

Citation: *R. v. Roney*, 2024 YKTC 19

Date: 20240527  
Docket: 22-10016  
Registry: Watson Lake

**IN THE TERRITORIAL COURT OF YUKON**  
Before His Honour Judge Block

REX

v.

YANCY BRETT RONEY

Appearances:

(Counsel present on May 27, 2024 to  
receive reasons for judgment on the  
*Charter* s. 11(b) application)

Felix Remillard-Larose

Gregory Johannson-Koptyev

Counsel for the Crown  
Counsel for the Defence

(Counsel prior to May 27, 2024)

Kimberly Eldred

Cody Civiero

Counsel for the Crown  
Counsel for the Defence

**REASONS FOR JUDGMENT**

[1] BLOCK T.C.J. (Oral): I am going to read my reasons for judgment in respect of the decision I gave on April 10, 2024, on the delay application pursuant to s. 11(b) of the *Canadian Charter of Rights and Freedoms* (“*Charter*”) that was brought by both Mr. Munch and Mr. Roney. I stayed the charges against Mr. Munch pursuant to a violation of his right to trial within a reasonable time pursuant to s. 11(b) of the *Charter* and dismissed the same application in respect to Mr. Roney.

[2] I have to say at the outset, that the determination of these issues was not assisted by the incomplete filing of materials by then defence counsel for Mr. Roney, not the counsel who presently appears for him, and no written response whatsoever by the Crown, again, not the Crown counsel who presently appears on the matter.

[3] The charges against both men stem from a home invasion robbery and a severe beating on June 1, 2022, which left a Watson Lake drug trafficker, one David Prentice Steele, in a coma for a number of days. One of the charges before the Court is not in fact a robbery but I think I do no injustice by indicating that the essence of the charges against both men were in fact a home invasion, as I have described.

[4] Mr. Steele gave an initial interview to the Royal Canadian Mounted Police (“RCMP”) following his recovery of consciousness some week or 10 days after the attack. The statement was weak on the key issue at trial, which was the reliability of the identification of the alleged attackers. The defendants were named in an Information sworn July 21, 2022, alleging that they had committed the offences of break, enter, and commit; the indictable offences of aggravated assault; and mischief over and theft under. The defendants elected trial before the Territorial Court.

[5] Mr. Roney was arrested on November 4, 2022. It appears to be uncontroversial that he was in Watson Lake during the period between the swearing of the Information and his arrest. There was a suggestion, but no *viva voce* or affidavit evidence, that he evaded arrest for some months.

[6] Mr. Roney’s first appearance on the matter in court was on December 2, 2022. The matter was then adjourned for Mr. Roney to obtain counsel. The issue of

Mr. Roney's representation was not settled until May 24, 2023, when Mr. Civiero, counsel until recently, got on the record. In the intervening months, Mr. Roney was initially represented by Mr. Forester, who had a conflict in the matter which was addressed before the Court in February 2023.

[7] My determination of the responsibility for the 10 months of delay between the swearing of the Information and the determination of Mr. Roney's representation was handicapped by the partial record filed by the applicant. I chose to divide responsibility for the period July 2022 to June 2023 equally between the Crown and Mr. Roney. This may well be overly generous to the applicant. There was no evidence that either party was in a hurry to get this matter before a trial court. By "either party", I am referring to Mr. Roney and the Crown. The main issue facing the defence was the retaining of counsel. As we have indicated, six months was spent dealing with that issue alone.

[8] Mr. Roney had unrelated matters before the Court. On June 22, 2023, 11 months after the Information was sworn, he was offered August 2023 trial dates for the matter that is currently before me but he chose instead to use those trial dates for the unrelated matters.

[9] I acknowledge the difficulty in retaining Mr. Civiero and I do not quarrel with the tactical choice to use available court time for other matters, but both of the periods of delay occasioned by these issues constitute a waiver of the delay between, first of all, for the pre-retainer period, as I have indicated, but also waiver the delay between the proffered August and the accepted October 2023 trial dates in relation to the matters currently before me.

[10] As indicated above, it is evident Mr. Roney's progress to trial showed little or no concern for urgency and the two-month delay between the proffered August trial dates and the actual commencement of this matter in October must be accounted to him.

