

CANADA / JUDGMENT

R. v. Bradbury

1999 BCCA 524

COURT

British Columbia Court of Appeal

DECIDED

16 September 1999

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c99-0524.html Citation: R. v. Bradbury Date: 19990916 1999 BCCA 524 Docket: CA025381 Registry: Vancouver COURT OF APPEAL FOR BRITISH COLUMBIA BETWEEN: REGINA RESPONDENT AND: SCOTT CAMERON BRADBURY APPLICANT Before: The Honourable Madam Justice Newbury (In Chambers) Applicant Appearing in person F.G. Tischler Counsel for the Respondent Place and Date of Hearing: Vancouver, British Columbia September 1, 1999 Place and Date of Judgment: Vancouver, British Columbia September 16, 1999 Reasons for Judgment of the Honourable Madam Justice Newbury:

- [1] Mr. Bradbury applies for leave to appeal his conviction on two counts of failing to comply with the terms of a recognizance entered into by him on February 3, 1998. The term in question prohibited Mr. Bradbury from having any contact, direct or indirect, with Sherri Bradbury except for the purpose of arranging access to his child through a third party. Mr. Bradbury was also convicted in Provincial Court of two other counts of failing to comply with the recognizance, but succeeded on appeal to the Supreme Court of British Columbia in having those convictions quashed: see the Reasons of Mr. Justice Ralph dated November 26, 1998 (Vancouver Registry No. X052206).
- [2] In this court, Mr. Bradbury acknowledged that he must raise a question of law alone in order to obtain leave to appeal further. The questions of law that I took from Mr. Bradbury's submissions related not to the rulings of Ralph J. (which would be the subject of any appeal) but to the trial judge's conduct of his trial. In Mr. Bradbury's argument:
- (a) the trial judge erred in refusing him an adjournment at the start of the trial, which began on June 30, 1999, after Mr. Bradbury indicated that he did not have counsel and was not prepared to proceed. The trial judge replied that Mr. Bradbury had had since February to prepare for the trial, and that an adjournment would not be granted.
- (b) the trial judge erred in refusing to admit into evidence an affidavit he had brought to trial, sworn by one "Steve", stating that he, Steve, rather than Mr. Bradbury, had called Ms. Bradbury in contravention of the no-contact order. In this regard, Mr. Bradbury was advised by the trial judge that if he wished to call "Steve" as a witness, the Court would grant him an adjournment for that purpose. However, Mr. Bradbury declined the opportunity and said he wished to proceed. Ultimately, Mr. Bradbury says, he felt he was not going to get a fair trial

anyway, the judge had already made up his mind, and it would have been useless to bring "Steve" to court.

