

R. v. Taylor

Her Majesty The Queen and Bryan Taylor

Ontario Superior Court of Justice

Archibald J.

Heard: March 8, 2010
Oral reasons: March 8, 2010
Docket: None given.

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Counsel: A. Morgan, for Crown
S. Pieters, for Bryan Taylor

Subject: Criminal

Criminal law.

Archibald J., S.C.J. (Orally):

1 The original bail hearing took place over two days before Justice of the Peace D. Begley. On December 18th, 2009, Justice of the Peace Begley detained the accused on the secondary grounds. Mr. Pieters has pointed out correctly that Justice of the Peace Begley's decision is not dispositive of his rationale as to why the accused should be detained on the secondary grounds other than his reference to the fact that the alleged offences are serious.

2 It is a reverse onus. The accused was previously released on a recognizance of \$2,000.00 for assault, assault with intent to resist arrest, and fail to comply. What is most noteworthy about that release is that he was to abstain from communicating directly or indirectly with a number of his co-accused with whom he is now charged again.

3 The events before the court are extremely serious. They comprise abduction, forcible confinement, and assault. The case against Mr. Taylor largely pivots on Mr. Taylor being a party to the offences. There is no direct evidence to support the proposition that he was involved in the perpetration of the vicious assaults against the two complainants. The case, however, is extremely strong at this juncture against Mr. Taylor on the basis that he was a party to the abduction and the extortion. Mr. Taylor is seen on the surveillance tapes which support the Crown's proposition that he was at least involved in the release of the second complainant, Mr. Persaud, to allow Mr. Persaud, in the circumstances, to acquire sufficient funds to pay off the kidnappers. Mr. Persaud had, within twelve hours of his release, pointed out Mr. Taylor by means of what appears to be an appropriate photo identification line-up. Mr. Persaud advised the police that "This is the guy from last night" in regard to the identification of Mr. Taylor. Mr. Persaud equally advised the police concerning conversations that allegedly took place between Mr. Taylor and himself while Mr. Persaud was abducted and held against his will in the bathroom of the apartment in question.

4 Three of the four co-accused have been released. Mr. Pieters makes the strong point that one of the co-accused, in particular Mr. Brandice, is facing at least as equally serious

charges if not more. The case against Mr. Brandice in regard to the possession of weapons is extremely serious in that Mr. Brandice was found in possession of a gun and possession of the drugs and it was his apartment which is the centerpiece of the alleged abduction. He was released for some reason by a justice of the peace on a \$100,000.00 surety. The Crown opposed that release but did not ultimately attempt to review the appropriateness of that release. Two other co-accused, whose cases are not as strong nor significant, were equally released. One other accused is still in custody, and Mr. Chokar was detained and has not yet secured his release.

5 Given the number of charges and the number of accuseds, a preliminary inquiry has not yet been set. I must review this case from the perspective of the secondary grounds. I should not, as Mr. Pieters indicated, look at it from the lens of the tertiary grounds because three of four co-accused were released in the circumstances. I do not disagree with that innovative argument on the part of Mr. Pieters. What, however, gives me pause for concern is the strength of the Crown's case as it relates to the secondary grounds. It would appear at this particular juncture that the case against Mr. Taylor as a party to these offences is quite strong. The surveillance evidence combined with the conversations that the complainant indicates that he had with Mr. Taylor, combined with the identification case against Mr. Taylor makes the Crown's case quite significant.

6 If Mr. Taylor is convicted of these offences, he is looking at a minimum of five to seven years in the federal penitentiary. What also gives me pause for concern is the fact that it is a reverse onus and one of the terms and conditions was for Mr. Taylor to stay away from Mark Bureiras, his co-accused Sean Terell, his co-accused here and Shane Persaud, who I understand is the second complainant in this case.

7 In carefully reviewing the Justice of the Peace's decision, although it was bereft of any detail concerning the rationale behind why he detained the accused, in my view, it was ultimately the correct decision that the accused should be detained on the secondary grounds. The fact that three of the four accused were released is a change in circumstance and could be material but each of the co-accuseds' situations must be looked at and compared to Mr. Taylor.

8 In my view, it would appear that the release of Mr. Brandice was probably an error in law made by a Justice of the Peace. Two wrongs, however, do not make a right. Because Mr. Brandice was released is not sufficient reason for me therefore to release Mr. Taylor given the gravity of the offences, the strength of the Crown's case, Mr. Taylor's prior criminal record, and the reality that this was a reverse onus, and the terms of that reverse onus. The other two co-accused, as mentioned, were released, but those cases against those two accuseds are not very strong.

9 Given Mr. Taylor's criminal record and the reverse onus in these circumstances and the nature of this offence, and the strength of this case, I conclude that there is a substantial likelihood that Mr. Taylor would commit further offences upon his release, or he would interfere with the administration of justice. I do not find that there is a substantial material change in circumstance that would warrant a release for Mr. Taylor. Indeed, even if the sureties could put forward a situation where supervision would in essence be 24/7 while in the community, given all of the aforesaid, a release would amount to an error in principle in reference to the secondary ground. Thus, I maintain Mr. Taylor's detention.

10 I want to thank Mr. Pieters in particular for his fine presentation over the last two days. He has done an absolutely commendable job, a first-class job, on behalf of his client in difficult circumstances and has raised every possible argument in his client's favour.

11 Although in the end analysis, for the reasons given, Mr. Taylor is detained.

12 MR. PIETERS: Thank you, Your Honour.

13 THE COURT: And thank you, Mr. Peters.

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