

2011 CarswellOnt 543,

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R. v. Taylor

Her Majesty the Queen v Bryan Taylor

Ontario Court of Justice

K.N. Barnes J.

Heard: January 20, 2011

Judgment: January 20, 2011

Docket: None given.

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Counsel: T. Lissaman, for Crown

S. Pieters, for Mr. Taylor

Subject: Criminal

Criminal law.

Cases considered by *K.N. Barnes J.*:

R. v. Hall (2002), 4 C.R. (6th) 197, 217 D.L.R. (4th) 536, 167 C.C.C. (3d) 449, 97 C.R.R. (2d) 189, 293 N.R. 239, [2002] 3 S.C.R. 309, 2002 SCC 64, 2002 CarswellOnt 3259, 2002 CarswellOnt 3260, 165 O.A.C. 319 (S.C.C.) — followed

R. v. LaFramboise (2005), 2005 CarswellOnt 8335, 203 C.C.C. (3d) 492 (Ont. C.A. [In Chambers]) — followed

Statutes considered:

Criminal Code, R.S.C. 1985, c. C-46

s. 109 — referred to

s. 515(10)(b) — considered

s. 515(10)(c) — considered

s. 523(2) — pursuant to

K.N. Barnes J.:

1 Mr. Bryan Taylor is facing a number of charges which include offences such as forcible confinement, assault, aggravated assault, abduction and various firearms charges, including pointing a firearm. A preliminary inquiry was held before this Court.

2 Mr. Bryan Taylor has been detained in custody and pursuant to s. 523(2) of the *Criminal Code*, he has applied to this Court to vacate the order for his detention. The Crown seeks Mr. Taylor's continued detention on the secondary and tertiary grounds, s. 515(10)(b) and (c) respectively of the *Criminal Code*. Mr. Taylor has put forward a plan for judicial interim release involving a surety release in an amount which is between \$25,000.00 to \$50,000.00. The proposed plan includes conditions involving house arrest and 24-hour supervision. Four potential sureties have been proposed.

3 Mr. Taylor was detained by Justice of the Peace Begley at the original bail hearing. The subsequent review of that decision was dismissed by Justice Archibald of the Superior Court of Justice. These are serious allegations.

4 The witnesses at the preliminary inquiry informed the Court that on or about the 12th day of November, 2009, Mr. Shane Persad and Mr. Ramkhalawan were abducted at gunpoint, from Martin Grove Road and Rexdale Boulevard, in the City of Toronto. The two hostages were taken from the scene in two different vehicles, all in an effort to ascertain the location of and kill another person called "Rajin".

5 Mr. Ramkhalawan testified that he was abducted by two men and ordered to sit in the back of a motor vehicle. He explained that one of his abductors occupied the driver's seat while the second sat in the back seat. He stated that the vehicle was put in motion. Mr. Ramkhalawan explained that he was abducted at gunpoint and that any time he asked his abductors a question, he was hit with a gun. He indicated that at some point a gun was placed against his head. He stated that his head was covered with a sweater and death threats were made against him by both of his abductors.

6 According to Mr. Ramkhalawan, the driver was in possession of the firearm. He further explained that the kidnapper with the gun occupied the driver's seat and drove the vehicle. He indicated that, at some point, the gun, the firearm, was placed close by in the vehicle. According to Mr. Ramkhalawan, while the vehicle was in motion, he began to fight the driver and the abductor who was sitting beside him. He stated the driver pulled over the vehicle, which was travelling on Highway 401. He indicated that he managed to kick out the car windows and make good his escape. Mr. Ramkhalawan sustained some serious injuries.

7 Mr. Shane Persad testified that he was abducted at gunpoint and driven in a vehicle driven by Mr. Taylor's co-accused, a Mr. Chhokar. He stated that, at some point, he felt a gun placed at his side whilst he was in the vehicle. According to Mr. Persad, he was forced by his abductors to take them to Rajin's house. He was told by his abductors to get down when Rajin opened the door because they intended to shoot Rajin. This attempt was unsuccessful because

Rajin did not open the door.

8 Mr. Persad stated that he was then taken by his abductors to an apartment where he was bound with duct tape and placed in a bathtub. According to Mr. Persad, the person who had fought Mr. Ramkhalawan stated that he wanted to kill Mr. Ramkhalawan. He explained that this person also showed him identification belonging to Mr. Ramkhalawan. He further described that this same person asked him if he knew Mr. Ramkhalawan's PIN number. According to Mr. Persad, while he was in the bathtub, he saw a gun which was placed on his legs in his lap area. He also stated that this firearm was placed in his mouth by the man who had been fighting with Mr. Ramkhalawan. He stated that this man stated that he was going to shoot him and that this man cocked the gun. Mr. Persad stated that he was told by his abductors that they were seeking Rajin because Rajin had stolen their marijuana.

