

244069-8-B
Vancouver Registry

In the Provincial Court of British Columbia
(BEFORE THE HONOURABLE JUDGE SENNIW)

Vancouver, B.C.
October 14, 2021

REGINA

v.

PATRICK HENRY FOX

PROCEEDINGS AT TRIAL
(Adjournment)

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Appearing for Crown Counsel:

C. Johnson

Appearing on his own behalf:

P. Fox

Proceedings

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CNSL C. JOHNSON: Good morning, Your Honour. Chris Johnson, J-o-h-n-s-o-n. I'm counsel appearing on behalf of the Provincial Crown. And I've got conduct of the only matter that's on the list this morning, that's Patrick Henry Fox. And this is Mr. Fox.

THE ACCUSED: Hello. Patrick Fox, self-represented.

THE COURT: Thank you.

CNSL C. JOHNSON: This matter is set for trial today, Your Honour. It's an allegation of breach of a probation order and the gist of the allegation is that Mr. Fox failed to remove a website which he was court ordered to do by way of a probation order.

The Crown has three witnesses. Two of whom are --

THE ACCUSED: [Indiscernible].

CNSL C. JOHNSON: One moment, please.

THE ACCUSED: Sorry. Thank you.

CNSL C. JOHNSON: The Crown has three witnesses and two of them have called our office early this morning to indicate that their children are sick and have been COVID tested and they're awaiting COVID results and they were unable to find other child care. So I'm not in a position to proceed. As a result of that, I'm asking the court to consider an adjournment of this matter.

I did have the opportunity to speak to Mr. Fox and there's another issue that he will no doubt raise, which I will raise first because we've discussed it. And that is, that several weeks ago, Mr. Fox wrote a letter to the Crown office addressed to me. That letter came to my attention about ten days ago. And in the letter, Mr. Fox indicates that he's received the disclosure, and the disclose -- there was an initial disclosure package which he did receive. He's confirmed that. Then there was a fuller disclosure package which contained things such as an audiotape of his interview with the police and other items. That was disclosed to him by way of a hard drive on, I believe it was September 15th, Mr. Fox?

THE ACCUSED: Correct.

Proceedings

1 CNSL C. JOHNSON: He tells me, in this letter and
2 today, that everything on the hard drive has been
3 encrypted and so he's unable to access it.
4 THE COURT: Oh.
5 CNSL C. JOHNSON: I brought that to my office's
6 attention last week and they indicated that it is
7 not encrypted from our end of the disclosure. So
8 I've got a situation that I don't know the answer
9 to.
10 THE COURT: Mm-hmm.
11 CNSL C. JOHNSON: Mr. Fox has been --
12 THE COURT: Just a moment, Mr. Fox.
13 CNSL C. JOHNSON: -- kind enough to actually bring the
14 hard drive to court today. And so to resolve that
15 situation, what I would like is some time this
16 morning so that I can actually look at the hard
17 drive to see what Mr. -- whether what Mr. Fox is
18 telling me is the case.
19 THE COURT: All right.
20 Yes, Mr. Fox, what would you like to say?
21 THE ACCUSED: I just want to point out with respect to
22 the hard drive that at the jail, I have no ability
23 to encrypt the files myself because the laptops
24 that they provide don't have any software for
25 anything like that. So if there's any question,
26 or if the BCPS tries to claim that perhaps I
27 encrypted them at the jail, I mean that would be
28 an outrageous claim on their part.
29 THE COURT: And I've not -- I've not heard anything to
30 that effect --
31 THE ACCUSED: Right.
32 THE COURT: -- so.
33 THE ACCUSED: And after I had stood, Mr. Johnson then
34 did mention that I brought the hard drive so that
35 it could be checked. And so I just wanted to make
36 sure that the court was aware of -- of that, as
37 well. I wasn't just claiming that the files were
38 encrypted. I -- I actually brought the hard
39 drive.
40 THE COURT: All right. Well, it sounds like you're
41 very well prepared, Mr. Fox.
42 THE ACCUSED: Thank you.
43 THE COURT: And we're hoping to be better prepared, but
44 there was a glitch.
45 So I'll stand down so that you can have a
46 look at the hard drive, Mr. Johnson. And Madam
47 Registrar will call me when -- when you're done

Proceedings

1 doing that.

