

NOVA SCOTIA COURT OF APPEAL

Citation: *R. v. Travers*, 2019 NSCA 56

Date: 20190628

Docket: CAC 473448

Registry: Halifax

Between:

Robert Henry Travers

Appellant

v.

Her Majesty the Queen

Respondent

Judges: Beveridge, Fichaud and Farrar, JJ.A.

Motion Heard: June 18, 2019, in Halifax, Nova Scotia

Held: Motion for disclosure dismissed per reasons of Farrar, J.A.;
Beveridge and Fichaud, JJ.A. concurring.

Counsel: Appellant in person
James A. Gumpert, Q.C. and Glenn Hubbard, for the
respondent
William Mahody, Q.C. for the Lawyers' Insurance
Association of Nova Scotia

Reasons for judgment:

[1] In a decision dated June 9, 2017 (unreported), Justice Timothy Gabriel convicted Mr. Travers of aggravated assault and sentenced him to six and a half years in prison.

[2] On February 20, 2018, Mr. Travers filed a Notice of Appeal from both conviction and sentence. He is self-represented. In his Notice of Appeal, he alleges the verdict is unreasonable and cannot be supported by the evidence; there was a miscarriage of justice; and the trial was in violation of his *Charter* rights. On his sentence appeal, he seeks the imposition of a sentence that is “warranted in law”.

[3] The appeal hearing is scheduled to be heard on Tuesday, October 1, 2019, at 2 p.m. Mr. Travers is to file his Factum, Book of Authorities and Motion to Adduce Fresh Evidence and supporting Affidavit by August 1, 2019. The Crown is to file its Factum and Response to Fresh Evidence by September 3, 2019.

[4] On July 11, 2018, Mr. Travers first appeared on an Appeal Court Chambers conference call. Justice Duncan R. Beveridge was the presiding judge. On that call Mr. Travers suggested that his trial counsel, Sarah White, did not do what she should have done; putting into play an allegation of ineffective counsel. It is unclear what Mr. Travers considers to be deficiencies in Ms. White’s representation of him.

[5] As there were no particulars of his allegations against trial counsel, nor any real articulation of his grounds of appeal Beveridge, J.A. issued an order on July 12, 2018, which provided:

1. Mr. Travers shall file a document with the Registrar on or before September 14, 2018, that specifies his grounds of appeal;
2. Mr. Travers shall file with the Registrar his motion to adduce fresh evidence with accompanying affidavit on or before September 14, 2018;
3. The parties shall appear in teleChambers on September 19, 2018, at 10 a.m. for an update and further date and directions.

[6] Mr. Travers has not filed any document that clarifies his grounds of appeal nor given any particulars about his allegations of ineffective assistance of counsel as required by the July 12, 2018 Order.

[7] On September 19, 2018, the scheduled follow-up telephone Chambers call was held. At that time, Mr. Travers indicated, rather than represent himself, he wished to have legal aid counsel. A representative of Nova Scotia Legal Aid (NSLA) was present on the call and advised Mr. Travers it required an affidavit from him outlining the particulars of his complaints against his former counsel before it could assess the merits of his appeal.

[8] As the appeal book could not be filed before November 23, 2018, NSLA would be unable to do a merit assessment until sometime after that.

[9] The matter returned to telephone Chambers on December 12, 2018 and January 16, 2019. On both occasions it was adjourned to allow NSLA time to complete its merit assessment.

[10] In telephone Chambers on January 30, 2019, NSLA informed the Court that it would not be providing counsel to Mr. Travers. Mr. Travers advised he did not wish to appeal NSLA's decision and that he would continue to represent himself.

[11] He also confirmed that he was still alleging ineffective assistance of counsel.

[12] Also on January 30, 2019 the issue of further disclosure was discussed. Mr. Travers was seeking disclosure of Ms. White's file as well as two appeal decisions and materials from previous court proceedings in 1999 and 2002.

