

**SUPREME COURT OF CANADA**

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| **Citation:** R. *v.* Vassell, 2016 SCC 26, [2016] 1 S.C.R. 625 | **Appeal heard:** May 20, 2016  **Judgment rendered:** June 30, 2016  **Docket:** 36792 |

Between:

**Shane Rayshawn Vassell**

Appellant

and

**Her Majesty The Queen**

Respondent

**Coram:** Cromwell, Moldaver, Karakatsanis, Wagner, Gascon, Côté and Brown JJ.

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| **Reasons for Judgment:**  (paras. 1 to 12) | Moldaver J. (Cromwell, Karakatsanis, Wagner, Gascon, Côté and Brown JJ. concurring) |

R. *v.* Vassell, 2016 SCC 26, [2016] 1 S.C.R. 625

Shane Rayshawn Vassell Appellant

v.

Her Majesty The Queen Respondent

**Indexed as: R. *v.* Vassell**

2016 SCC 26

File No.: 36792.

2016: May 20; 2016: June 30.

Present: Cromwell, Moldaver, Karakatsanis, Wagner, Gascon, Côté and Brown JJ.

on appeal from the court of appeal for alberta

*Constitutional law — Charter of Rights — Right to be tried within reasonable time — Delay of three years to trial — Whether accused’s right to be tried within reasonable time under s. 11(b) of Canadian Charter of Rights and Freedoms infringed.*

V was charged along with six other individuals for possession of cocaine for the purpose of trafficking. The Crown prosecuted the seven accused jointly but eventually proceeded to trial against V alone. The delay to trial was over three years. V applied for a stay of proceedings due to the delay. The trial judge dismissed the application and convicted V. A majority of the Court of Appeal dismissed the appeal.

Held: The appeal should be allowed, the conviction set aside and a stay of proceedings entered.

V’s right to be tried within a reasonable time under s. 11(*b*) of the *Canadian Charter of Rights and Freedoms* was infringed. When a s. 11(*b*) violation is raised, courts must be careful not to miss the forest for the trees. In this case, V waited three years for a three-day trial. Significantly, he did not cause any of the delay; rather, he took proactive steps throughout to have his case tried as soon as possible. Despite his efforts, substantial delay was caused by his co-accused, and the inability of the system to provide earlier dates. In these circumstances, a more proactive stance on the Crown’s part was required. The Crown chose to prosecute all seven accused jointly, as it was entitled to do. But having done so, it was required to remain vigilant that its decision not compromise their s. 11(*b*) rights. V’s trial was adjourned twice, and the Crown and the system failed to respond proactively enough to these adjournments to avoid unreasonable delay.

**Cases Cited**

**Referred to:** *R. v. Godin*, 2009 SCC 26, [2009] 2 S.C.R. 3; *R. v. Morin*, [1992] 1 S.C.R. 771; *R. v. Auclair*, 2014 SCC 6, [2014] 1 S.C.R. 83; *R. v. Schertzer*, 2009 ONCA 742, 248 C.C.C. (3d) 270.

**Statutes and Regulations Cited**

*Canadian Charter of Rights and Freedoms*, ss. 9, 10(*b*), 11(*b*), 24(2).

APPEAL from a judgment of the Alberta Court of Appeal (Watson, Rowbotham and O’Ferrall JJ.A.), 2015 ABCA 409, 29 Alta. L.R. (6th) 1, 609 A.R. 253, 656 W.A.C. 253, 331 C.C.C. (3d) 97, [2015] A.J. No. 1416 (QL), 2015 CarswellAlta 2344 (WL Can.), affirming decisions of Marceau J., 2014 ABQB 196, 587 A.R. 56, [2014] A.J. No. 386 (QL), 2014 CarswellAlta 590 (WL Can.), and 2014 ABQB 281, [2014] A.J. No. 505 (QL), 2014 CarswellAlta 772 (WL Can.). Appeal allowed.

Graham Johnson, for the appellant.

Susanne Boucher and Jonathan Martin, for the respondent.