2 CNSL C. JOHNSON: Thank you. And I should say, it may
3 take some time.

4 THE COURT: I appreciate that.

5 CNSL C. JOHNSON: Unlike Mr. Fox, I'm -- I'm going to
6 need somebody to assist me to do that and I'll
7 have to locate them, but thank you, Your Honour.

8 THE COURT: Yes, all right. We'll stand down.

9 THE ACCUSED: Thank you.

10 THE CLERK: Order in court.

11

12 (PROCEEDINGS ADJOURNED)

13 (PROCEEDINGS RECONVENED)

14

15 CNSL C. JOHNSON: Thank you, Your Honour. Chris
16 Johnson appearing for the Provincial Crown and
17 I've got conduct of the Patrick Fox matter and Mr.
18 Fox is now present.

19 THE COURT: Thank you.

20 CNSL C. JOHNSON: So I thank the court for the time.
21 What I did in the interim, I haven't talked to Mr.
22 Fox about this, so I'll just tell him --

23 THE COURT: Put it on the record, mm-hmm.

24 CNSL C. JOHNSON: -- exactly what I did. I went to the
25 Crown office. I spoke to my assistant in the
26 Crown office with the hard drive that Mr. Fox
27 has -- and --

28 THE ACCUSED: May I borrow your -- oh, thank you.
29 Maybe I need to take an appointment.

30 CNSL C. JOHNSON: Thank you.

31 THE ACCUSED: Please, continue.

32 CNSL C. JOHNSON: And we plugged in the hard drive and
33 put in the password and all of the documents came
34 up and we were able to access all of them
35 including the videos. And Mr. Fox had indicated
36 to me that when he attempted to do that on the
37 laptop at -- that he was provided with at
38 pretrial, he was unable to and indicated that he
39 was receiving a code which, I believe, it was PGP,
40 is that correct, Mr. Fox?

41 THE ACCUSED: No, it's not a code. It's -- it's a flag
42 within the file when you use PGP to encrypt the
43 file, it puts some header information at the
44 beginning of the file. I was able to open the
45 files using Microsoft Word so I could look at the
46 actual bytes that are contained in the file. And
47 those flag was -- that flag was present in each of

Proceedings

1 the files. I individually checked every single
2 file and it was there.
3 CNSL C. JOHNSON: Okay. So the assistant checked all
4 of the files, including the -- I think there's --
5 I don't want to be quoted wrong, but I think
6 there's six or seven video files that were also
7 operable. So I don't know what the solution is
8 for this, but what I'm going to suggest is the
9 only -- there's really only two possibilities that
10 I'm able to see. One is that Mr. Fox isn't being
11 forthright. I'm -- I'm not saying that that is
12 the case, but that's a possibility.

13 And the second is that the equipment that
14 he's been provided with, for some reason, isn't
15 compatible with this hard drive. That's the only
16 thing I can think of because it is, I'm told, not
17 encrypted and it does not show as being encrypted.

18 THE COURT: Right. So then, what do we do now about
19 making sure that Mr. Fox can access all of his
20 disclosure?

21 CNSL C. JOHNSON: So I'm open to whatever his
22 suggestion is, but my idea or --

23 THE COURT: Mm-hmm.

24 CNSL C. JOHNSON: -- what I could have done is I am
25 willing to send a letter to the powers that be at
26 the pretrial center. And I understand the
27 practice already is that they're to supervise Mr.
28 Spo -- Mr. Fox when he accesses his disclosure.
29 And I will have them ensure that he's able to
30 access it. I think that that is something that I
31 am able to do and they can verify whether these
32 things are encrypted or not encrypted. And
33 really, the point is, Mr. Fox wants to be able to
34 read everything. And so --

35 THE COURT: Right.

36 CNSL C. JOHNSON: -- hopefully that will take place in
37 that way.

38 THE COURT: Mr. Fox.

39 THE ACCUSED: I would like to propose that Mr. Johnson
40 bring a laptop to the courtroom and we can have a
41 look at the contents of the drive right now in
42 open court on the record and get to the bottom of
43 this once and for all because what Mr. Johnson --
44 sorry, I'm just -- I'm -- I'm trying to be
45 diplomatic. Yes, that's what I would propose.
46 And if the court is not open to that, then I would
47 secondarily like to propose that, perhaps, Mr.

