

CANADA / JUDGMENT

R. v. Bottomley

2023 BCSC 910

COURT

Supreme Court of British Columbia

DECIDED

30 May 2023

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2023 BCSC 910 R. v. Bottomley IN THE SUPREME COURT OF BRITISH COLUMBIA Citation: R. v. Bottomley, 2023 BCSC 910 Date: 20230530 Docket: X083239 Registry: New Westminster Rex v. Jordan Robert James Bottomley Restriction on publication: A publication ban has been imposed under s. 486.5 of the Criminal Code restricting publication, broadcasting or transmission in any way information that could identify the witness referred to as A.B This publication ban applies indefinitely unless otherwise ordered. Before: The Honourable Madam Justice Devlin Reasons for Judgment re: Crown Application for a Publication Ban Counsel for the Crown: K. Boland Counsel for the Attorney General: J.I. Katz KJ. Elvin-Jensen Counsel for Accused Bottomley: M.J. Swartz Place and Date of Hearing: New Westminster, B.C. May 26, 2023 Place and Date of Ruling given to Parties with Reasons to Follow: New Westminster, B.C. May 26, 2023 Place and Date of Judgment: New Westminster, B.C. May 30, 2023

Introduction

- [1] On November 11, 2019, Andrew Baldwin was stabbed to death in the residence of his friend in Surrey, BC. Mr. Baldwin's friend, who I will refer to as "A.B." in this ruling, witnessed the stabbing.
- [2] Jordan Bottomley is charged with the first-degree murder of Mr. Baldwin. Mr. Bottomley's trial commenced on May 17, 2023, and the Crown advised that they intend to call A.B. as a witness on May 30, 2023.
- [3] On this application, the Crown seeks a publication ban pursuant to s. 486.5 of the Criminal Code, R.S.C. 1985, c. C-46 [Code], with respect to the identity of A.B. A hearing was held in relation to the application on May 26, 2023.
- [4] Specifically, the Crown seeks an order directing that any information that could identify A.B. shall not be published or broadcast, including his name, photographs, visual depictions, description of his physical appearance or his current employment. In support of their application, the Crown filed an affidavit from S/Sgt. Jeffery of the RCMP.

- [5] Counsel for the Attorney General of Canada (the "AG Canada") were granted standing in the hearing on the publication ban. They support the Crown's application, and filed two affidavits detailing A.B.'s participation in the BC Witness Security Unit ("BCWSU") and the RCMP's E-Division's Witness Protection Section ("WPS"). I was provided both redacted and unredacted versions of the two affidavits.
- [6] Counsel for Mr. Bottomley do not oppose the Crown's application, and the media did not participate in the application.
- [7] After hearing submissions from Crown counsel and counsel for the AG Canada, I advised that I was satisfied the Crown had established a basis for granting the publication ban pursuant to s. 486.5 of the Code, and issued an order to that effect, with brief reasons to follow. These are those reasons. Background Facts
- [8] As stated earlier, the theory of the Crown is that A.B. was an eyewitness to the killing of Andrew Baldwin on November 11, 2019, while they were both inside A.B.'s residence in Surrey, BC.
- [9] Mr. Bottomley was initially charged with the first-degree murder of Mr. Baldwin together with two other individuals: Munroop Hayer and Jagpal Hothi. A fourth accused, Jasman Basran, was charged with being an accessory after the fact. All three former co-accused have disposed of their charges prior to the commencement of trial. The Crown theory is that Mr. Bottomley, Mr. Hothi, and Mr. Hayer were engaged in drug trafficking, and associated violence. They say the murder of Mr. Baldwin was carried out in retaliation for a drug debt he owed to Mr. Hayer.
- [10] A.B. has agreed to provide testimony to support the charge against Mr. Bottomley. The related risk to A.B.'s safety was such that he was admitted to the BC Witness Security Program, and is currently having his safety and security needs managed by the BCWSU. The details of the steps undertaken in relation to A.B.'s participation in the BCWSU are set out in the unredacted affidavits filed by counsel for the AG Canada.
- [11] Based on the materials filed on this application, I am satisfied that there is a clear risk to A.B.'s safety due to his cooperation in the investigation into Mr. Baldwin's death and in these proceedings. The Governing Legal Principles
- [12] Section 486.5(1) of the Code provides that a justice "may" make an order directing that any information that could identify a witness shall not be published in any document or broadcast or transmitted in any way, if the justice is "of the opinion that the order is in the interest of the proper administration of justice".
- [13] Section 486.5(7) sets out the factors to be applied in considering whether to impose the ban:
- (a) the right to a fair and public hearing;

