

COURT OF APPEAL FOR BRITISH COLUMBIA

Citation: *R. v. Fox*,
2019 BCCA 211

Date: 20190606
Docket: CA44915

Between:

Regina

Respondent

And

Patrick Henry Fox

Appellant

Restriction on publication: A publication ban has been imposed under s. 486.5(1) of the *Criminal Code* restricting the publication, broadcasting or transmission in any way of evidence that could identify a victim/witness/undercover officer, referred to in this judgment by the initials G. and S. This publication ban applies indefinitely unless otherwise ordered.

Before: The Honourable Madam Justice Newbury
The Honourable Madam Justice D. Smith
The Honourable Madam Justice Griffin

On appeal from: Orders of the Supreme Court of British Columbia, dated
June 20, 2017 (conviction) and November 10, 2017 (sentence)
(*R. v. Fox*, 2017 BCSC 2665 (conviction) and 2017 BCSC 2361 (sentence),
Vancouver Docket 27178).

Oral Reasons for Judgment

The Appellant, appearing in person
(via videoconference):

P.H. Fox

Counsel for the Respondent:

D.M. Layton, Q.C.

Place and Date of Hearing:

Vancouver, British Columbia
June 6, 2019

Place and Date of Judgment:

Vancouver, British Columbia
June 6, 2019

Summary:

Crown application for dismissal of appeals against conviction and sentence dismissed for lack of due diligence in prosecution of appeals and for respondent's flouting of the jurisdiction of the Court.

[1] **NEWBURY J.A.:** The Crown applies for the dismissal of appeals brought by Mr. Fox (or the person who calls himself Patrick H. Fox) against his conviction and sentence on charges of criminal harassment and possession of firearms at an unauthorized place; and for other orders relating to the publication and dissemination of filed materials and information.

[2] Mr. Fox was convicted by a jury on June 28, 2017 at a trial where he was self-represented, although a lawyer, Mr. Lagemaat, was provided to cross-examine the complainant, Ms. Capuano (Mr. Fox's former common law wife), on the harassment charge. On November 10, 2017, Mr. Fox was sentenced to three years' imprisonment on the harassment charge and 10 months concurrent on the firearms charge, with credit for time already served.

[3] Mr. Fox filed a notice of appeal on November 22, 2017 in respect of his convictions and sentence. The primary ground of appeal was that Mr. Lagemaat had provided "ineffective assistance" in a deliberate effort to cover-up perjury on Ms. Capuano's part in collaboration or collusion with Crown counsel.

[4] An application made by Mr. Fox under s. 684 of the *Criminal Code*, R.S.C. 1985, c. C-46 for the appointment of counsel in this court was dismissed on November 9, 2018.

[5] A series of case management hearings before Fitch J.A. took place over the ensuing months. Mr. Fox was told repeatedly that he had to provide the transcript and appeal books for his appeal, but he was unable to do so because of financial circumstances. At the fifth case management conference, Fitch J.A. warned that he had to have a plan for pursuing his appeal by March 25, 2019, failing which the Crown could apply to have the appeals dismissed for want of prosecution.

[6] Around this time — March 2019 — also, Mr. Fox would appear to have participated in launching a new website devoted to attacks on Ms. Capuano's reputation and asserting that his convictions were bogus. Various materials that had been included in the Crown's disclosure materials in his case, as well as excerpts from trial transcripts and Ms. Capuano's victim impact statement, were mounted on the website, which of course attracted responses from members of the public whose toxicity matched that of Mr. Fox. All of this conduct violated the terms of Mr. Fox's probation order, which had prohibited the dissemination of materials referring to Ms. Capuano; as well as the terms of a Provincial Court order limiting his use of disclosure materials he had received; and the implied undertaking attached to materials disclosed to him as a self-represented litigant. In summary, Mr. Fox engaged in conduct he knew to be unlawful, and in doing so continued his harassment of Ms. Capuano.

[7] In addition, he attempted to travel to the United States, without the approval of his probation officer and contrary to the terms of the probation order. After this attempt he was transported back to the Canadian border and placed in the custody of the Burnaby RCMP on a warrant issued on an information that charged him with breaches of his probation order. He is to be tried on those three charges in August 2019.

[8] Today Mr. Fox has confirmed that he is unable to obtain the transcript and prepare the appeal books that would be required for any appeal. He has also repeated arguments made before Holmes A.C.J. concerning his citizenship and has effectively admitted he is responsible for the new website. He has also expressed eagerness to be charged on further harassment counts.

[9] I am persuaded that Mr. Fox's appeals against conviction and sentence must now be dismissed for lack of diligent prosecution of the appeal. The Crown has adduced evidence that appears to strongly support its contention that Mr. Fox has intentionally violated orders of the Provincial Court and Supreme Court of British Columbia. Today, he effectively admitted responsibility for the new website and

raised only a technical objection to the Crown's assertion that in publishing the disclosure materials, he breached the order of Burgess P.C.J. Without deciding that particular issue, I will say that the evidence strongly suggests that the orders were breached and that Mr. Fox's primary goal was to harass his ex-wife yet again.

[10] I would grant an order dismissing Mr. Fox's conviction and sentence appeals for want of prosecution and for repudiating the jurisdiction of this court. I would also grant an order prohibiting Mr. Fox from disseminating, distributing, publishing, broadcasting or transmitting in any way any materials filed on this application, or any part or excerpt thereof, except insofar as dissemination or distribution is necessary for the purposes of his participating in this or any other legal proceeding in British Columbia. Also, an order directing that none of the information regarding any breaches by Mr. Fox of his probation order, whether contained in the materials filed on this application, or in the information given or representations made at the hearing of this application, be published, broadcast or transmitted in any way before such time as: (i) if a preliminary hearing is held, Mr. Fox is discharged; or (ii) if Mr. Fox is tried or ordered to stand trial, the trial is ended.

[11] **D. SMITH J.A.:** I agree.

[12] **GRIFFIN J.A.:** I agree.

"The Honourable Madam Justice Newbury"