- (c) Mr. Bradbury says that he felt "forced" to take the stand because the trial judge told him that the only evidence he would rely on was the Crown's evidence. This would seem to be the result of Mr. Bradbury's misunderstanding of the trial judge's comments in the following exchange: THE ACCUSED: Well, I can prove that she lied there. Otherwise it's just throwing around stuff. Q Sherri, is it not true that the only proof the police have that I breached the court order is your word? A For my breaches. THE COURT: Well, what evidence the police have is not something that she would know about. That's something -- THE ACCUSED: Q To your knowledge -- THE COURT: Pardon? It's not relevant. The evidence that I have to rely on is what the evidence -- the evidence the Crown can produce. That is the only evidence that I can rely on here in this court. THE ACCUSED: Well, Your Honour, originally I had asked for these changes to be put with the other charges so that everything could kind of be viewed in context, because if they're not then you're getting -- THE COURT: I can't help that. I have to deal with what is before me. THE ACCUSED: But you're getting an incomplete picture. THE COURT: Well, that may be, but I can't help it. I have to deal with what has been presented to me. THE ACCUSED: Because I can prove on numerous occasions that she's lied and manipulated the courts. But you're not willing to let me show you that, so I'm unsure how I can get a fair trial. Q Sherri, let's put it this way. Are you aware that I have several affidavits that say I was the primary caregiver for Kayla? A I am aware that you have some from neighbours that we lived beside who had only known us a short period of time and that -- Q A short period of time? Weren't they the ones who watched Kayla every day that you were working for well over a year and a half? A That's not correct. THE COURT: Now, you're getting sidetracked again. [Emphasis added] As I read the Court's comments, they were intended to explain why the witness (Sherri Bradbury) could not be asked about facts not relevant to the case and not in evidence. It is obvious from a reading of the transcript, moreover, that the trial judge considered all the evidence presented.
- [3] Mr. Bradbury ended his argument with the contention that the trial judge was "obviously unfair" and that anyone who attended the trial would know he did not get a fair hearing. Mr. Bradbury referred to various places in the transcript where the judge interjected to limit his cross-examination of his ex-wife, and told him that he would get his opportunity to "tell his side of the story" after the Crown's case was in.
- [4] Mr. Justice Ralph dealt with all of these arguments in his Reasons, albeit in slightly different terms (probably because Mr. Bradbury had couched his arguments in different terms in the Court of Appeal than he did in Supreme Court). I can see no prospect of success for Mr. Bradbury on any of the grounds stated. In particular, it is clear, as Ralph J. found, that the trial judge's decision not to adjourn Mr. Bradbury's trial was a matter of discretion and does not raise a question of law; that the trial judge was correct in refusing to admit affidavit evidence from "Steve"; and that the verdicts on counts 3 and 4 cannot be said to be unreasonable or not supported by the evidence by any stretch.

- [5] Further, I have read through the transcript and am satisfied Mr. Bradbury would have no chance of succeeding in his argument that he generally did not receive a fair trial. The trial judge conducted the trial in a reasonable and competent manner and in particular, made it clear to Mr. Bradbury that he was not required to testify. In this regard, I note for example the following passage following the close of the Crown's case: THE COURT: All right. Mr. Bradbury, if you'll stand, please, sir. THE ACCUSED: Yes, sir. THE COURT: You now have an opportunity to take the stand and testify on your own behalf. There's nothing in law that requires you to do that. If you do take the stand you will be sworn and you will be subject to cross examination. You can, in addition to all of that, call whatever witnesses you wish to call and you may present such evidence as may be admissible. You can do that without yourself taking the stand. Should you fail to take the stand, however, the weight that I can attach to your statement given from the position that you're now in would not be as great as the weight that I could attach to a statement given from the witness box. The reason for that is this. Standing where you are now standing you cannot be cross examined nor can you be sworn, so you can see quite clearly that it would be unsworn testimony not subject to cross examination whereas from the witness box it would be sworn testimony and subject to cross examination. THE ACCUSED: No. I would encourage them to ask me questions. I've tried to explain the truth to them before. THE COURT: All right. Now, what is it you wish to do? THE ACCUSED: Well -- THE COURT: Do you wish to take the stand or not? THE ACCUSED: Let me ask you this first. Don't I make a motion or doesn't -- so what you're saying basically is that they've proven their case and so -- THE COURT: I haven't said anything of the kind. THE ACCUSED: So isn't there a way? Do I make a motion here for dismissal, that they haven't proved -- THE COURT: A no evidence motion you mean? THE ACCUSED: Yes. THE COURT: A no evidence motion would be made in that situation where there is absolutely no evidence. THE ACCUSED: Or that they haven't proved their case? THE COURT: No. THE ACCUSED: How do you do that one? THE COURT: Well, you can make what is a non-suit, a motion, in essence, and you would therefore -- I would have to then rule. If I ruled against you, then, you would be out of luck. THE ACCUSED: I couldn't testify. Okay. No. I'll go ahead. All this stuff is for the other court case, so you'll have to bear with me while I go over it and stuff. THE COURT: Do you wish to take the stand? THE ACCUSED: Sure. Can I just go up there and do whatever I want? THE COURT: Just take your stuff with you and you'll be sworn. In the circumstances, I would dismiss the application for leave. "The Honourable Madam Justice Newbury"

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