

IN THE PROVINCIAL COURT OF NOVA SCOTIA

Citation: R. v. Kalinowski, 2013 NSPC 54

Date: 20130509

Docket: 2445460

Registry: Amherst

Between:

Her Majesty the Queen

v.

George Edward Kalinowski

Judge: The Honourable Judge Paul B. Scovil

Heard: 9 May 2013, in Amherst, Nova Scotia

Written decision: 3 July 2013

Charge: THAT HE, on or about the 17th day of February 2012 at, or near Saltspring, Hwy 104E, County of Cumberland, NS, did unlawfully commit the offence of driving at speed that exceeds posted speed limit in Act by 1 to 15 km/h, inclusive, contrary to section 106A(a) of the Motor Vehicle Act.

Counsel: Ms. Catherine Hirbour, for the crown
Mr. George Kalinowski, self represented

By the Court:

[1] This is an application by Mr. Kalinowski, who has been charged under 106 of the *Motor Vehicle Act*, for a decision regarding whether his *Charter* rights under section 11(b) of the *Charter* have been violated, and for a remedy in relation to that, pursuant to section 24(2) of the *Charter of Rights and Freedoms*.

[2] In relation to the facts, they are fairly straightforward. The accused was stopped and ticketed for an alleged violation under 106A(a) of the *Motor Vehicle Act* of Nova Scotia on February 17th, 2012 on Highway 104 near Saltsprings, Nova Scotia. That ticket contained a notice that he was “required to either plead guilty and pay the amount...or notify the court of your intent to appear in court”, with the date of April the 20th, 2012 on it. On April the 20th, the applicant appeared in New Glasgow Provincial Court’s administrative office and filed a notice for an intention to plead not guilty and have a trial. The first date available was set, which was for today, some 12 months, 19 days later.

[3] The question before us is whether that’s an unreasonable amount of time for a trial to take place. There is nothing before me to indicate other than it was one where either one or two officers would be witnesses. These normally take, from a crown perspective, probably an average of nine to ten minutes to call evidence and then, depending on the nature of the defence and what’s going on, they’re very brief. There is very little, in my experience before the courts, much simpler than a speeding charge. Although to say that, that’s not to indicate that you don’t have complex questions that appear from time to time, depending on the facts. But before me is the indication it’s just a simple speeding ticket.

[4] In relation to this, *R. v. Askov* [1990] 2 S.C.R. 1199 from the Supreme Court of Canada set out the factors that were to be taken into account in determining whether there’s an infringement of 11(b). They are:

- (1) the length of the delay;
 - (2) the explanation for the delay;
 - (3) waiver;
 - and (4) prejudice to the accused.
- The longer the delay, the more difficult it should be for a court to excuse it, and very lengthy delays may be such that they cannot be justified for any reason. Delays attributable to the crown will weigh in favour of the

accused. Complex cases, however, will justify delays longer than those acceptable in simple cases. Systemic or institutional delays will also weigh against the crown. When considering delays occasioned by inadequate institutional resources, the question of how long a delay is too long may be resolved by comparing the questioned jurisdiction to others in the country.

[5] That is not in evidence in front of me, but I can indicate that I did inquire today, if one appeared at our front desk, he would get a trial within I think eight to nine months. And I can also indicate that in the later stages of 2012, efforts were made in this court to double up times and double up numbers of cases to bring down the lengthy delay to one in where it was probably six to eight to nine months, depending on what an accused may wish.

[6] If an accused waives his right by consenting or concurring in delay, that has to be taken into account. That's not the case here. And that, that waiver has to be valid and informed, unequivocal and freely given.

[7] In relation to this, the length of the delay is obviously, for a speeding charge, lengthy. The explanation for the delay is simply that's when time was available, as far as what is before me. There is no waiver before me. Prejudice to the accused is a question, but I can say this, without inquiring from the accused in this, I have seen people charged with very serious criminal offences be less worried and less upset than some people charged with simple speeding tickets.

[8] It is an individual thing as to how people are affected. Prejudice to an individual is the waiting for a trial. It could be, in a simple manner like speeding, that a person has either job offers that might be dependent on a license, that they are waiting and that gives them concern as to whether they should take a job, tell an employer that they have this, that they might lose their license, all those can be prejudice to an accused, in what would otherwise seem a simple case. So that has to be considered as well. So it's not simply saying, "Oh, it's only a speeding charge, there's no prejudice to the accused". As I said, it's unique to individuals. There's nothing here to say that it isn't something that is giving this accused great angst or not. But one has to look as well at the simplicity and the length of the delay.

[9] In relation to this as well, I quote from *R. v. Christie* 2001 NSSC 26; 190 N.S.R. (2d) 356, a decision of Justice Cacchione looking at delay. At paragraph 4 he said:

What must be done is to assess the reasonableness of the overall lapse of time. It may be that each individual period when isolated from others may constitute a reasonable delay, however the total period may nonetheless be unreasonable for the purpose of s. 11(b). *R. v. Conway* (1989), 49 C.C.C. (3d) 289 S.C.C. p. 307. It is clear that on an application such as this the court is not to simply apply a mathematical or administrative formula to determine whether the delay is unreasonable. What the court must do is to determine judicially whether the delay is unreasonable. This is done by balancing the interests which the system is designed to protect against factors which inevitably lead to delay or otherwise cause delay.

[10] I also note, in one of the cases just provided to me by the accused, and I'd have to find it, I'm not going to, but it certainly, it sets out there that findings of systemic fault aren't finger pointing and blaming. Neither, when we say the crown, are we referring to an individual prosecutor. We're not referring to the individual police officers, unless something can be attributed specifically to an office. In this case it's systemic, because that was the first available date for speeding trials.

[11] In relation to this, as indicated by the defence, eight to nine would not probably be out of the ordinary, but I'm not saying that it is or it isn't. Each case is unique. But 12 months, 19 days is. It is a lengthy delay with no reasonable explanation as to why, and it would appear to be totally systemic. There is no waiver of an accused of asking for an additional period to get counsel, wanting to put it off for some other factor, having to go somewhere. It was set for today's date, it's a lengthy delay, and in relation to that, I find it does infringe the accused's 11(b) *Charter* rights, and as a result I'm staying the charge.

