COURT OF APPEAL OF YUKON

Citation: *R. v. Rutley*,
2015 YKCA 4

Date: 20150202
Docket: 12-YU716

Between:

Regina

Respondent

And

Darren Troy Rutley

Appellant

Before: The Honourable Madam Justice Bennett
The Honourable Madam Justice Garson
The Honourable Mr. Justice Savage

An appeal from: an order of the Supreme Court of Yukon dated January 25, 2013
(*R. v. Rutley*, 2013 YKTC 7, Dawson City Docket 11-11015)

Oral Reasons for Judgment

Appellant appearing In Person:

Counsel for the Respondent: J. Cliffe, Q.C.

Place and Date of Hearing: Vancouver, British Columbia
February 2, 2015

Place and Date of Judgment: Vancouver, British Columbia
February 2, 2015

Summary:

Mr. Rutley filed an amended notice of appeal for his conviction appeal on March 1, 2013. The Crown brought a Rule 13 application to dismiss the appeal for want of prosecution. Mr. Rutley was given extensions to file through a series of case management conferences and hearings, and he filed his appellant's factum on January 30, 2015. His factum bears no relation to his amended notice of appeal. In his factum, Mr. Rutley alleges that the state and the judiciary altered the trial transcripts. HELD: appeal on the ground of altered transcripts dismissed. As Mr. Rutley does not wish to pursue any further grounds of appeal, the conviction appeal is dismissed.

[1] **BENNETT J.A.**: With the concurrence of my colleagues, I have edited these oral reasons adding references to the prior appearances and decisions of this Court in order to clarify, for Mr. Rutley, the reason his appeal has been dismissed.

[2] Mr. Rutley appears for the fifth time before a division of the Court after having approximately five case management conferences before Mr. Justice Frankel. In reasons indexed as 2014 YKCA 6, Frankel J.A. sets out the history of case management for Mr. Rutley's appeal. On May 23, 2014, Frankel J.A. referred the appeal to a division of the Court.

[3] The Crown brought an application pursuant to Rule 13 of the *Yukon Territory Court of Appeal Criminal Appeal Rules, 1993*, to dismiss Mr. Rutley's appeal for want of prosecution, which was heard before the Court on June 27, 2014 (2014 YKCA 9). The Court on that occasion gave Mr. Rutley "one last chance" and set out a schedule for filing his material: transcripts and appeal books by August 1, 2014 and factum by September 15, 2014. The application to dismiss was adjourned generally. Mr. Rutley did not comply with these dates. As a result, another application to dismiss his appeal was brought by the Crown on September 26, 2014. The Court had before it evidence that Mr. Rutley had paid for some of the transcripts, and ordered that he file proof that he had ordered all the appeal books and transcripts by October 30, 2014. A new schedule was set, requiring that transcripts and appeal books be filed by November 28, 2014 and a factum filed by December 31, 2014. The Court adjourned the application to dismiss the appeal to October 31, 2014.

[4] On October 31, 2014, Mr. Rutley appeared and demonstrated that he had ordered the transcripts. The application to dismiss his appeal was adjourned to December 1, 2014. On December 1, 2014, the appeal books had been filed, and the transcripts were completed. Mr. Rutley sought an additional month to file his factum, and that application was granted.

[5] Mr. Rutley also sought access to audio recordings of the trial proceedings. He was told that the Court would not make any direction regarding the recordings, as he had to rely on the transcripts as certified. Mr. Rutley was to file his factum by January 30, 2015 and the application to dismiss his appeal was adjourned until February 2, 2015.

[6] Mr. Rutley filed a factum on January 30, 2015. The factum he filed bears no relation to the grounds of appeal in his amended notice of appeal filed March 1, 2013. His grounds of appeal relate to his allegations that the hard copy of the transcript and the audio copy of the transcript have been tampered with, and in particular tampered with by the judiciary. I have appended a copy of the factum to these reasons.

[7] Mr. Rutley wishes to challenge the content of the audio recordings on the basis that the trial judge used “buffering techniques” to tamper with the recording of his trial. As noted above, he had previously been told that he had to rely on the certified transcripts.

[8] The audio recordings are the official record of the Court and, in my respectful view, there is absolutely no merit to this ground of appeal. I would not permit Mr. Rutley to pursue the factum that he has filed.

[9] I would dismiss that ground of appeal.

[10] **GARSON J.A.**: I agree.

[11] **SAVAGE J.A.**: I agree.

[12] **BENNETT J.A.**: Mr. Rutley, you are not going to be permitted to pursue that ground of appeal. I will permit you to some additional time to file a factum that addresses the issues in your amended notice of appeal except for the issue relating to your audio recording issue.

