File No. 39456

IN THE SUPREME COURT OF CANADA

(ON APPEAL FROM THE COURT OF APPEAL OF ALBERTA)

BETWEEN:

TANNER JAY MORROW

Appellant

- and –

HER MAJESTY THE QUEEN

Respondent

APPELLANT'S FACTUM

Pursuant to Rule 42 of the *Rules of the Supreme Court of Canada*

Counsel for the Appellant:

ANDREA L. SERINK
SERINK LAW OFFICE
Suite 600, 630 6 Avenue SW
Calgary AB T2P 0S8
Tel: (403) 719-7500
Fax: (403)719-3669
Email: as@serinklawoffice.ca

Agent for counsel for the Appellant:

MOIRA DILLON
SUPREME LAW GROUP
900 - 275 Slater Street
Ottawa, Ontario K1P 5H9
Tel: (613) 691-1224
Fax: (613) 691-1338
Email: mdillon@supremelawgroup.ca

Counsel for the Respondent:

ANDREW BARG
JUSTICE AND SOLICITOR GENERAL
Appeals, Education & Prosecution Policy Branch
3rd Floor, Centrium Place, 300, 332-6 Avenue SW
Calgary, Alberta T2P 0B2
Tel: (403) 297-6005
Fax: (403) 297-3453
Email: andrew.barg@gov.ab.ca

Agent for Counsel for the Respondent:

LYNNE WATT
GOWLINGS WLG
2600 - 160 Elgin Street
Ottawa, ON KIP 1C3
Tel: (613) 786-8695
Fax: (613) 563-9869
Email: lynne.watt@gowlingwlg.com

TABLE OF CONTENTS

PART I: STATEMENT OF FACTS

INTRODUCTION

1. On May 31, 2018, Tanner Jay Morrow (hereinafter "the Appellant") was charged with harassment of his former partner, the Complainant, and was bound by a recognizance neither to contact her nor attend at her residence. Within days of being charged, the Complainant contacted the Appellant's father and asked whether there was any way to withdraw the charges. The Appellant's father passed that question on to the Appellant, and the Appellant made inquiries. Then, rather than passing the requested information back to his father, the Appellant communicated directly with the Complainant, by attending her residence in breach of his recognizance. Following a discussion with the Complainant during which the Appellant related to her the information he had received on how to withdraw the charge, the Appellant kissed the Complainant without her consent. The Appellant was charged with breaching his recognizance and sexual assault. The Crown later filed a replacement information adding the additional charge of obstruction of justice.

2. Following a trial, the Appellant was convicted of all charges. He appealed his conviction for sexual assault and obstruction of justice. The majority of the Court of Appeal of Alberta dismissed his appeal. Both the majority and dissenting justice agreed that the conviction for sexual assault withstood appellate scrutiny, however, the majority of the appeal court and the dissent disagreed on whether the evidence was sufficient to prove beyond a reasonable doubt that the Appellant had obstructed justice. The Appellant appeals to this Court as of right under s. 691(1)(a) of the *Criminal Code* ("*CC*") from the judgment of the Court of Appeal of Alberta, File 1901-0174-A, made on November 19, 2020 (*R v Morrow*, 2020 407).

EVIDENCE AT TRIAL

3. In the Complainant's direct testimony, the Crown elicited minimal evidence regarding the conversation the Appellant had with her about the outstanding charge. In response to the question of what the Complainant could remember about that conversation she said, "That I could call in to the Crown prosecutor's office, I believe, and say that I wanted the charges dropped, and there was a form to fill out. I can't remember all the details, but he had the process

explained to me at the time."[1] The Complainant said the conversation made her feel, "Pressured to please him, to get him out of the house, to remain calm and civil"[2] because the last time he had been at her house they had a huge fight. She thought the conversation was "about half an hour, maybe".[3] In response to "how he left it with [her]?" the Complainant said, "I think I said that I would look into it and that I'd do what I could."[4] The Crown asked her "Do you recall what, if anything, he asked you?" and the Complainant answered, "If I cared about him, if I wanted these charges to go through, if I could imagine a future past all of this with him."[5]

4. Defence counsel asked the Appellant, "And can you tell me more about that conversation?", to which the Appellant responded, "It was basically the same stuff over and over again, her saying that she didn't want me in gaol, she didn't want me charged." He elaborated, "I said, Well -- I asked why she was doing it. The reason I asked her -- or, sorry, told her that the steps of going about dropping the charges was she ended up messaging my dad, saying that she wanted the charges dropped and the cops wouldn't let her. That was the Facebook message we were bringing forward".[6] The Appellant did not deny that he was in breach of his recognizance by communicating directly with the Complainant and attending her residence.

5. In cross-examination the Crown suggested to the Appellant: "you took the time to ask her about why she was proceeding with charges against you?" to which he responded, "Yeah, cause of the message she sent my dad, yes". [7] The Appellant agreed with the Crown's suggestion in cross-examination that "in fact, you took the step of -- of telling her how she could drop the charges?". To which he responded, "yes".[8]

---

[1] Appellant's Record Volume II page 30/24-27.
[2] Appellant's Record Volume II page 30/29-32.
[3] Appellant's Record Volume II page 35/37-38.
[4] Appellant's Record Volume II page 35/40-41.
[5] Appellant's Record Volume II page 36/2-4.
[6] Appellant's Record Volume II page 60/21-27.
[7] Appellant's Record Volume II page 69/16-18.
[8] Appellant's Record Volume II page 69/20-24.