- (b) whether there is a real and substantial risk that the victim, witness or justice system participant would suffer harm if their identity were disclosed;
- (c) whether the victim, witness or justice system participant needs the order for their security or to protect them from intimidation or retaliation;
- (d) society's interest in encouraging the reporting of offences and the participation of victims, witnesses and justice system participants in the criminal justice process;
- (e) whether effective alternatives are available to protect the identity of the victim, witness or justice system participant;
- (f) the salutary and deleterious effects of the proposed order;
- (g) the impact of the proposed order on the freedom of expression of those affected by it; and
- (h) any other factor that the judge or justice considers relevant.

[14] The legal principles that govern this application are not in dispute. For the purposes of this application, I adopt my discussion of the governing legal principles in *R. v. Coban*, 2022 BCSC 94 (at paras. 12-14) and *R. v. Tull*, 2020 BCSC 1692 (at paras. 13-28). In addition, I have also considered the findings of Justice Wedge in *R. v. Bacon*, 2018 BCSC 2264 (at paras. 10-16). Discussion

[15] I am satisfied that there is a serious risk of harm to A.B. if he testifies without the benefit of the protective measures sought by the Crown in the form of a publication ban. Namely, the measures put in place by the BCWSU for A.B.'s safety would be jeopardized without the imposition of the publication ban. Furthermore, the order sought by the Crown serves to provide a sense of safety for A.B., which I expect would enable him to testify at trial without an additional concern for his security. In doing so, the order will also encourage his full participation as a witness in the criminal justice process, and the participation of others in similar circumstances: s. 486.5(7)(b), (c), and (d).

[16] I accept that A.B.'s testimony is critically important to the case, as he is the only eyewitness to what occurred inside his residence on November 11, 2019. Given the information provided to me in the affidavits, I do not consider that any alternatives to making the order would be effective in protecting A.B. from the harms identified: s. 486.5(7)(e).

[17] With respect to the factors set out in s. 486.5(7)(a), (f), and (g), the trial will be conducted in open court, where both the public and the media can attend. Accordingly, there will be minimal impact on the freedom of expression of those affected by the order, and no adverse effect on the accused's right to a fair and public hearing. In particular, the media will still be able to publish, broadcast, and transmit information pertaining to the case. The impact of the publication ban--i.e., by requiring, in essence, that references to A.B. simply be anonymized--is minimal.

[18] Finally, I emphasize, as stated earlier, that the accused is not opposed to this application.

[19] Thus, for the reasons set out above, I am satisfied that the salutary effects of the sought ban outweigh any deleterious effects, and that it is in the interest of the proper administration of justice. As discussed, the publication ban will reduce the risk of harm to A.B., and will promote his participation in the criminal justice system and the participation of others in similar situations.

Disposition

[20] Pursuant to s. 486.5 of the Code, I order the imposition of a limited publication ban on the identity of the witness referred to as A.B, in the terms set out in the draft order provided to me by the Crown. In particular, no person shall, among other things, publish in any document or broadcast or transmit in any way any visual depiction or photograph of the witness, any description of his physical appearance or information about his current occupation or his actual name. The witness shall be referred to only as "A.B.". "Devlin J."

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Prepared on 26 October 2026 · Esheria