

VANCOUVER
AUG 11 2022
COURT OF APPEAL
REGISTRY

CA47391
VANCOUVER REGISTRY

COURT OF APPEAL

REGINA

RESPONDENT

v.

PATRICK HENRY FOX

APPELLANT

AFFIDAVIT #3 OF PATRICK FOX
RE: AFFIDAVIT OF CHRIS JOHNSON

I, Patrick Henry Fox, presently incarcerated at North Fraser Pretrial Centre (NFPC) in the City of Port Coquitlam in the Province of British Columbia, solemnly affirm and say as follows:

1. I am the appellant and personally know about the matters referred to in this Affidavit, except where they are based on information and belief, in which case I believe them to be true.
2. Regarding paragraph 11 of Chris Johnson's Affidavit #1 (Johnson Affidavit), filed 2022-05-20:
 - 2.1. The Crown has failed to provide any evidence that any of the material related to the prosecutions against me which has been published on the internet was obtained through the disclosure process in those matters. The Crown has repeatedly accused me of "stealing" a number of electronic devices they had provided me containing disclosure material, however they have, again, failed to provide any evidence to support those allegations.
 - 2.2. Mr. Johnson also claims there is an ongoing concern about me

publishing disclosure material and he appears to be using that as a basis to justify delays in providing me disclosure. However, in the past six years that the BCPS has been prosecuting me, neither they nor any judges have been able or willing to articulate a basis for that concern, or a basis for opposing me publishing disclosure material.

3. Regarding paragraph 16 of the Johnson Affidavit, Mr. Johnson states I did not request another bail hearing at the 2020-10-20 appearance, however in my 2020-10-31 letter to Mr. Johnson (attached as Ex. 'E' to the Johnson Affidavit), in the first paragraph, I expressly requested he schedule a bail hearing at the earliest opportunity.

4. Regarding paragraph 18 of the Johnson Affidavit:

4.1. Mr. Johnson claims he and I had off the record discussions in the courtroom, on at least two occasions, regarding which witnesses might be called. Mr. Johnson claims I stated I wanted Det. Dent to be called. However, at each pretrial appearance I appeared by video from NFPC, so the discussions he's referring to could not possibly have occurred because, as the transcripts show, the judge was present before I was connected; and the Sheriffs' practice at the 222 Main Street courthouse is to terminate the video connection as soon as the hearing ends unless I or Crown explicitly request they not terminate the connection so that I and Crown may confer further. But in such a case that request would appear in the record/transcript and it does not.

4.2. Prior to 2020-11-26 there was absolutely no discussion between myself and Crown Counsel, including Mr. Johnson, regarding witnesses other than my requests for Crown to provide me a list of the witnesses they intended to call.

4.3. At the 2020-11-26 trial I stated that was the first I had heard of Det. Dent being called as a witness. Mr. Johnson did not dispute that and did not claim we had any discussions about possible witnesses prior to that point. Mr. Johnson also acknowledged that he had included Det. Dent's evidence in the disclosure material he had provided me three days prior and that that was all he was required to do

(TR p418-32).

