

CANADA / JUDGMENT

USA v. Danielson

2002 BCSC 1854

COURT

Supreme Court of British Columbia

DECIDED

18 March 2002

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2002BCSC1854 Citation: USA v. Danielson Date: 20020318 2002 BCSC 1854 Docket: CC010997
Registry: Vancouver IN THE SUPREME COURT OF BRITISH COLUMBIA IN THE MATTER OF THE
EXTRADITION ACT, R.S.C. 1999, c. 18 Oral Reasons for Judgment Mr. Justice Maczko March 18,
2002 BETWEEN: THE UNITED STATES OF AMERICA REQUESTING STATE/ RESPONDENT AND:
ERIK K. DANIELSON PERSON SOUGHT/ APPLICANT Counsel for Requesting State/Respondent:
W.Y.W. Loo Counsel for Person Sought/Applicant: J. Guild

- [1] The accused is charged with sexual assault in the United States. The evidence on which the United States relies is the statement of the complainant, who says that the accused touched her private parts, and admissions of the accused.
- [2] The accused has made three arguments:
- (1) the arrest of the accused was arbitrary, and therefore evidence of his identification attained after the arrest is inadmissible;
 - (2) the package of evidence submitted by the United States is inadmissible; and
 - (3) this court should enter a stay of proceedings because the delay in seeking extradition proceedings has resulted in a violation of the accused's rights under ss. 7 and 11(b) of the Charter. Arbitrary Arrests
- [3] The accused argued that the arrest was arbitrary and therefore contrary to s. 9 of the Charter because the warrant spelled his name as E-R-I-K whereas the accused's name is spelled E-R-I-C.
- [4] The basis of the argument is that the officer made an assumption that the accused was the right person and took no steps to assure himself that this was the right person, and therefore the arrest was arbitrary and contrary to s. 9 of the Charter.
- [5] The arresting officer knew the accused because he had dealt with him on previous occasions. In 1999 he received a warrant under the Immigration Act and was about to execute it but was told not to because it turned out that the accused had dual citizenship. Proceedings under the Immigration Act were abandoned and the United States began extradition proceedings. The officer also had a description of the accused and knew his date

of birth. The affidavit in support of the warrant contains a physical description of the accused.

- [6] The mere fact that the accused's name was misspelled by using a "k" instead of a "c" does not make the arrest arbitrary. The officer thought he was arresting the right man, and he in fact did arrest the right man.
- [7] In any event, I would decline to find the evidence inadmissible pursuant to s. 24(2) of the Charter.
- [8] Counsel for the accused argued that the record submitted by the United States was not admissible because there is nothing in the document to show that the certification was done by a "judicial officer" or "prosecuting authority" as prescribed by 33(3)(a) of the Extradition Act, R.S.C. 1999, c. 18, which reads as follows: A record of the case may not be admitted unless
 - (a) in the case of a person sought for the purpose of prosecution, a judicial or prosecuting authority of the extradition partner certifies that the evidence summarized or contained in the record of the case is available for trial . The certification of the record is provided by a person named Scott L. Horne, District Attorney Office of the District Attorney, County La Crosse, Wisconsin.
- [9] I take judicial notice that a District Attorney in the United States is a prosecuting authority as required by the Extradition Act. Delay
- [10] The offence in this case is alleged to have occurred on July 18, 1998. The accused was arrested on July 19, 1998 and came before the court on that same date. The accused was released on bail on July 20, 1998 and appeared in court on August 4, 1998. He was required to appear on September 21, 1998 but he did not appear. The case was adjourned to September 28, 1998, and again the accused did not appear.
- [11] The accused fled to Canada. Sometime in October 1998 the accused's wife called the District Attorney's office and told them that the accused was in British Columbia. Nothing was done until January 1999 when the accused was living in Merritt, British Columbia. The R.C.M.P. were about to execute an immigration warrant in February, 1999, but abandoned it because it appeared that the accused had dual citizenship. The United States then began extradition proceedings.
- [12] It was clear that at that point the United States knew that the accused was living at 1770 Menzie Street in Merritt, British Columbia. Nothing was done until February 2001, which is the date appearing on the extradition documents. The documents were received by the Canadian authorities on February 9, 2001, and the Authority to Proceed was issued by the Minister of Justice on April 2, 2001. The warrant was issued on July 5, 2001.

- [13] The accused argues that the U.S. authorities knew he was in British Columbia by October 1998, knew his specific address by January 1999, and simply took too long to have the accused brought before the courts in Canada.
- [14] I find no merit in the accused's argument. The prosecuting authorities in Wisconsin moved very quickly to bring the accused to trial. The trial was thwarted only because the accused fled. I do not think it is open to the accused to argue that his Charter rights have been breached because it took too long to capture him. The delay in this case was caused primarily by the actions of the accused and not by the U.S. or the Canadian authorities.
- [15] Section 11(b) of the Charter does not apply to extradition proceedings (*The Republic of Argentina v. Mellino* (1987), 33 C.C.C. (3d) 334).
- [16] The issue of delay as an infringement of s. 7, however, does arise in extradition proceedings, but in a limited way. A judge presiding over an extradition proceeding has Charter jurisdiction by virtue of s. 25 of the Extradition Act, which "clearly confers charter jurisdiction on the extradition judge insofar as the issues are specific to the functions of the extradition hearing", (*Kwok v. United States of America* (2001), 155 C.C.C. (3d) 225 per Arbour J. at para. 54). Unreasonable delay by foreign authorities in bringing extradition proceedings only engages the accused's s. 7 Charter rights if such delay compromises the fairness of the extradition proceeding, (*Mellino, supra*; *United States of America v. Allard and Charette* (1987), 33 C.C.C. (3d) 501). The accused's protection from an abuse of process with respect to the substantive proceeding in the foreign jurisdiction comes from the Minister of Justice and potentially through applications that may be made at trial.
- [17] The accused has not established that any of the alleged delay compromises his right to a fair extradition hearing. He is therefore not entitled to a Charter remedy.
- [18] In any case, I find that the delay was not unreasonable as it resulted from the accused's flight.
- [19] The accused argued that he had put down roots in Canada and it would be unfair to send him back to the United States to face a charge that was laid almost three years ago. That is an argument that is more properly made to the Minister of Justice and not the courts.
- [20] I find there is sufficient evidence to put the accused on trial and that the requirements of the Extradition Act have been met. (DISCUSSION BY COUNSEL RE APPEAL)
- [21] THE COURT: All right. Mr. Danielson, your lawyer will translate that for you, but, in essence, you have 30 days to appeal and you will not be surrendered to American authorities before that appeal period has expired. "F. Maczko, J. by P.D. Dohm, A.C.J." The Honourable Mr. Justice F. Maczko by The Honourable Associate Chief Justice P.D. Dohm

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