

CANADA / JUDGMENT

R. v. Bryfogle

2024 BCSC 643

COURT

Supreme Court of British Columbia

DECIDED

19 April 2024

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2024 BCSC 643 R. v. Bryfogle

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

R. v. Bryfogle,

2024 BCSC 643

Date: 20240419

Docket: 105679

Registry: Kamloops

Rex

v.

Roy Charles Bryfogle

Before: The Honourable Justice Hori

On appeal from: An order of the Provincial Court of British Columbia,

dated October 21, 2019 (R. v. Bryfogle, Kamloops Registry 105679,).

Reasons for Judgment

Counsel for the Crown:

M. Cissell

Appearing in person:

R.C. Bryfogle

Counsel for the Attorney General of Canada:

V. Young

Place and Date of Hearing:

Kamloops, B.C.

March 25, 2024

Place and Date of Judgment:

Kamloops, B.C.

April 19, 2024

Introduction

- [1] Mr. Bryfogle appeals his summary conviction and sentence on the charge of breach of probation. The trial judge convicted Mr. Bryfogle on October 21, 2019. On November 7, 2019, the trial judge sentenced Mr. Bryfogle to 30 days in prison followed by probation for 12 months.
- [2] The Attorney General of Canada made submissions on this appeal because Mr. Bryfogle's appeal includes the claim that the trial judge erred in denying his application for disclosure of third party records in the possession of the Royal Canadian Mounted Police ("RCMP").
- [3] During the process of this appeal, Mr. Bryfogle made applications for orders:
- a) compelling the Provincial Crown and the RCMP to disclose documents and information;
 - b) disqualifying counsel for the Provincial and Federal Crown from continuing to act in this matter; and
 - c) removing me as the judge in this appeal.

I dismissed all of those applications in reasons for judgment on October 31, 2022 (2022 BCSC 1898) and August 28, 2023 (2023 BCSC 1492).

- [4] Mr. Bryfogle appealed my decision of October 31, 2022, my case management rulings related to the disqualification of counsel and my denial of Mr. Bryfogle's request to issue subpoenas for witnesses on the summary conviction appeal. In the Court of Appeal, Mr. Bryfogle sought a "certiorari review" of these decisions. The Court of Appeal quashed the appeal for want of jurisdiction: *R. v. Bryfogle*, 2023 BCCA 292.
- [5] In addition, starting in 2022 or perhaps earlier, Mr. Bryfogle sought to commence private prosecutions against various individuals including the Attorney General of British Columbia, most of the Crown counsel who have had conduct of his case and RCMP officers. Mr. Bryfogle sought to have those private prosecutions authorized by me in this appeal process. The Court advised Mr. Bryfogle of the proper process for applying to the court to commence a private prosecution which did not include bringing them before me in this appeal process.

- [6] Finally, in July 2023, Mr. Bryfogle applied for relief, in the nature of mandamus, to compel responses from certain provincial and federal employees, politicians and other federal entities. This Court denied Mr. Bryfogle's application: *R. v. Bryfogle*, 2023 BCSC 2060.
- [7] I mention the foregoing process to explain the long length of time that has passed since Mr. Bryfogle filed his appeal notice. This appeal has been outstanding for much longer than it should have been because of Mr. Bryfogle's unrelenting search for information that has no bearing on this appeal.

Background

- [8] On June 9, 2006, the Law Society of British Columbia obtained an order of this Court restraining Mr. Bryfogle from engaging in activities that constitute the practice of law: *Law Society (British Columbia) v. Bryfogle*, 2006 BCSC 1092.
- [9] On July 14, 2016, Associate Chief Justice Cullen, as he then was, held that Mr. Bryfogle had breached the June 9, 2006, restraining order, and held Mr. Bryfogle in contempt. The basis for the contempt order was that Mr. Bryfogle involved himself in proceedings related to the Chilcotin National Congress and Zsuzsanna Hegedus (now known as Zsuzsanna Holland).
- [10] On July 15, 2016, Cullen A.C.J. sentenced Mr. Bryfogle for the contempt. The sentencing decision is found at *Law Society of British Columbia v. Bryfogle*, 2016 BCSC 2188. The penalty imposed on Mr. Bryfogle for his contempt conviction was a conditional sentence order for 12 months followed by a period of probation for a further year. The probation order imposed upon Mr. Bryfogle included the following terms:
- a) That Mr. Bryfogle not involve himself in any proceeding or legal matter, in any manner whatsoever, on behalf of or relating to the Chilcotin Nation and its members, including those who identify with the Chilcotin National Congress; and
 - b) That Mr. Bryfogle not involve himself in any proceeding or legal matter whatsoever on behalf of or relating to Zsuzsanna Hegedus, except as to appear as a witness under subpoena to a criminal proceeding brought against Ms. Hegedus.
- [11] It was a breach of the aforesaid probation order that resulted in charges against Mr. Bryfogle and which is the subject of this appeal.
- [12] Mr. Bryfogle faced two counts on an amended information arising from the breach of probation:

Count 1

On May 1, 2018, Mr. Bryfogle, without reasonable excuse, breached the probation order by involving himself in a legal matter relating to Zsuzsanna Holland, contrary to Section 733.1(1) of the Criminal Code.