5. Regarding paragraphs 18-19 of the Johnson Affidavit, Mr. Johnson is mistakenly referring to events from 244069-8-b (CA48145), not 244069-7-b (CA47391). It was following the appearance on 2021-10-14, and before the appearance on 2021-11-23, that Mr. Johnson stated he intended to call Det. Dent and I stated I wanted Det. Dent to testify. Mr. Johnson even referenced this in open court, on the record, at the 2021-11-23 appearance, so it is proven by the transcript of that appearance. And, the discussion about possibly making admissions was following the 2022-01-10 appearance in the matter of 244069-8-b. And again, that was referred to by Mr. Johnson, on the record in open court at the appearance on 2022-01-27.
6. Regarding paragraph 20 of the Johnson Affidavit, the "admissions" referred to in my letter are the statements I had made during the Det. Dent interview, NOT the admissions Mr. Johnson is referring to in paragraph 19 of his affidavit. In the letter, I placed the word "admissions" in quotations, because I believed it should have been abundantly obvious that any statements I had made to Det. Dent in the interview could not have been taken seriously.
7. Regarding paragraph 21 of the Johnson Affidavit:
 - 7.1. My statement in my 2020-10-31 letter, about being ready for trial right now, related to my preceding statement in that letter about potentially needing time to investigate Johnson's witnesses and to obtain rebuttal evidence - NOT to the disclosure material. Also, if the Crown was not intending to provide any further disclosure, beyond their initial package they had already provided, then I was ready for trial.
 - 7.2. I had no "hope" that Crown would call Ms. Capuano as a witness, because Ms. Capuano had nothing to do with this case and therefore she would have no relevant testimony. Moreover, I did not believe the Crown would ever rely on testimony from Ms. Capuano again, given her extensive and proven record of committing perjury at the trial in the index offense.

7.3. My statement regarding the testimony of one or two VPD officers was in relation to the narratives provided by two VPD officers regarding their involvement in my arrest on 2020-09-17, which was provided to me in the very brief initial disclosure package. As of 2020-10-31 those were the only police statements that had been disclosed to me.

7.4. Johnson's claims about how he understood my 2020-10-31 letter are inconsistent with his email communications with Kelsea Goodwillie (Ex. D of Johnson's affidavit). On 2020-10-15, Ms. Goodwillie told Johnson she sent him the electronic disclosure. Johnson did not respond. On 2020-11-03, Goodwillie sent a follow-up email to Johnson asking if he had been able to review the material yet. Johnson did not respond. On 2020-11-18, more than a month after she had provided Johnson the electronic disclosure, Goodwillie sent another follow-up email to Johnson. Finally, Johnson responded, saying he was in the process of reviewing the material. Johnson made no mention of me saying I didn't require the material. On 2020-11-20, Goodwillie sent Johnson another follow-up email, asking whether Johnson had been able to review everything yet and expressing concern about whether I would have sufficient time to review everything considering the trial was less than a week away. Johnson responded that same day, saying he did review everything and "it can now be disclosed...hopefully as soon as possible" (emphasis added). And, later in that email thread, Johnson said "Yes I'm okay with that as long as we can have it sent on Monday" (emphasis added). Again, there was no mention of my 2020-10-31 letter or of any supposed statements by me that I don't require the disclosure material.

7.5. Mr. Johnson misquoted me as saying "...the evidence of one or two VPD officers..." (emphasis added), whereas I actually said "...the testimony of one or two VPD officers..." (emphasis added). Testimony is merely a person's words and the indisputable reality is that people lie, exaggerate, misrepresent, forget, and memory is often unreliable and subjective. I would never equate the word "testimony" with "evidence", and I would never consider "testimony" to be "proof" of anything.

8. Regarding paragraphs 20-21 of the Johnson Affidavit, in the matter of 244069-6-b Mr. Johnson and Judge Denhoff refused to allow me to waive my right to timely disclosure (regarding a small amount of insignificant material that Johnson even admitted he did not intend to use at the trial), resulting in an adjournment, which I firmly opposed, on the day of the trial.

9. Regarding paragraph 23 of the Johnson Affidavit:

9.1. Mr. Johnson claims to have no memory of my telephone message from early November 2020 (2020-11-03??), requesting he schedule a bail hearing and a PTC, however I also requested in my 2020-10-31 letter (Ex. 'E' of the Johnson Affidavit) that he schedule a bail hearing.

9.2. Mr. Johnson's claim about me knowing I could schedule the bail hearing and the PTC myself by contacting the registry is also false. Up to that point I had always gone through the Crown to schedule appearances because:

(1) Crown has direct access to the registry, whereas I would have to do it by mail which would take much longer; and

(2) I don't have access to Crown's schedule so I don't know when they're available. That means I would have to first schedule a brief appearance to then schedule the actual hearing at a time conducive to both the court and the Crown.

