

25166-3		
Quesnel Registry		
In the Supreme Court of British Columbia		
(BEFORE THE HONOURABLE MR. JUSTICE BUTLER AND JURY)		
Quesnel, B.C.		
November 12, 2015		
REGINA		
v.		
ROY ARTHUR TOPHAM		
PROCEEDINGS AT TRIAL (Verdict and Crown Application to Vary Terms of Bail (DAY 14)		
COPY		
Crown Counsel:		J. Johnston
Defence Counsel:		B. Johnson

INDEX

EXHIBITS

NIL

RULINGS

Verdict 1
Adjournment re Crown Application 6

Quesnel, B.C.
November 12, 2015

THE CLERK: In the Supreme Court of British Columbia, this 12th day of November, 2015. Oh, pardon me.
Sorry, My Lord. Testing, testing. I'm just going to stand down one moment, My Lord.
THE COURT: All right, we'll do that.
THE CLERK: Sorry about that.

(PROCEEDINGS ADJOURNED)
(PROCEEDINGS RECONVENED)

THE CLERK: We're back on record.
MS. JOHNSTON: Thank you, My Lord. Jennifer Johnston for Provincial Crown.
MR. JOHNSON: Barclay Johnson for Mr. Topham.
THE COURT: All right. I understand we have a verdict. We'll bring in the jury.

(JURY IN)

THE COURT: Madam Registrar.
THE CLERK: Members of the jury, have you reached a verdict?
THE JURY FOREPERSON: Yes, we have.
THE CLERK: Mr. Foreman, what is your verdict as to Count one, do you find Roy Arthur Topham guilty or not guilty to the offence of

wilfully promoting hatred against an identifiable group, people of the Jewish religion or ethnic origin, contrary to s. 319(2) of the *Criminal Code*, by communicating statements, other than in private conversation, between the 28th day of April 2011 and the 4th day of May 2012, inclusive, at or near Quesnel, in the Province of British Columbia?

THE JURY FOREPERSON: The jury finds the accused, Roy Arthur Topham, guilty to Count one, My Lord.

THE CLERK: The jury finds Roy Arthur Topham guilty of Count one, My Lord.

Mr. Foreman, what is your verdict as to Count two, as read, do you find Roy Arthur Topham guilty or not guilty of the offence of wilfully promoting hatred against an identifiable group, people of the Jewish religion or ethnic origin, contrary to s. 319(2) of the *Criminal Code*, by communicating statements, other than in private conversation, between the 29th day of January 2013 and the 11th day of December 2013, inclusive, at or near Quesnel, in the Province of British Columbia?

THE JURY FOREPERSON: The jury finds Roy Arthur Topham not guilty of Count two, My Lord.

THE CLERK: The jury finds Mr. Topham not guilty on Count two, My Lord.

Members of the jury, hearken to your verdict as the court doth record it. You find the accused, Roy Arthur Topham, guilty to Count one and not guilty to Count two. These are your verdicts, so say you all. Please stand to confirm your verdict.

The verdicts are unanimous, My Lord.

THE COURT: Thank you. Now I want to take this opportunity to thank you for the very difficult task that you have undertaken over the last three weeks. It's something that you weren't trained to do, you have no experience in it. We gave you a tremendous amount of information. You heard the evidence. I gave you a lot of information about the law. It was a very, very difficult task. In performing it, you were carrying out your obligations by representing the people of Canada. It's a very important civic duty, and I thank you very much for doing that. I know from watching you that you listened carefully, and you carried out your responsibility in a really conscientious manner.

Your presence here is very important to the justice system. It allows the law to stay in touch with the attitudes of the members of the community. And I hope it was also a learning experience for you that you now better understand how the system of justice works, and I hope that it's something that will stay with you for a long time.

I do want to remind you about secrecy, which I told you about at the start. Please remember that jury deliberations are secret. You're not allowed at any time to disclose any information relating to the proceedings that took place in that jury room, unless they were also repeated here in this room. Of course, anything that was said in open court you can freely talk about, but your jury deliberations are secret.

Thank you. You are excused.