Count 2

On May 1, 2018, Mr. Bryfogle, without lawful excuse, disobeyed a lawful order of the Court, by involving himself in a legal matter relating to Zsuzsanna Holland, contrary to Section 127(1) of the Criminal Code.

[13] The trial on the two-count information proceeded for six days between April and August 2019. On October 21, 2019, the trial judge convicted Mr. Bryfogle on both counts in the information. However, in accordance with the principle established by *R. v. Kienapple* (1974), [1975] 1 S.C.R. 729, 1974 CanLII 14, the trial judge noted a conditional stay of proceedings on Count 2 of the information.

[14] It is the conviction on Count 1 of the information, relating to Mr. Bryfogle's breach of probation, that is the subject of Mr. Bryfogle's appeal in this proceeding.

Proceedings in the Provincial Court

[15] During the Provincial Court proceedings, the trial judge heard numerous applications including the following:

- a) An application brought by an employee of the B.C. Prosecution Service to release her from a subpoena issued by Mr. Bryfogle which the court granted;
- b) Applications for the court to issue subpoenas to various witnesses that Mr. Bryfogle sought to call which were all denied by the court on the basis that it was not probable that the proposed witnesses could give material evidence;
- c) An intervenor application which the court denied;
- d) An application for a dismissal of the charges based on an "exoneration" of Mr. Bryfogle by on order of the "Universal Supreme Court of the Tsilhqot'in", which the court dismissed;
- e) An application for disclosure of various documents which the court denied on the basis that the documents were not relevant;
- f) An application for removal of Crown counsel on the basis that he was in a conflict of interest which the court rejected;
- g) A plea of *autrefois acquit* which the court did not accept; and
- h) A claim of *res judicata* which the court dismissed.

[16] On the third day of trial, June 19, 2019, Mr. Bryfogle made a submission that the Provincial Court lacked jurisdiction over the charges against him because the charges arose out of a civil contempt order. Mr. Bryfogle relied upon the authority of *United Nurses of Alberta v. Alberta (Attorney General)*, [1992] 1 S.C.R. 901, 1992 CanLII 99. While the trial judge did not specifically refer to the jurisdiction issue in his reasons for judgment, he must have rejected Mr. Bryfogle's submission because the trial judge accepted jurisdiction when he convicted Mr. Bryfogle.

Grounds of Appeal

[17] Mr. Bryfogle relies on only three grounds of appeal. Mr. Bryfogle's notice of appeal is limited to the following grounds:

- a) that the Provincial Court lacked jurisdiction over the charges in the indictment;
- b) that the trial judge erred in denying him disclosure of Crown documents and subpoenas duces tecum; and
- c) that the trial judge erred in failing to find an abuse of process by the Crown.

[18] It is of significance in this appeal that Mr. Bryfogle does not allege that the trial judge erred in his findings of fact. Mr. Bryfogle does not contend that the findings of fact made by the trial judge were unsupported by the evidence or that they were otherwise unreasonable.

Standard of Review

[19] The appeal process for summary conviction matters is set out in Part XXVII of the Criminal Code, R.S.C. 1985, c. C-46 [Code]. Section 822 of the Code incorporates the appeal provisions of s. 686 of the Code which provide that on hearing an appeal against a conviction, the court of appeal may allow the appeal where it is of the opinion that:

- a) the verdict should be set aside on the ground that it is unreasonable or cannot be supported by the evidence;
- b) the judgment of the trial court should be set aside on the ground of a wrong decision on a question of law; or
- c) on any ground there was a miscarriage of justice.

[20] When considering the grounds of appeal, the appeal court is required to review the trial decision based on the evidence before the trial judge unless the appeal court, on application, allows the presentation of fresh evidence. In this appeal, Mr. Bryfogle made numerous applications to the Provincial Court and this Court, both before and after the conviction, for disclosure of documents.