[13] The two appeal decisions Mr. Travers referred to (2001 NSCA 71 and 2003 NSCA 56) stem from the same criminal charge of mischief pursuant to s. 430(1)(d) of the *Criminal Code of Canada*, R.S.C. 1985, c. C-46 which were laid in 1998. The charges related to noise complaints which led to the police filing charges.

[14] At his first trial, Mr. Travers was convicted. His appeal to the Summary Conviction Appeal Court was dismissed.

[15] On further appeal to this Court, the conviction was quashed and a new trial ordered. Justice Linda L. Oland, writing for the Court, found that the police may have disregarded Mr. Travers' s. 8 rights under the *Canadian Charter of Rights*

and Freedoms, Part I of the *Constitution Act*, 1982, by entering and searching his dwelling and by seizing a clock radio which was entered into evidence at trial. It was found that the trial judge erred when he proceeded without making an inquiry as to the possibility of a breach of Mr. Travers' constitutional rights (2001 NSCA 71, ¶41).

[16] Mr. Travers was convicted at his second trial. He again appealed. His Application for Leave to Appeal was granted, but his appeal dismissed (2003 NSCA 56).

[17] Mr. Travers seeks the decisions and the transcripts from the 1999 and 2002 trials relating to the mischief charges. The decisions are reported and have been provided to Mr. Travers by the Crown in its brief on this motion.

[18] As well, in or around March 13, 2019, Ms. White's file was provided to Mr. Travers.

[19] On April 23, 2019, Mr. Travers filed a Notice of Motion seeking:

Full and complete disclosure in its entirety that is relevant to my appeal of my conviction and sentence that is an inmate appeal before the Court.

[20] The Affidavit in support of the motion provides:

2. False, misleading and fabricated evidence has been used against me.
3. I will require additional disclosure that includes previous N. S. Court of Appeal trial transcripts and decisions that are relevant that were provided in the past that are able to be copied and provided for my inmate appeal of my conviction and sentence.

[21] At telephone Chambers on May 1, 2019, Mr. Travers was told he could file additional paperwork to set out exactly what he wants as disclosure and why this disclosure is relevant to his appeal. If he decided to file this additional paperwork, it was to be done by May 10, 2019. Mr. Travers did not file any materials by that date. He did file more materials on May 22, 27 and 28, 2019. However, those materials do not expand on the reason for his request for disclosure of the trial transcript and Court of Appeal decision.

[22] Mr. Travers' disclosure motion was heard by a Panel of the Court on June 18, 2019.

Issue

Should the transcripts of the trials in 1999 and 2002 be disclosed?

Standard of Review

[23] There is no standard of review. We are considering the disclosure motion in the first instance.

Analysis

Disclosure of the Transcripts of the Trials in 1999 and 2002

[24] This Court has the ability to order production of materials pursuant to s. 683(1)(b) of the *Criminal Code*. The Ontario Court of Appeal in *R. v. Trotta*, [2004] O.J. No. 2439 outlined an applicant must demonstrate the following in order to obtain disclosure in aid of a fresh evidence application:

- demonstrate a connection between the Request for Production and the fresh evidence he proposes to adduce;
- that there is a reasonable possibility that the material sought could assist on the motion to adduce fresh evidence; and
- it must be demonstrated that there is some reasonable possibility that the evidence to which the production request is linked may be received as fresh evidence on appeal.

(*Trotta*, ¶25)

[25] I see no basis to order the Crown to produce the trial transcripts from the 1999 and 2002 mischief trials.

[26] Mr. Travers has not filed any documentation nor was he able to indicate in argument why the transcripts are necessary on the appeal.

[27] He has not demonstrated any connection between the request for production of the trial transcripts and the fresh evidence he proposes to adduce.

[28] Nor has he established that there is a reasonable possibility that the materials sought could assist on the motion for fresh evidence or that it may be received as fresh evidence on appeal.

[29] I would dismiss the motion for production.

Farrar, J.A.

Concurred in:

Fichaud, J.A.

Beveridge, J.A.