(JURY EXCUSED)

MR. JOHNSON: My Lord, I'm going to apply at this point to have the sentencing stayed until after the constitutional issue has been determined, and I don't know whether we have to set a date in Supreme Court here. I think the next Supreme Court chambers is the 7th of December, but I don't know that it's necessary if you make a ruling on the - on the request this morning.

THE COURT: Ms. Johnston?

MS. JOHNSTON: My Lord, I was anticipating my friend was going to make that application. The soonest chambers day is actually Monday, but I just don't think even by the 7th we're going to have an idea. I would suggest we put it over to the January fix date which, if memory serves, is the 25th of January, but I'd want to double-check the date.

In addition, My Lord, I'd like to address Mr. Topham's bail terms. I was just given a thumb drive from the RCMP literally minutes before we came down here. I am told that there is significant information concerning this trial itself that may or may not be of concern to the court. I have to actually look at it.

Also, I'm told by the RCMP, and I'll have to confirm how reliable this evidence is, that a fund is being undertaken to order the transcripts of the entire proceedings, and put the entirety of the proceedings on radicalpress.com. That again may or may not be a concern for Your Lordship, but what I'm asking, My Lord, is under the provisions of the *Criminal Code* that allows Your Lordship to address bail at the conclusion of the verdict, I would suggest if we could please reconvene say either at 1:30 or at two. By then I'll have printouts of all of the information that's been just given to me by the RCMP, and I will be in a position to have a factual basis to put before the court in terms of modifying the bail terms.

I'll tell the court, I will not be seeking to have bail revoked, but I will be seeking to have the terms - his current bail terms modified.

THE COURT: All right. Well, that - that seems appropriate. I would suggest that we reconvene at 1:30 and we'll deal with the issues at that time.

MS. JOHNSTON: Thank you. And I'll have copies of disclosure for my friend. I would hope that I could print it off quite quickly, so if you would even like to check with my office by 12 o'clock, I would hope that I'd have a hard copy printout for him.

MR. JOHNSON: Thank you, My Lord.

THE COURT: All right. 1:30.

THE CLERK: Order in court. Court is adjourned till 1:30.

(PROCEEDINGS ADJOURNED FOR NOON RECESS)

(PROCEEDINGS RECONVENED)

THE CLERK: We're back on record.

THE COURT: Thank you.

MS. JOHNSTON: Thank you, My Lord. My Lord, this is the Crown's application under section -

MR. JOHNSON: I wonder if we should introduce yourself?

MS. JOHNSTON: My Lord, I only do that usually in the morning. However, Johnston -

THE COURT: I don't need to - I know who you both are by now.

MR. JOHNSON: Okay. I thought it was just for the record.

THE COURT: And we do that for the record, but I don't think we need to right now.

MR. JOHNSON: My Lord, before my friend gets started, I'm on my feet to oppose her application at this point. I don't have enough notice of this application. I haven't had instructions from my client. I've just been given this binder two minutes ago. I don't think it's fair to have this application heard at this time. It's going to take a while. I would think I could make myself available Monday or Tuesday possibly of next week by phone, if that's acceptable. In the meantime, I would suggest that the existing bail conditions apply. If my friend's concern is that there's going to be a transcript put out there somewhere, I can pretty well safely say that even on an expedited basis, I don't think we're going to get a transfer - a transcript of this trial between now and Tuesday next week.

THE COURT: It seems unlikely.

MR. JOHNSON: Pardon me?

THE COURT: It seems unlikely.

MR. JOHNSON: Yeah, and I - as I say, if that's the concern, I'm certainly not going to be ordering anything through my office. Mr.

Topham has said that he's not going to be ordering anything through himself either, and I can't speak on behalf of anybody else who may apply, who may have standing, to get a copy of the transcript. You have to deal with WordAssist, and I expect that they've got their own issues regarding copyright and what have you, so I'm not going to be doing anything, you have my undertaking, until we hear this matter.

THE COURT: All right. I guess, Ms. Johnston, I have some sympathy with that position, especially, as I don't know what it is, and it sounds like an unusual application.

MS. JOHNSTON: My Lord, it's not unusual for Crown to apply for additional bail terms when there's actually been a conviction.

THE COURT: No, no, not that part of it. What is it that you're seeking?