[21] All of the disclosure applications were denied and Mr. Bryfogle did not make an application to adduce fresh evidence on this appeal. The failure to make application to adduce fresh evidence is particularly noteworthy because Mr. Bryfogle represented to the court during the appeal process that he had the documents and information he sought to adduce. However, for reasons that continue to be unclear, Mr. Bryfogle submitted that he could not present them to the court on the appeal unless there was a formal order for disclosure.

[22] Accordingly, this appeal must proceed on the record before the trial judge.

Findings of Fact

- [23] The Crown presented evidence at Mr. Bryfogle's trial from police officers, Mr. Bryfogle's probation officers and a correspondence coordinator for the Attorney General of British Columbia. The Crown also relied upon Justice Tammen's reasons for judgment in a Williams Lake proceeding involving Zsuzsanna Holland.
- [24] The trial judge found that on May 1, 2018, Mr. Bryfogle was bound by a probation order which prohibited him from involving himself in any proceeding or legal matter, in any manner whatsoever, on behalf of or relating to Zsuzsanna Holland, except as a witness under subpoena to a criminal proceeding against Ms. Holland. The trial judge also found that Mr. Bryfogle understood the consequences of breaching the terms of his probation.
- [25] The evidence before the trial judge was that in May 2017, the RCMP were investigating Ms. Holland for conspiracy and counselling to commit kidnapping. The investigation led the police to Mr. Bryfogle as a suspect. However, after further investigation, the police cleared Mr. Bryfogle of any suspicion and advised him, on July 12, 2017, that he was no longer a suspect.
- [26] In April 2018, Ms. Holland was on trial on criminal charges in Williams Lake. On April 26, 2018, Justice Tammen authorized a subpoena for Mr. Bryfogle to attend court to testify as a witness for the defence in the Williams Lake matter. The subpoena limited the evidence of Mr. Bryfogle to matters within his personal knowledge and germane to the issues in the case.
- [27] On April 19, 2018, Ms. Holland was charged with criminal offences in Kamloops.
- [28] On May 1, 2018, Mr. Bryfogle sent e-mails to the RCMP and to the Attorney General of British Columbia related to the criminal prosecution of Ms. Holland in Kamloops. The e-mails indicated that Mr. Bryfogle had reviewed the Report to Crown Counsel on the Kamloops prosecution and that he sought to explain why the Crown's case against Ms. Holland will "unravel". The trial judge found that these e-mails were in violation of the probation order as they showed Mr. Bryfogle inserting himself into the Kamloops prosecution of Ms. Holland.
- [29] Although he did not testify, Mr. Bryfogle's defence at the trial was that he had a reasonable excuse for sending the e-mails of May 1, 2018. Mr. Bryfogle alleged the subpoena authorized by Justice Tammen in the Williams Lake proceeding allowed him to communicate with the police and the Attorney General of British Columbia about Ms. Holland and that he was assisting the police in their investigation of Ms. Holland.
- [30] The trial judge rejected both defences argued by Mr. Bryfogle. The trial judge held that a subpoena issued for Mr. Bryfogle to attend court as a witness for Ms. Holland in a Williams Lake prosecution did not authorize him to involve himself in another criminal matter relating to Ms. Holland in Kamloops.

- [31] The trial judge also rejected Mr. Bryfogle's argument that he was assisting the police in their investigation of Ms. Holland. The trial judge referred to the communications between Mr. Bryfogle and the police, none of which suggest that the police were seeking Mr. Bryfogle's assistance.
- [32] In my view, Mr. Bryfogle's conviction by the trial judge is supported by the evidence and is not unreasonable. In fact, on this appeal, Mr. Bryfogle does not challenge the findings of fact made by the trial judge.