9 Mr. Persad testified that he was tortured and that he was burned with a hot knife. According to Mr. Persad, the man who had fought with Mr. Ramkhalawan also participated in his torture. He stated that this man burnt him. At some point, Mr. Persad was released and asked to provide his abductors with \$50,000.00 and a quantity of marijuana which Mr. Persad promised to do.

10 Mr. Persad identified Mr. Taylor as one of the persons who had abducted him. It is not disputed that there is surveillance evidence placing Mr. Taylor in the apartment, that there is also some fingerprint evidence placing him at the apartment. As I have indicated, Mr. Persad also stated he saw Mr. Taylor in the apartment.

11 There are a number of developments that constitute a change in circumstances since the original bail hearing and also since the bail review in this matter. At the time of these hearings, Mr. Taylor was facing some outstanding charges of assault and assault resist arrest. Mr. Taylor has since been acquitted of those charges. Although the same sureties are proposed the quantum of the monetary component of the proposed judicial interim release has increased to between 25,000 to \$50,000.00.

12 The evidence presented at the bail hearing and also at the bail review suggested that Mr. Taylor was, at the highest, a party to the crimes. The evidence called at the preliminary inquiry has strengthened the Crown's case against Mr. Taylor.

13 Mr. Shane Persad has identified Mr. Taylor as the person who made utterances about Mr. Ramkhalawan and Mr. Ramkhalawan has testified that he fought his abductors during his kidnapping. He indicated that he fought the abductor that sat beside him in the vehicle as well as striking the driver who was in the front seat. Mr. Persad identified Mr. Taylor as the person who threatened to kill him. He indicated that Mr. Taylor is one of the people who tortured him. He indicated that Mr. Taylor is the person who placed the gun in his mouth. He also identified Mr. Taylor as the person who asked him to produce \$50,000.00 and a quantity of marijuana.

14 The defence has expressed concerns about the manner in which the identification evidence was elicited during the preliminary inquiry. These are issues to be addressed during the trial.

15 Four well-meaning individuals have been put forth by Mr. Taylor as potential sureties, together with a plan which involves 24-hour supervision and also house arrest. These plans certainly can be varied by this Court as required.

16 Ms. Yvonne Johnson is Mr. Taylor's mother. She is working and she works from 3 p.m. to 11 p.m. She was forthright in her testimony, however, she had no idea where her son was supposed to live while he was on release on the assault and the assault resist arrest charges. She did not know how he supported himself. She had no idea what type of music manager he had or exactly what he did with respect to music. She had told Mr. Taylor to get a job and return to school. Mr. Taylor had simply ignored her request. Mr. Taylor had not lived with her for a while. She had no idea how to reach him when Mr. Taylor's alleged involvement in this offence broke the news.

17 The cumulative effect of all of these facts leaves this Court to conclude that Mr. Taylor is not close with his mother and that he would not listen to her and that Ms. Yvonne Johnson will be unable to supervise Mr. Taylor.

18 Ms. Nekoda Roberts is Mr. Taylor's cousin. The plan is that she is to supervise Mr. Taylor while his mother, Yvonne Johnson, is at work. Ms. Roberts' hours of work are from 11 p.m. to 7 a.m. Ms. Roberts was Mr. Taylor's surety when he was arrested on drug charges in 2007. She testified that she was willing to go to Mr. Taylor's mother's home to supervise him. She was, however, not quite sure how Mr. Taylor would get to her home if supervision at her home was necessary. It was clear that the logistics of the supervision between herself and Ms. Yvonne Johnson had not been fully thought out or worked out.

19 Ms. Marlena Ewan is a sister of Mr. Taylor's girlfriend. She was not prepared to be a surety but she was willing to supervise him. She works from 8:30 a.m. to 4:30 p.m. She is currently on maternity leave. Ms. Ewan's willingness to supervise Mr. Taylor but her unwillingness to face potential liability for any failure on his part to comply with terms of any release makes her unsuitable to supervise Mr. Taylor and also to act as a surety.

20 Mr. Setsi Morojele is a music manager for Mr. Taylor. He proposes to offer Mr. Taylor employment on unspecified music projects at unspecified and unpredictable hours. This sort of employment will make any house arrest provision with an exception for employment unworkable rendering that provision of any release ineffective. Mr. Morojele's proposed supervision is proposed to occur during the course of this employment, and, therefore, for the reasons articulated, is unworkable.

21 For the reasons previously articulated, I conclude that Ms. Yvonne Johnson is unable to supervise Mr. Taylor. Ms. Roberts, who was his previous surety, is unable to provide 24-hour house arrest type of supervision and thus is unsuitable. Ms. Ewan has no interest in being a surety and thus is also unsuitable. Mr. Morojele's contribution is significantly unstructured as to be unsuitable.

22 At the time of his arrest on these charges, Mr. Taylor was subject to a probation order, which has the standard keep the peace and be of good behaviour provision. He was also subject to a s. 109 weapons prohibition order. These allegations involve weapons offences.

