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R. v. Souchleris

Between
Her Majesty the Queen, and
Constantine Souchleris

[2000] O.J. No. 5203

Ontario Court of Justice
Newmarket, Ontario
Bogusky J.

April 13, 2000.
(12 paras.)

Counsel:

K. McCleave, for the Crown.
P. Periti, for the defence.

¶ 1 **BOGUSKY J.**:— I will first deal with R. v. Caruso. The only thing I regret about that decision is my not reading transcript before it was distributed. My English teachers would not have been impressed.

¶ 2 Now, list an historical background on that particular decision. And I am going strictly an memory, which is dangerous at my age. But my feeling today is that the decision reflects the tension which existed in 1991, in this building. As memory serves me, the whole system was shattering. The work load of the existing Crowns, Justices of the Peace and Judges, was enormous. The demands were overwhelming. The work could not be completed, and nothing appeared to be being done to correct it. Justice, in fact, was starting to devour itself from within. Crowns were frazzled, Justices and Judges were angry. Each component was spinning out and agitating the others. It was not a pleasant place for any of the players.

¶ 3 The decision reflects the frustration of not having enough time to hear and determine the cases which were on the court platter. It also reflects the frustration of having to use what little time there was in fact, to listen to Askov applications instead of dealing with cases on the merits.

¶ 4 In other words, the problems were compounding at an increasing rate. Since I was the author of R. v. Caruso, I can also destroy it.

¶ 5 I adopt the decision of Justice Weinper in R. v. Williams, as being the correct consideration for dealing with delays in getting Highway Traffic Act matters through the system.

¶ 6 Now, the merits of this appeal. On November the 8th of 1999, the defendant was successful in a delay application. Of course, it has now been appealed by the Crown to this Court.

¶ 7 In this case, he received a citation and requested, and in fact received, a trial date. That trial date was approximately six months into the future, if my arithmetic is correct.

¶ 8 Within four or five days of that trial date, he hired an agent. The agent requested disclosure, electronically, and that request was sent to an office which was no longer used by the prosecution. In fact, the

prosecution had moved to an entirely different building. The FAX was not relayed.

¶ 9 On the trial date, some four or five days later, the agent, who was now standing in the shoes of the defendant, asked for a remand, as he felt, professionally, it was unwise to have the trial without benefit of the disclosure.

¶ 10 A new trial date was set for a month later, but through some mix-up resulting from the prosecution having moved from the old premises, that disclosure was not made. Another date was set, and that one was in November.

¶ 11 In this case, the Court finds that if the meter was running when the first trial date was given to him, which was in February, the meter stopped running on the first trial date. And it is not a cumulative thing. At the point when the agent asked for a new trial date, it created a new data for the meter to begin running. In actual fact, in November, the system was prepared to let the defendant have his day in court. From August, which was the day of the first trial, at which time the agent begged off, to the month at November, is approximately four months. And that delay does not even open up the idea of an application for relief because of a delay.

¶ 12 So, the Crown's appeal is successful, and I guess it is a case of setting a new trial date.

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