Jurisdiction

- [33] Mr. Bryfogle appeals on the basis that the trial judge had no jurisdiction to try the charges against him.
- [34] Mr. Bryfogle's first submission on this issue is that the trial judge did not make a specific finding on the issue of jurisdiction and gave no reasons for accepting jurisdiction.
- [35] Whether the trial judge had jurisdiction to try this case is a question of law. As stated in *R. v. Burns*, [1994] 1 S.C.R. 656, 1994 CanLII 127 at 664, "[t]rial judges are presumed to know the law with which they work day in and day out." The Court in *Burns* held that trial judges do not err merely because they do not give reasons for deciding one way or the other on problematic points. The error occurs where the reasons for judgment disclose a lack of appreciation of relevant evidence or the appropriate legal principles.
- [36] In this case, the trial judge clearly rejected Mr. Bryfogle's submission that he had no jurisdiction by accepting jurisdiction and convicting Mr. Bryfogle. There is nothing in the reasons for judgment on which I can conclude that the trial judge lacked an appreciation of the relevant evidence or the appropriate legal principles. Therefore, I do not accept Mr. Bryfogle's first submission on the jurisdiction issues.
- [37] The second submission by Mr. Bryfogle on this issue is that the trial judge erred in accepting jurisdiction to try this case.
- [38] Mr. Bryfogle relies upon *United Nurses of Alberta* as authority for the principle that the Provincial Court cannot convert a civil contempt order made in the Supreme Court to criminal contempt. In my view, *United Nurses of Alberta* does not assist Mr. Bryfogle. The breach of probation charge against Mr. Bryfogle did not involve the conversion of civil contempt to criminal contempt by the trial judge. Associate Chief Justice Cullen had already placed Mr. Bryfogle on probation. Mr. Bryfogle did not appeal the sentence imposed by Cullen A.C.J. The trial judge was enforcing the probation order under the Code. In other words, if there was a conversion of the civil contempt to criminal contempt, it occurred when Cullen A.C.J. sentenced Mr. Bryfogle.
- [39] Accordingly, this ground of appeal must fail.

Disclosure

- [40] Mr. Bryfogle made application for disclosure of the Holland investigation file during the trial. Mr. Bryfogle presented no evidence as to the relevance of the Holland investigation file to the charges before the trial judge. However, he suggested that the file was relevant because the police had requested that he assist them in their investigation of Ms. Holland and they encouraged him to communicate with them.
- [41] At the suggestion of Mr. Bryfogle and with the consent of Crown counsel, the trial judge reviewed the Report to Crown Counsel in the prosecution of Ms. Holland. The purpose of having the judge review the Report to Crown Counsel was to determine whether the Holland investigation file contained any information that was relevant to the charges against Mr. Bryfogle. After reviewing the report, the trial judge concluded that Mr. Bryfogle was initially a person of interest in the Holland investigation, but that there was no substance to the suggestion that Mr. Bryfogle participated in the investigation in any fashion.
- [42] The trial judge denied Mr. Bryfogle's disclosure application on the basis that there was no connection between the Holland investigation and the charges against Mr. Bryfogle.
- [43] The Holland investigation involved a conspiracy and counselling to commit the offence of kidnapping. Mr. Bryfogle was initially a person of interest in this investigation but the police cleared him of all suspicion by July 12, 2017. The trial judge found that after that date, Mr. Bryfogle was no longer involved in the Holland investigation as a suspect or an informant.
- [44] Mr. Bryfogle presented no other evidence to connect the Holland investigation to his charges and he gave no other explanation for how the two were connected. Without any connection between the Holland investigation and the charges against Mr. Bryfogle, the trial judge had no basis upon which to require disclosure of the file.
- [45] Mr. Bryfogle also suggested that there was a "big man sting" operation. However, he conceded that he had no evidence of such an operation.
- [46] As a result, the conclusion of the trial judge that the Holland investigation was not relevant to the proceedings before him was not unreasonable or contrary to the evidence. Accordingly, the trial judge did not err in law by denying disclosure of the Holland investigation file to Mr. Bryfogle, nor was the decision a miscarriage of justice.
- [47] One of the grounds for appeal included in Mr. Bryfogle's notice of appeal is that the trial judge erred in denying him subpoenas duces tecum. However, Mr. Bryfogle did not argue this ground of appeal at the hearing. Therefore, I will consider that Mr. Bryfogle no longer relies on this ground.
- [48] In any event, after reviewing the record, it is quite obvious that the witnesses proposed by Mr. Bryfogle were not likely to have material evidence related to the charges before the Court.

[49] Therefore, I would not accede to this ground of appeal.

Abuse of Process

[50] Mr. Bryfogle's notice of appeal includes an abuse of process as one of the grounds for his appeal. However, Mr. Bryfogle made no submissions on this ground of appeal. Therefore, I will consider that Mr. Bryfogle abandoned this ground of appeal at the hearing.

[51] However, neither the trial record nor the proceedings on appeal include any evidence to establish an abuse of process. Mr. Bryfogle's allegations of an abuse of process are founded upon bald assertions by him without any evidentiary foundation. Therefore, this ground of appeal must fail even if not abandoned.

Sentence Appeal

[52] The notice of appeal is an appeal of both Mr. Bryfogle's conviction and his sentence. However, Mr. Bryfogle made no arguments with respect to the suitability of the sentence he received.

[53] Therefore, I cannot accede to Mr. Bryfogle's appeal on sentencing.

Disposition

[54] Based on the foregoing, Mr. Bryfogle's appeals against his conviction and his sentence are dismissed.

"D.K. Hori J."

HORI J.

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