Proceedings

1 Johnson can bring a laptop to one of the
2 visitation rooms downstairs and we can have a look
3 at the contents of the hard drive right now. I --
4 I don't think that that --
5 CNSL C. JOHNSON: I don't think that's necessary,
6 because we just did that.
7 THE ACCUSED: Well, no. You just said that -- that,
8 potentially, I'm not being forthright. And so I
9 can --
10 CNSL C. JOHNSON: Well, I'm not relying on that. I'm
11 just indicating there's only two options here that
12 I'm able to ascertain. So I'm not suggesting that
13 you are not being forthright, I'm just saying --
14 THE ACCUSED: Oh.
15 CNSL C. JOHNSON: -- there are two possible options.
16 THE ACCUSED: Mm-hmm.
17 CNSL C. JOHNSON: I mean, I -- I can't see any others.
18 THE ACCUSED: Mm-hmm.
19 CNSL C. JOHNSON: And so it seems to me given that what
20 Mr. Fox is saying, that what's important here is
21 that you be able to access your disclosure.
22 THE ACCUSED: I disagree.
23 CNSL C. JOHNSON: Not whether you're able to prove that
24 I'm being forthright or not. To have --
25 THE COURT: Right.
26 CNSL C. JOHNSON: So --
27 THE COURT: So what is it that you disagree with, Mr.
28 Fox?
29 THE ACCUSED: I think that the important thing, from my
30 perspective, is not that I can access the
31 disclosure, but that I can prove the corruption
32 and the misconduct that the B.C. Prosecution
33 Service has been engaging in for the past five
34 years, in my case and in others as well, but we're
35 only concerned with my case at this point. This
36 is the third time now that they've provided
37 encrypted files. And every time they do that,
38 they put on this big show and pretend that they
39 have no idea what's going on and that it was an
40 honest mistake.
41 But doing the same thing three times is
42 clearly not an honest mistake.
43 THE COURT: Well, and first of all, I'm a technological
44 dinosaur. So I'm coming from that place. It does
45 seem to me that if they can be read, that they
46 should be able to be read at North Fraser with
47 appropriate software, whatever that might be. And

Proceedings

1 so I'm inclined to go ahead with what Mr. Johnson
2 has said.

3 But to address your -- your concern, as you
4 are no doubt aware, when you come before the court
5 on the information that you've been charged with,
6 the issue for the court is very narrow. And so if
7 you have some concern about maleficence on the
8 part of the prosecution service, that's not
9 something that a judge sitting here on this matter
10 can deal with.

11 So I just want to make sure that we've got
12 everything kind of narrowed down. And the key
13 thing for a judge sitting in this position on this
14 matter is that you have access, and I would like
15 to say in a relaxed fashion, so not sitting in a
16 courtroom here with Mr. Johnson, but at your
17 leisure at North Fraser in a room where you can
18 take all the time you need to access your
19 disclosure.

20 And your secondary issue, which as I said,
21 this court cannot deal with, you may need more
22 time to kind of look at that than what would be
23 provided here. So at the present time then, I'm
24 going to accede to Mr. Johnson's suggestion, and
25 that is that he write to the powers that be at
26 North Fraser to make sure that you can access
27 the -- that they provide you with proper equipment
28 so that you can access the disclosure.

29 Certainly, I would have no reason to know
30 anything about why it might be encrypted,
31 particularly, from my ignorant point of view as
32 far as technology is concerned. And if there is a
33 difficulty accessing it, you can certainly come
34 back before the court.

35 Now -- but dealing with the earlier
36 application because Crown witnesses were not
37 available, I'm assuming, Mr. Johnson, that they
38 are available at another time and they are
39 material witnesses?