23 An assessment of the evidence called at the preliminary inquiry indicates that there is some compelling evidence that Mr. Taylor, while subject to the orders described, committed the serious offences in violation of the orders. This leads the Court to have serious concerns on the secondary ground that there is a substantial likelihood that if Mr. Taylor is released from custody he will commit further criminal offences. In addition, the circumstances of the offences, in particular the elaborate planning and method of plan execution, the hallmark of the offence being the abduction, torture and threatening of third parties in order to capture another party, Rajin, and the strength of the evidence at the preliminary inquiry, which indicates that Mr. Taylor was a principal participant in these crimes, leaves the Court to have serious concerns that there is a substantial likelihood that if Mr. Taylor is released he will interfere with the administration of justice. Therefore, I conclude that, having regard to all of the circumstances, the detention of Mr. Taylor is necessary for the protection and safety of the public including the victims of this crime.

24 I reach the same conclusion on the tertiary grounds as enunciated in s. 515(10)(c) of the *Criminal Code*. I instruct myself that the tertiary ground should be given a very narrow application, see *R. v. Hall*, [2002] 3 S.C.R. 309 (S.C.C.), and that it should be used sparingly. See *R. v. LaFramboise* (2005), 203 C.C.C. (3d) 492 (Ont. C.A. [In Chambers]).

25 After considering the tertiary ground criteria, in a bail review involving Mr. Taylor's then co-accused Mr. Dustin Brandejs, Nordheimer, J., of the Superior Court, upheld the decision of the justice of the peace to release Mr. Brandejs on bail. Mr. Brandejs' apartment was used to confine Mr. Persad. Mr. Brandejs was found in possession of a loaded firearm used in that abduction. The firearm, as I have indicated, was loaded. It had eleven rounds of ammunition. The other evidence of Mr. Brandejs' involvement in the actual abduction was tenuous at best, leading Justice Nordheimer to comment at paragraph ten of his judgment that Mr. Brandejs could simply have been a passive participant or been at the wrong place at the wrong time.

26 I note simply for the purposes of interest that Mr. Brandejs pled guilty to the weapons and other charges not including any charges relating to kidnapping or forcible confinement. I state that as a matter of simple interest. This not a relevant consideration for this Court in this hearing.

27 I also note that Mr. Brandejs, at the time of Justice Nordheimer's decision, essentially had no criminal record.

28 Mr. Taylor has had a prior criminal record for possession of cocaine for the purposes of trafficking. He was sentenced in January of 2008. He received a 78-day sentence having served 51 days in pre-trial custody. He was placed on probation for a period of two years and was subject to a s. 109 prohibition order for at least ten years. Both of these orders were in place at the time of these alleged offences.

29 In addition, unlike Mr. Brandejs, there is evidence implicating Mr. Taylor in the actual abduction of Mr. Shane Persad and some circumstantial evidence implicating him in the abduction of Mr. Ramkhalawan.

30 The Crown's case at the preliminary inquiry has only gotten stronger, as previously described. These are serious offences involving abduction, kidnapping, aggravated assault and some firearms offences. The circumstances surrounding the offence are some of the most serious and involved a coordinated abduction of at least two victims. There is direct evidence implicating Mr. Taylor in the abduction of Mr. Shane Persad. I have indicated that there is some circumstantial evidence implicating him with respect to the abduction of Mr. Ramkhalawan. There was torture. There were threats to kill. There was a pointing of a firearm at the victims, to name a few.

31 There is evidence suggesting that Mr. Taylor had a direct participation in all of these acts. The operation was well planned and the circumstances are very serious. Mr. Taylor is facing a minimum sentence of at least five years on the weapons charge alone. If convicted, he faces the potential of receiving a lengthy penitentiary sentence.

32 Having regard to all of the circumstances of this case, I have concerns on the tertiary ground and conclude that Mr. Taylor's detention is necessary to maintain confidence in the administration of justice. The detention order shall therefore remain.

33 All right.

MR. PIETERS: Thank you, Your Honour. Now, Your Honour, there is one other matter to attend to. There was an application argued before you some time ago, a Youth Court application...

THE COURT: Yes.

MR. PIETERS: ...and my understanding is this matter seems to be heading to committal in Superior Court.

THE COURT: All right.

MR. PIETERS: So I'm not sure when Your Honour is going to be able to turn your mind to releasing a judgment on those issues.

THE COURT: All right. All right. Well, since it's headed in that direction, I will plan to do that on the 25th, I believe, when it comes back.

MR. PIETERS: Thank you very much, Your Honour.

THE COURT: All right.

CLERK OF THE COURT: 25th of January, Courtroom 205, Your Honour?

THE COURT: Yes, I believe that's the next day.

34 — Adjourned to January 25, 2011, 10:00 a.m., Courtroom 205.

2011 CarswellOnt 543,

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