[discussion with Mr. Rutley]

[13] Mr. Rutley advises this Court that he does not want to pursue any other ground of appeal or file an additional factum.

[14] **BENNETT J.A.**: As Mr. Rutley is taking the position that he does not wish to pursue his other grounds of appeal, my colleagues concurring, his appeal from conviction is dismissed.

"The Honourable Madam Justice Bennett"

FILE #: 12-YU716
REGISTRY: VANCOUVER, BC

IN THE YUKON TERRITORY
COURT OF APPEAL

BETWEEN:

DARREN TROY RUTLEY

APPELLANT

AND

REGINA

RESPONDENT

FACTUM OF THE APPELLANT

CONSTITUTIONAL QUESTION

MR. DAVID MC WHINNIE
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MEMORANDUM OF ARGUEMENT

PART I - STATEMENT OF FACTS

OVERVIEW

I

THE HARD COPY " OFFICIAL TRANSCRIPT RECORD" YOU RELY UPON AS FACT IS A SET OF LIES AGREED UPON BY CROWN, ATTORNEY GENERALS OFFICE, AND THE JUDICIARY CONTRARY TO s. 366. OF THE CRIMINAL CODE.

s. 366(5) IF INVOKED IS ALSO UNCONSTITUTIONAL IN THIS CASE. THIS IS THE LAST LINE OF DEFENCE BY THE ABOVE MENTIONED PARTIES TO CIRCUMVENT JUSTICE, AND THE APPELLANTS RIGHT TO A FAIR JUDICIAL REVIEW.

THE FORGING OF THE OFFICIAL RECORD DENIES THE APPELLANT THE RIGHT TO PUT FORWARD HIS ARGUABLE GROUNDS OF APPEAL, AND INSTEAD LEFT WITH A RECORD DICTATING WHAT GROUNDS OF APPEAL THE APPELLANT MUST BE COMPELLED TOO.

THE ALLEGATIONS THAT I PUT FORTH AT THIS TIME IS ALL THEY ARE, MERE ALLEGATIONS AND A COMPLETE DETAILED LIST WOULD BE SUPERFLUOUS.

IT HAS BEEN NOT ONLY A SINGLE WORD OR PHRASE TO CONTEXTUALLY CHANGE AN ISSUE IN QUESTION, OR A DELETION OF PERTINENT FACTS HERE OR THERE., IT HAS BEEN A COMPLETE FABRICATION OF FACT.

THE "ALLEGED" JUDGE WHO CONDUCTED THE TRUE ARRAIGNMENT IS NOT EVEN THE SAME PERSON IN THE FORGED RECORD OF FACT.

THE TRANSCRIPT FROM THE DESTRUCTION OF EVIDENCE APPLICATION IS AGAIN NOT EVEN REMOTELY CLOSE TO WHAT TRANSPIRED IN THE COURT ROOM.

AMICUS QUESTIONS RAISING DOUBT SURROUNDING THE BREAK AND ENTER HAVE BEEN REMOVED.

CHARTER 1,7, 8, 11(d),15, 24(1) CHALLENGE

THE CENTRAL ISSUES IN THIS APPEAL IS WHETHER s. 675.(1) OF THE CRIMINAL CODE OF CANADA, AFFORDS THE APPELLANT THE RIGHT TO SCRUTINIZE THE OFFICIAL TRANSCRIBED COURT TRANSCRIPT RECORD AS FACT AND WHETHER THAT RIGHT FALLS WITHIN SECTION 7 (FULL ANSWER AND DEFENCE), AND 11(d) (RIGHT TO A FAIR TRIAL).

s. 482.(1) OF THE CRIMINAL CODE, THE RIGHT OF THE COURT TO CONTROL ITS OWN PROCESSES IS UNCONSTITUTIONAL WHEN IT INTERFERES WITHE RIGHTS OF THE APPELLANT TO MAKE FULL ANSWER AND DEFENCE. THE COURTS DUTY IS SOLEY TO OVERSEE AND ADJUDICATE, NOT INTERFERE.

IT IS UNDER SECTION 1 OF THE CHARTER THAT THE COURT OF APPEAL MUST ANSWER WHY IT IS DEMONSTRABLY JUSTIFIED IN DENYING THE APPELLANT THROUGH POLICY WHY THE RIGHT TO CHALLENGE THE COURT RECORD IS NOT IN THE PUBLIC INTEREST.

THE SECTION 1 CHALLENGE LIES AGAINST THE JUDICIARY AND THEIR UNCONSTITUTIONAL POLICY.