MS. JOHNSTON: Well, the Crown is asking for additional bail terms on the part of Mr. Topham. I have a book of materials for Your Lordship. I first have -

THE COURT: Is this the book that you were just given?

MS. JOHNSTON: Yes.

MR. JOHNSON: I haven't even looked at it, My Lord. I mean this is making the application.

THE COURT: Well, no, I'm only going to decide initially when I'll hear the application.

MR. JOHNSON: Okay, thank you.

MS. JOHNSTON: If Your Lordship looks at Tab 2, you can see November 12th, 2015, which was yesterday, so it's not as if the Crown is just simply sitting on it. This is an evolving matter.

At page 18, Your Lordship will see a sheet right in the middle, it starts, "B.C.H.T.C. file", page 18 on Tab 2.

THE COURT: Yes.

MS. JOHNSTON: Your Lordship will see at Tab 3 the first sheet of an affidavit for a search warrant, and you can see -

THE COURT: Sorry, just a moment. So page 18.

MS. JOHNSTON: Page 18.

THE COURT: Yes.

MS. JOHNSTON: All right.

THE COURT: And then?

MS. JOHNSTON: So Tab 3, there's the first page, which is the application for a search warrant. As part of the search warrant, there's an ITO. The second page in Tab 3 has exactly the same page that Your Lordship sees at page 18. All right. Your Lordship can see from the first page on Tab 3 the disclosure date, which was August 1st, 2012. Then we flip back to Tab 1, which is the undertaking given to the justice or judge. Page 3 of the undertaking [as read in]:

You shall not distribute, circulate, or share all or any part of the Crown disclosure materials with any person or organization.

So there we have it, an example of disclosure materials.

At page 23, that is one of the materials that was presented as part of the Crown's case and Your Lordship may arguably say that that is caught in Condition 4 of the current undertaking.

At page 30 in Tab 2, Your Lordship will see a picture of potential jurors lining up in the snow, and I don't believe - and I'm sure I would recognize her - that the lady with the blue umbrella actually became one of our jurors, but it is not typical in these courts that jurors have their photographs placed in alternative media sites.

And in terms of the transcript itself, if Your Lordship looks at Tab 4, which is Facebook postings from Mr. Topham, at - that is Tab 4, at page 14, this is, I'm told, a Facebook posting from November 6th, which was Friday, and it's hard to document the amount of money, that paragraph. That paragraph talks about raising \$8,000 to order transcripts so that the transcript as a whole can be placed on radicalpress.com.

So, My Lord, that I think is a snapshot of Crown's immediate concerns, and with that in mind, my friend has asked for an application to delay this - the Crown's application until next week.

THE COURT: And frankly, I think that makes sense.

I can tell you that I think it is a somewhat unusual application. I think you should think about exactly what it is you're asking for, and give Mr. Johnson an opportunity to consider that. Now I'm not sure about my timing next week by phone. I know I have applications at nine o'clock on Tuesday and Wednesday mornings, so they're out, and Monday is not good, I've got a C.C.A.A., which is a complicated application, all day long. So I guess what I'm saying is - you know what I could probably do is hear it on Thursday. I'm not sitting on Thursday, but I could do a nine o'clock telephone application.

MS. JOHNSTON: My Lord, I may be in Supreme Court on Thursday, I don't know yet, so I'm certainly free at nine. I may or may not be free past 10.

THE COURT: All right. Well, and I'm hoping that we're talking about an hour, not something longer. And can you give formal notice to Mr. Johnson as to what it is you're seeking as additional bail conditions?

MS. JOHNSTON: Thank you.

THE COURT: So that he knows what to respond to. So having done that, I guess all we'll do today is set this over to Thursday at nine o'clock, and at that time we can make any other orders that are required for fixing dates.

MS. JOHNSTON: Thank you.

THE COURT: All right. And I will hold onto this so that I have this binder for next Thursday.

MS. JOHNSTON: Thank you.

THE CLERK: Order in court. This court is now closed.

(PROCEEDINGS ADJOURNED TO NOVEMBER 19, 2015, AT 9:00 A.M.)

Transcriber: B. Berekoff