[11] Ultimately, a trial date of October 19, 2023, was set in Watson Lake. As we know, Mr. Munch accepted these dates very shortly after his arrest earlier that month. The police sought Mr. Munch in the environs of Watson Lake. Their efforts appear to have been relaxed at best. Notwithstanding the apparent fact that his considerable criminal antecedents were associated with Fort Nelson, British Columbia, his apparent origins in that locale and the fact that he was known to have family and associates in that community, no effort to locate him there was undertaken until September 2023. At that time, the local detachment of the RCMP in Fort Nelson were notified of the warrant for his arrest and he was quickly located and arrested.

[12] There is no evidence before me by way of either testimony or affidavit on which I could find that Mr. Munch was at large for the 15 months after the Information was sworn and before his arrest because he was attempting to evade capture or even knew that he was wanted for the crimes before this Court.

[13] As I have indicated, Mr. Munch was arrested in Fort Nelson, British Columbia, shortly before the trial date. His lawyer, Mr. MacGillivray, acted with notable diligence and immediately adjourned his client to the existing trial date later in October 2023 which had been set the previous August for Mr. Roney.

[14] In my view, in respect of Mr. Munch, the Crown is responsible for the entire delay between the date the Information was sworn in July 2022 and the beginning of this trial in October 2023.

[15] Two days before trial, on October 17, 2023, Crown attorneys then prosecuting the matter — as I have indicated, not the Crown attorney presently conducting the prosecution — made a series of unfortunate decisions. On that date of October 17, 2023, Mr. Steele was interviewed by Crown counsel in the presence of the Crown witness coordinator and without an electronic record. It is not necessary for me to describe in detail the significant elements of the evidence of identity as they differed between the original post-coma statement taken on June 12, 2022, the synopsis of the October 17 interview with Mr. Steele provided by Crown counsel to the defence the following day, and the notes of the October 17 interview taken by the Crown witness coordinator, that being Ms. Lois Sembsmoen.

[16] The account of the differences between all of the statements is contained in my oral reasons of March 21, 2024, requiring the disclosure of the Crown notes of the October 17, 2023 statement. By “Crown notes”, I mean the notes of the Crown attorneys themselves, not just the Crown witness coordinator.

[17] Suffice it to say that the synopsis of the October 17, 2023 interview given to defence counsel the next day — which was itself one day prior to trial — indicated a distinct improvement in the evidence of identity when contrasted with Mr. Steele’s original statement. Understandably, defence counsel demanded disclosure of the verbatim notes of the interview. The Crown militantly resisted this application.

[18] After argument, I ordered the disclosure of the notes taken by the Crown witness coordinator and ordered that she be made available for cross-examination by the defence. Her handwritten notes profoundly varied in content from the synopsis handed to the defence counsel the previous day. Her record of the interview significantly undermined the proposed evidence of identity by the injured man. Unfortunately, the continued presence of this important potential witness was not organized by Crown counsel even though she had been present at the opening of trial.

[19] There were a number of factors which coincided with the adjournment of the trial in October 2023. It was alleged — though no evidence was offered — that Mr. Steele had been threatened just prior to the October 19 trial date in an effort to discourage his participation. He was apparently in a known location in the immediate environs of Watson Lake. It was also clear that the controversy over the Crown witness coordinator's notes took up enough of the time set aside for trial that the completion of the trial was no longer possible during the scheduled period.

[20] However, the ill-advised last minute October 17, 2023 interview of Mr. Steele without an independent record and the provision of a fundamentally inaccurate synopsis of that interview to defence counsel coupled with the Crown's opposition to the disclosure of the Crown witness coordinator's notes and her unavailability to give evidence at the trial of this matter in October 2023 were the overwhelming factors necessitating the October 20, 2023 adjournment of this matter to today's date, that being May 27, 2024. All parties agreed that the trial should continue before me, notwithstanding the fact that my status as a deputy judge of the Territory with full-time

responsibilities in another jurisdiction precluded resumption of the trial proper until this date.

[21] The responsibility for the delay of this very serious matter from October through to May 27, 2024, lies solely with the Crown. That time period accounts for seven months and one week of delay.

[22] I calculate the cumulative delay for Mr. Roney to be 14 months, in my view and in view of the case law, well below the *Jordan* threshold. I calculate the cumulative delay for Mr. Munch to be 22½ months, well in excess of the *Jordan* threshold.

[23] Those are my reasons for judgment in the application before me.

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BLOCK T.C.J.