator who is not on trial.

- [17] He does not, I conclude, have standing as such to challenge the form of the Indictment, nor to object to the tendering of any evidence the Crown might seek to adduce, including any of the evidence referred to in his notice of motion.
- [18] To be clear, I also find that Mr. Roberts has not proved that the leading of evidence which may support a finding that he conspired with Colin Martin would be a breach of Mr. Roberts' rights under s. 7 of the Charter.
- [19] Mr. Roberts' notice of motion is dismissed in its entirety.
- [20] Is there anything arising?
- [21] MR. ECCLES: My only concern, My Lady, is Mr. Martin also has, and somewhat informally presented, but an application to amend the Indictment. Do I take it his application fails?
- [22] THE COURT: There will be no order that the Indictment be amended.

"A.J. Beames, J."

The Honourable Madam Justice A.J. Beames

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