9.3. At the 2020-10-20 appearance, I had requested, on the record, that a PTC be scheduled to address the outstanding issues. Johnson said he wasn't aware of any issues but that if any came up I could contact him and he would schedule a PTC if necessary.

10. Regarding paragraph 28 of the Johnson Affidavit:

10.1. In four out of the five prosecutions the BCPS has brought against me the transcripts of all of the police interviews, including the interviews of me, have been provided as part of the disclosure without me requesting it. The one and only

time that has not been the case is in this instance. Mr. Johnson's statement is plainly false.

10.2. I did not ask Mr. Johnson for the transcript of the police interview in 244069-8-b. The transcript was generated on 2021-08-26, and was included with RTCCv2 on 2021-11-10. It was provided without me requesting it. Mr. Johnson's statement is plainly false.

11. Regarding paragraph 32 of the Johnson Affidavit, Mr. Johnson claims the delay in getting the disclosure material to me was the result of his heavy schedule and personal obligations, however last minute or "day of the trial" delays have occurred in all three of the cases Johnson has prosecuted against me. If it was a one time occurrence I would give Mr. Johnson the benefit of the doubt but because it has happened consistently, in every case, I do not believe it.

12. Regarding paragraph 33 of the Johnson Affidavit:

12.1. Mr. Johnson refers to further off-the-record discussions he had with me the morning of the trial. Because of Johnson's proven history of lying about what did or didn't happen, I am adamant about not having any off-the-record communication with him unless it is in writing, is recorded, or is irrelevant. Johnson again claims I knew about his intention to call Dent as a witness. But, as explained above, that is false.

12.2. When Mr. Johnson spoke with me immediately before the start of the trial I did not agree that the Crown "did not need to play the video of the interview". I did not believe Johnson was seeking my agreement on the matter, he was informing me of how he intended to proceed.

12.3. The discussion to which Mr. Johnson refers occurred in a secure visitation room, in the basement of the courthouse, where the Sheriff's holding cells are located. The meeting with Johnson was entirely unexpected, I had received no advance notice of it, and it occurred, literally, minutes before the trial began.

12.4. I did not respond or react to Johnson's statements in the meeting because the interaction was not being recorded and, therefore, there would be no record of what was said.

13. Regarding paragraph 34 of the Johnson Affidavit, Mr. Johnson did not ask me to permit the Crown to lead the evidence of my statements at the interview through Det. Dent, he informed me that that was how he intended to proceed. Mr. Johnson and the Crown did not require my permission in that respect.

14. Regarding paragraph 35 of the Johnson Affidavit:

14.1. Mr. Johnson says when I objected to the calling of Det. Dent, he was not concerned about the trial being unfair because I had known that Dent would be a Crown witness and I had actually wanted Dent to be called. As explained above, all of that is false.

14.2. Mr. Johnson claims that in my 2020-10-31 letter I "requested a witness list only if the Crown was not confining it's case to my statements at the interview and the evidence of one or two VPD officers." However, what I said was that if the Crown's case was going to be based solely on my "admissions" and the testimony of one or two VPD officers, then I will not need time to investigate their witnesses or obtain rebuttal evidence.

15. Regarding paragraph 36 of the Johnson Affidavit:

15.1. I did not raise any concerns about the timing of the disclosure, the absence of a transcript of the interview, or Johnson's decision to rely on Dent's testimony rather than the recording of the interview, because the judge had already rejected any potential disclosure issues at the start of the trial. It was my understanding at that point that the only option left for me in that respect was to raise those issues in the appeal.

15.2. Given Mr. Johnson's consistent refusal to communicate with me regarding the outstanding issues prior to the trial or to schedule the bail hearing

and a PTC, I do not believe his claim that if I had raised any of those issues he would have conveyed them to the judge.

16. Regarding paragraph 41 of the Johnson Affidavit, the reason I did not appear for the 2021-01-21 hearing was that the Sheriffs refused to transport me from NFPC due to a possible COVID outbreak within NFPC.