WHEN A JUDICIARY HAS THE CAPABILITY TO PRODUCE FORGED DOCUMENTS UNDER POLICY (NOT LAW), AND DENY THE APPELLANT THE ABILTY TO CHALLENGE THAT RECORD, THERE IS NO JUSTICE.

DUE TO COLLUSION BETWEEN CROWN AND THE CORRECTION SERVICES CANADA, PURCHASED AUDIO TRANSCRIPT RECORDINGS HAVE BEEN UNLAWFULLY SEIZED.

THESE WERE PURCHASED SOLEY FOR THE PURPOSE OF SCRUTINIZING CONTINUITY AND BUFFERING TECHNICS DEPLOYED BY THE STATE SHOULD THE APPELLANT FIND FURTHER DISCREPANCIES WITH THE STATES RENDITION OF FACT.
THESE AUDIO TRANSCRIPT RECORDINGS HAVE NEVER BEEN RIGHTFULLY RETURNED.

WHEN THE C.O.A. RULES ON POLICY WHICH DENIES YOU THE RIGHT TO CHALLENGE THE COURT RECORD, THAT IS A CLEAR APPREHENSION OF BIAS, AND A DENIAL OF RIGHT OF APPEAL CONTRARY TO s. 675.(1) OF THE CRIMINAL CODE.

NOT SURPRISING, THE APPELLANT CAN FIND NO CASE AUTHORITIES TO SUPPORT THIS CONTEXT IN THE RIGHT OF APPEAL.

THE CROWN, STATE, AND EVEN THE JUDICIARIES PROCREATED PERCEPTION OF FAIRNESS IS NOT WITHOUT DISCOURSE. DECEIT AND DECEPTION IS AN ABUNDANT AND DOES BRING THE ADMINISTRATION OF JUSTICE INTO DISREPUTE.

"WIN AT ALL COSTS" IS, AND HAS ALWAYS BEEN THE CROWN, ATTORNEY GENERAL'S OFFICE, AND THE JUDICIARY'S DISPOSITION.

STATE AGENTS HAVE ATTEMPTED MURDER, AND 3 BRAIN BEATINGS COINCIDENTALLY ALL TO THE LEFT SIDE OF THE HEAD, WHERE ONES LONG TERM MEMORY IS STORED.

FORGING DOCUMENTS IS WITHIN THE REALM OF EGREGIOUS ACTS DEPLOYED BY ALL PARTIES.

CONSTITIUTIONAL QUESTION #1

DOES THE CONSTITUTION ACT 1982, AND THE CHARTER OF RIGHTS AND FREEDOMS UNDER SECTION 7 (FULL ANSWER AND DEFENCE) AND SECTION 11(d) (RIGHT TO A FAIR TRIAL) GIVE THE APPELLANT THE RIGHT TO CHALLENGE / SCRUTINIZE THE FILED "OFFICIAL COURT RECORD" (TRANSCRIPTS) FOR CONTINUITY AND BUFFERING TECHNIQUES DEPLOYED BY THE STATE, AND JUDICIARY?

THE "OPEN COURT" PRINCIPLE ASSUMES THE PUBLIC CONFIDENCE IN THE INTEGRITY OF THE COURT SYSTEM AND UNDERSTANDING OF THE ADMINISTRATION OF JUSTICE IS FOSTERED BY OPENNESS AND FULL PUBLICITY. THE OBJECTIVES INCLUDE:

(1) MAINTAINING AN EFFECTIVE EVIDENTIARY PROCESS;

(2) ENSURING A JUDICIARY AND JURIES THAT BEHAVE FAIRLY AND THAT ARE SENSITIVE TO THE VALUES THEY HAVE ESPOUSED BY SOCIETY;

(3) PROMOTING A SHARED SENSE THAT OUR COURTS OPERATE WITH INTEGRATE AND DISPENSE JUSTICE; AND

(4) PROVIDING AN ONGOING OPPORTUNITY FOR THE COMMUNITY TO LEARN HOW THE JUSTICE SYSTEM OPERATES AND HOW THE LAW BEING APPLIED DAILY IN THE COURTS AFFECTS THEM.

CONSTITUTIONAL QUESTION #2

IS IT IN THE INTERESTS OF JUSTICE THAT JUDICIAL POLICY DERIVED UNDER s. 482. AND s. 683 OF THE CRIMINAL CODE CONSTITUTIONAL WHEN IT ALLOWS THE JUDICIARY, NAMELY THE TRIAL JUDGE TO FORGE THE "OFFICIAL COURT RECORD" PRIOR TO BE FILED?