The judgment of the Court was delivered by

1. Moldaver J. — This appeal comes to us as of right from the Court of Appeal for Alberta, based on the dissenting reasons of O’Ferrall J.A. (2015 ABCA 409, 609 A.R. 253). In line with O’Ferrall J.A.’s opinion, Mr. Vassell says that his right to be tried within a reasonable time under s. 11(*b*) of the *Canadian Charter of Rights and Freedoms* was violated. He asks this Court to set aside his conviction for possession of cocaine for the purpose of trafficking (2014 ABQB 281), and enter a stay of proceedings. In the alternative, he alleges violations of his ss. 9 and 10(*b*) *Charter* rights, and says that his statement to police should have been excluded at trial under s. 24(2). In that event, he seeks a new trial.
2. For reasons that largely accord with those of O’Ferrall J.A., I am of the view that Mr. Vassell’s s. 11(*b*) *Charter* argument must succeed. Accordingly, I would allow the appeal, set aside Mr. Vassell’s conviction, and enter a stay of proceedings. As a result, I find it unnecessary to address Mr. Vassell’s ss. 9 and 10(*b*) arguments.
3. Turning to the s. 11(*b*) issue, when a violation is raised, courts must be careful not to miss the forest for the trees (*R. v. Godin*, 2009 SCC 26, [2009] 2 S.C.R. 3, at para. 18). The forest in this case is plain as day. At every opportunity, Mr. Vassell attempted to move his case to trial. But in the end, as O’Ferrall J.A. observed, he “waited three years for a three-day trial” (para. 54). Looking at this forest — that is, the overall delay in a case of moderate complexity — I am satisfied that the delay was unreasonable.
4. As the trial judge found, much of the delay was caused by Mr. Vassell’s six co-accused and their counsel (2014 ABQB 196, 587 A.R. 56). But this delay cannot be ignored in assessing whether Mr. Vassell’s right to be tried within a reasonable time was breached. As this Court said in *R. v. Morin*, [1992] 1 S.C.R. 771, at p. 800, “an investigation of unreasonable delay must take into account all reasons for the delay in an attempt to delineate what is truly reasonable for the case before the court” (emphasis in original).
5. In this case, the Crown chose to prosecute all seven accused jointly, as it was entitled to do. But having done so, it was required to remain vigilant that its decision not compromise the s. 11(*b*) rights of the accused persons (see, for example, *R. v. Auclair*, 2014 SCC 6, [2014] 1 S.C.R. 83, and *R. v. Schertzer*, 2009 ONCA 742, 248 C.C.C. (3d) 270, at para. 146).
6. In many cases, delay caused by proceeding against multiple co-accused must be accepted as a fact of life and must be considered in deciding what constitutes a reasonable time for trial. But here, it was clear from the outset that the delay caused by the various co-accused not only prevented the Crown’s case from moving forward, it also prevented Mr. Vassell from proceeding expeditiously, as he wanted. Importantly, this is not a case where Mr. Vassell simply did not cause any of the delay; rather, it is one in which he took proactive steps throughout, from start to finish, to have his case tried as soon as possible. In this regard, his counsel reviewed disclosure promptly, pushed for a pre-trial conference or case management, worked with the Crown to streamline the issues at trial, agreed to admit an expert report, made the Crown and the court aware of s. 11(*b*) problems, and at all times sought early dates.
7. In these circumstances, I believe that a more proactive stance on the Crown’s part was required. In fulfilling its obligation to bring all accused to trial within a reasonable time, the Crown cannot close its eyes to the circumstances of an accused who has done everything possible to move the matter along, only to be held hostage by his or her co-accused and the inability of the system to provide earlier dates. That, unfortunately, is what occurred here. In the last analysis, Mr. Vassell ended up being the sole person out of the initial seven co-accused to be tried. To repeat the words of O’Ferrall J.A., he “waited three years for a three-day trial”. That is unacceptable, and it resulted in Mr. Vassell being deprived of his right to be tried within a reasonable time.
8. Turning briefly to a consideration of the trees, I am respectfully of the view that two adjournments of Mr. Vassell’s trial, occasioned by the Crown, pushed the delay beyond the bounds of reasonableness.
9. The first adjournment occurred in February 2013 because of the Crown’s need to attend a funeral. By this time, the indictment had narrowed to Mr. Vassell and two co-accused, and the trial was scheduled for one week instead of the original two. While the typical wait for a one-week trial in this jurisdiction was six to eight months, the system was able to accommodate a relatively quick second date, in June 2013, a period of four months. In submissions before this Court, Mr. Vassell’s counsel stated that while he and counsel for one of the remaining co-accused were available in June, counsel for the other co-accused was not. As a result, the trial was rescheduled for September 2013.
10. The funeral was an unavoidable event, which no one could foresee and for which no one can be held responsible. But the resulting delay cannot be completely disregarded. In particular, the additional three months of delay caused by the co-accused’s unavailability in June should be attributed to the Crown, who in the circumstances should have been more proactive in ensuring that the prosecution moved forward expeditiously. For example, knowing that Mr. Vassell wanted an early trial and had already experienced almost two years of delay, the Crown could have chosen to deal with him separately in June. Severance at this stage of the proceedings was, in my view, both viable and reasonable.
11. As the Crown properly conceded, the second adjournment falls squarely at the feet of the Crown and the system. On the second trial date in September 2013, the Crown announced that it intended to lead additional undisclosed expert evidence. At this point, Mr. Vassell stood alone on the indictment. The charges against his remaining two co-accused had been stayed. His trial was only to take three days. His counsel was available in November. And yet, Mr. Vassell was required to wait another seven months for a third trial date, because the earliest the court could accommodate the matter was April 2014. In the face of the obvious s. 11(*b*) concern — and knowing that Mr. Vassell had pushed all along for an early trial — it appears that the Crown and the system did nothing to secure earlier dates. In fact, it took the system almost twice as long to offer Mr. Vassell a third trial date than it had for his second, which involved a longer trial. And, to add insult to injury, in the end, the Crown did not call its new expert evidence.
12. Despite Mr. Vassell’s best efforts, his trial became bogged down as a result of a series of events over which he had no control and for which he bore no responsibility. The Crown was required to be more proactive in light of Mr. Vassell’s consistent efforts to obtain a speedy trial — and the system was insufficiently robust to provide him with earlier dates following the second adjournment of his trial. Taking into account all of the delay and the reasons for it, Mr. Vassell’s s. 11(*b*) right was violated. Accordingly, I would allow the appeal, set aside Mr. Vassell’s conviction, and enter a stay of proceedings.

*Appeal allowed.*

Solicitors for the appellant: Dawson Duckett Shaigec & Garcia, Edmonton.

Solicitor for the respondent: Public Prosecution Service of Canada, Yellowknife.