17. Regarding paragraph 42 of the Johnson Affidavit:

17.1. At the 2021-02-02 appearance Mr. Johnson and the judge both feigned surprise that the disclosure material had been taken back from me after the trial (Supp TR p31134-45), however it is clear from the emails attached as Ex. 'I' to the Johnson Affidavit that Johnson was well aware of that fact.

17.2. Contrary to Mr. Johnson's claim, I explained the reason I was unable to articulate how the disclosure would be useful to me on sentencing is because I hadn't even had enough time to review it while it was in my possession for the less than three days, and that I need access to it so I can find the specific parts that could be mitigating factors or otherwise relevant at sentencing (Supp TR p32120-28).

17.3. Mr. Johnson's claim that I was unable to say how the disclosure material would be useful to me at sentencing is false. I stated that I believed Johnson was going to argue my statements to Dent show that I have a complete disregard for justice and for the court, and that I require the video of the interview to show that that wasn't the case at all - that my statements were not made seriously. However, the judge interrupted as I was explaining and I was not able to finish (Supp TR p3311-6).

17.4. At the 2021-02-02 appearance both Mr. Johnson and the judge repeatedly said the Crown would provide me the disclosure material so I could prepare for sentencing. But regardless of their repeated claims, the material was not provided.

18. Regarding paragraph 46 of the Johnson Affidavit, contrary to Mr. Johnson's claim that "[Judge Rideout] did not grant Mr. Fox's request for disclosure...", Judge Rideout DID, unequivocally, state at the 2021-02-02 and 2021-02-03 appearances that the Crown WOULD provide me the requested disclosure material for the purpose of preparing sentencing submissions. And, Mr. Johnson DID agree at those appearances that he WOULD provide me the requested materials.

19. Regarding paragraph 48 of the Johnson Affidavit:

19.1. I am the self-represented opposing party. Of course I would not express those professed beliefs to the opposing counsel. My failure to communicate my beliefs about opposing counsel's intentions means absolutely nothing.

19.2. It is also meaningless that Mr. Johnson did not state certain things about his intentions or strategy because he is a lawyer, and lawyers routinely posture and bluster - it is a standard tactic. Also, Johnson specifically, has a proven history of brazenly lying to me and to the court so anything he does or does not say would have no credibility.

20. Regarding paragraph 50 of the Johnson Affidavit:

20.1. Mr. Johnson claims he did not knowingly and deliberately withhold the disclosure material and his witness list, however he offers no explanation for why the Crown had the material in their possession as early as 2020-10-09 yet it was not provided to me until 2020-11-23.

20.2. Mr. Johnson offers no explanation for why the material was provided to him, personally, on 2020-10-15 and despite multiple follow-up emails by Kelsea Goodwillie he didn't actually review and approve it to be disclosed to me until 2020-11-20.

21. Regarding paragraph 52 of the Johnson Affidavit, contrary to Mr. Johnson's claim, it is Johnson's and Judge Rideout's own words right there in the transcript of the 2021-02-

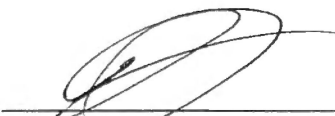
02 appearance. In response to my statements about publishing disclosure material, Johnson clearly said "I think that may be why you're here today, Mr. Fox, because it was published." And Judge Rideout clearly affirmed "Yes". Moreover, Mr. Johnson does not offer any alternative explanation for those admissions.

22. Regarding paragraph 53 of the Johnson Affidavit, the indisputable fact remains that in every case which Mr. Johnson has prosecuted against me there have consistently been unexpected, last minute circumstances either created or claimed by Mr. Johnson which resulted in either delaying the start of the trial or proceeding with the trial as scheduled but with me unable to be prepared due to the Crown's conduct.

Affirmed before me at the City of
Port Coquitlam in the Province
 of British Columbia, this 29
 day of July, 2022.



 Commissioner for Taking Affidavits



 Patrick Fox