40 CNSL C. JOHNSON: Yes, that's correct, Your Honour.

41 THE COURT: All right. So -- and there have been no
42 laches. So following the dicta in *Darville*, I
43 will grant the adjournment.

44 Now, this matter was set for two days. I'm
45 assuming that's still appropriate?

46 CNSL C. JOHNSON: I thought it was set for one.

47 THE COURT: Maybe it was set for one, I'm sorry.

Proceedings

1 CNSL C. JOHNSON: I believe it is set for one day.
2 I've indicated to Mr. Fox that I'm likely to rely
3 on the most witnesses I would rely on is three,
4 and hopefully not three, but I can conduct the
5 Crown's case in about two hours and so Mr. Fox --
6 THE COURT: Would have the rest of the day.
7 CNSL C. JOHNSON: Yes.
8 THE COURT: Yes. So did you wish to set the new trial
9 date today while you're here?
10 CNSL C. JOHNSON: I -- I think what I would propose is
11 that we -- if Your Honour could adjourn the matter
12 to the judicial case managers, but also have a
13 follow-up date, I'm thinking two weeks, and the
14 reason I'm going to suggest that, is because I'm
15 going to get that letter sent to the pretrial
16 today.
17 THE COURT: Mm-hmm.
18 CNSL C. JOHNSON: And so Mr. Fox should be able to
19 access his disclosure next week and so I would
20 like to hear from Mr. Fox in two weeks whether
21 that's occurred or not. And he could -- he could
22 appear by video so he doesn't need to come.
23 THE COURT: All right. And so did you wish then to put
24 the fix date for the new trial over to that two
25 week time, as well?
26 CNSL C. JOHNSON: Yes, but if we could be adjourned to
27 the judicial case managers today, then I can
28 arrange a new date today and we can confirm it in
29 two weeks.
30 THE COURT: Yes, so I'll adjourn the matter to the
31 judicial case manager. And what day would you
32 like to come back in the initial appearance room
33 with Mr. Fox to appear by video?
34 CNSL C. JOHNSON: Thank you, Your Honour. Just one
35 moment, please.
36 The -- exactly two weeks from today, I
37 believe, is the 28th of October. That's a
38 Thursday and that would be agreeable.
39 THE COURT: All right. So to October 28th, at 9
40 o'clock in the initial appearance room. And that
41 is two-fold, to put the new trial date on the
42 record and secondly, to confirm -- I'm hoping it
43 will be to confirm -- that Mr. Fox has been able
44 to access the disclosure, and if not, obviously,
45 then appropriate steps would be taken after that.
46 THE ACCUSED: Okay, great. And I just have one
47 question I want to confirm with Mr. Johnson here.

Proceedings

1 So are you saying, then, that you actually saw the
2 files being opened? They were able to be opened,
3 is that what you're saying?

4 CNSL C. JOHNSON: Yes.

5 THE ACCUSED: The PDF files and the video files, or?

6 CNSL C. JOHNSON: Well --

7 THE ACCUSED: Okay.

8 CNSL C. JOHNSON: Okay, all of the -- every single file
9 was --

10 THE ACCUSED: Mm-hmm.

11 CNSL C. JOHNSON: -- opened.

12 THE ACCUSED: That's fine. Just want to make sure that
13 you stated that on the record and that that was
14 very clear.

15 Okay, thank you.

16 CNSL C. JOHNSON: And Your Honour, just while we're
17 here on the record, Mr. Fox did provide me a large
18 envelope with six pages of paper and the hard
19 drive and I'm returning those to him now.

20 Thank you.

21 THE COURT: All right, thank you. We'll stand down and
22 the court will take the morning break.

23 THE ACCUSED: Thank you.

24 CNSL C. JOHNSON: Thank you, Your Honour.

25

26 (PROCEEDINGS ADJOURNED TO JCM TO FIX A NEW
27 DATE)

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34 Transcriber: J. Vanin

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I hereby certify the foregoing to
be a true and accurate transcript
of the evidence recorded on a sound
recording apparatus, transcribed to
the best of my skill and ability.



J. Vanin
Court Transcriber