ARGUEMENT

SECTION 1 OF THE CHARTER OF RIGHTS AND FREEDOMS GUARANTEES THE RIGHTS AND FREEDOMS SET OUT IN IT SUBJECT ONLY TO SUCH REASONABLE LIMITS PRESCRIBED BY LAW AS CAN BE DEMONSTRABLY JUSTIFIED IN A FREE AND DEMOCRATIC SOCIETY.

THIS IS CONTRARY TO s.366 OF THE CRIMINAL CODE, AND AND s.7 OF THE CHARTER (THE RIGHT TO MAKE FULL ANSWER AND DEFENCE).

IF s. 366.(5) WAS INVOKED IN THIS CONTEXT, IS IT IN THE INTEREST OF JUSTICE TO ALLOW FOR THE FORGING OF SUCH DOCUMENT,S AND DOES THIS LAW OVERRIDE THE RIGHTS OF THE APPELLANT IN MAKING FULL ANSWER AND DEFENCE.

THE COURT OF APPEAL JUDICIARIES POLICY ON THE DISTRIBUTION OF AUDIO RECORDINGS IN THIS SPECIFIC CONTEXT AND CASE IS UNCONSTITUTIONAL AND CLEARLY BRINGS THE ADMINISTRATION OF JUSTICE INTO DISREPUTE.
IT CIRCUMVENTS THE APPELLANTS RIGHT UNDER s.1 OF THE CHARTER TO PUT THE ONUS ON THE CROWN AND ATTORNEY GENERALS OFFICE AS TO WHY, IT IS IN THE INTERESTS OF JUSTICE TO THE FETTER THE RIGHT OF ACCESS, AND TO CHALLENGE THE COURT AUDIO RECORD AS TO WHY SCRUTINIZING THE RECORD SHOULD BE DENIED.

THE B.C. AND YUKON COURT POLICIES DENYING ACCESS TO COURT AUDIO RECORDS CIRCUMVENTS THE RIGHT OF THE APPELLANT TO HAVE THE STATE SHOW WHY THE RECORD SHOULD BE DENIED TO PURCHASE AND TO ACCESS PREVIOUSLY PURCHASED AUDIO RECORDINGS TO SCRUTINIZE THE STATES RECORD.

THIS POLICY IS THEREFORE UNCONSTITUTIONAL, AND DOES BRING THE ADMINISTRATION OF JUSTICE INTO DISREPUTE. THE JUDICIARY CANNOT FETTER A FUNDAMENTAL RIGHT OF THE PUBLIC OR IN THIS CASE, THE APPELLANT.

AT COMMON LAW, THE ONUS RESTS UPON THE PERSON SEEKING TO DENY PUBLIC ACCESS TO A PUBLICITY OF COURT PROCEEDINGS AND COURT RECORDS TO PROVE THAT EXTRAORDINARY CIRCUMSTANCES JUSTIFY DEPARTURE FROM THE FUNDAMENTAL CONSTITUTION PRINCIPLES OF THE “OPEN COURT”; AND THE APPELLANTS RIGHT TO MAKE FULL ANSWER AND DEFENCE UNDER SECTION 7 OF THE CHARTER OF RIGHTS AND FREEDOMS.

IT IS NOT ENOUGH FOR A PARTY SEEKING SECRECY OR A BAN ON PUBLICITY TO SAY THAT ON A BALANCE OF CONVENIENCE, THE COURT SHOULD EXERCISE AN AD HOC DISCRETION TO CLOSE THE COURT OR DENY ACCESS TO COURT RECORDS.

THE "OPEN COURT" PRINCIPLE ASSUMES THE PUBLIC CONFIDENCE IN THE INTEGRITY OF THE COURT SYSTEM AND UNDERSTANDING OF THE ADMINISTRATION OF JUSTICE IS FOSTERED BY OPENNESS AND FULL PUBLICITY. THE OBJECTIVES INCLUDE:

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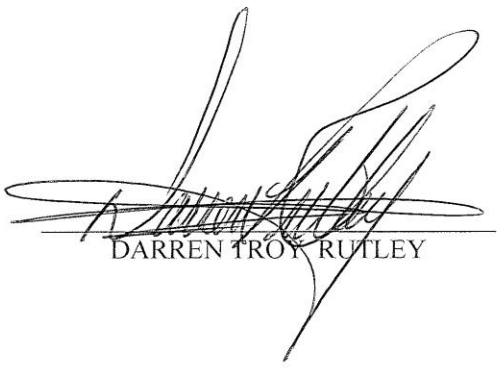
DATED THIS 30th DAY OF JANUARY, 2015 IN VANCOUVER, BC



DARREN TROY RUTLEY