6. At trial, the Appellant's evidence that the Complainant asked the Appellant's father for information about withdrawing charges was never put to the Complainant by counsel for the Appellant, however, the Crown did not challenge the Appellant's narrative on this point.[9] Further, the trial judge intervened to stop trial counsel from asking about the text messages and the trial counsel did not pursue the line of questioning further. In any event, the tenor of the Crown's cross examination focused on whether the Appellant admitted that he provided the Complainant the information on how she could go about contacting the Crown. The Crown said, "And, in fact, you told her how to withdraw the charges?" to which the Appellant responded, "From what I was told how to do it, yes, I -- that's what I told her, yeah."[10] The Crown followed up by suggesting that the Appellant's "intention was to convince her not to press charges" to which he responded, "It wasn't to convince her. She told my dad that she didn't want the charges, and she wanted them dropped but the cops wouldn't let her. So -- I gave her advice how to do it".[11]

7. In closing argument, the Crown submitted that the Appellant had admitted to the charge of obstructing justice on his own evidence. The submissions were premised on the basis of who benefited from the information being provided. The defence argued for an acquittal on the basis that providing information is not obstruction of justice.

THE TRIAL JUDGE'S REASONS FOR CONVICTION

8. In finding the Appellant guilty the trial judge reasoned as follows:

> The accused testified he had been told by someone that the complainant had contacted his father and indicated she was having regrets over laying the complaint with the police and wished to withdraw said complainant. He further said he took it upon himself to then contact police and receive direction as to how she could go about having the charges withdrawn. It was, in my view, one of the, if not the primary reason he knowingly and wilfully breached the no contact condition of his recognizance and attended her residence on June 2nd, 2018.

---

[9] At trial the Crown advocated for the judge to believe the Appellant's testimony as according to the Crown his testimony made out the offence.
[10] Appellant's Record Volume II page 75/16-17.
[11] Appellant's Record Volume II page 75/19-21.

> The complainant testified he gave her detailed directions as to how to withdraw the charges against him. She further testified he tried to use their relationship and his affection for her as a means to convince her to have the charges dropped. Indeed, the circumstances are quite similar to that addressed in *R v Crazyboy*, 2011 ABPC 369, a decision by my brother Judge Semenuk. It appears, in his evidence, that he was doing this for her benefit, although I struggle to see any benefit to her. Rather, I am of the view that he intentionally, or using the wording of the section "willfully" attempted to defeat the course of justice by attempting to dissuade her from proceeding with the matter by trying to prey on her affections for him. That it was clearly unsuccessful is more of a comment on his significant misunderstanding regarding those affections than it is on the attempt.
>
> I am of the view that his efforts, taken collectively, constitute the actus reus and that the *mens rea* of specific intent can be inferred from both his evidence and the evidence of the complainant. In my view, his actions in this regard were wilful and were done in an attempt to dissuade her from giving evidence. He clearly was the potential main beneficiary of his actions. [12]

THE MAJORITY OF THE COURT OF APPEAL

9. In upholding the conviction for obstructing justice, the majority said the "gravamen of this offence is the doing of any act for the purpose of, or which has a tendency to, obstruct justice".[13] As an example, the majority postulated that "[d]issuading someone from testifying or from pursuing criminal charges can be such an act". The majority held that the "context of the act, the circumstances under which it occurred, and the relationship between the parties, both past and present, all inform a trial judge's assessment of whether obstruction has been made out".[14] Citing *R v Esau*, 2009 SKCA 31 (CanLII) at para. 50 the majority said that deference is owed to a trial judge because the trial judge had the benefit of hearing the testimony, assessing the credibility of that testimony, and understanding how the alleged obstruction occurred, in his assessment, of the intention behind the impugned conduct.

10. The majority found "[t]he context clearly supports the inference made by the trial judge".[15] In support of this contention the majority restated the factual underpinnings of the other charges for which the Appellant was convicted. According to the majority, the Appellant "went to her home to pressure her to drop the charges" and he "was persistent and refused to

---

[12] Appellant's Record Volume I page 10/8-31.
[13] Appellant's Record Volume I page 18, para. 16.
[14] Appellant's Record Volume I page 18, para. 16.
[15] Appellant's Record Volume I page 18, para. 17.

leave the home for over two hours".[16] The majority highlighted he sexually assaulted her by forcing a kiss and the Complainant testified she was afraid.[17]

11. The majority framed the issue as if the Appellant was not entitled to question whether the judge found criminal intent in convicting the Appellant of the obstruction charge. They said, "it was for the trial judge to determine whether the attempt to persuade the complainant to drop the charges and the provision of information as to how she could go about doing that amounted to improper pressure and therefor represented an attempt to pervert justice".[18]

12. The majority found, "[t]he trial judge inferred that the Appellant knew his attendance at the complainant's home would have a significant impact on her and concluded that his actions were undertaken with intent to dissuade the complainant from proceeding with the prosecution".[19] The majority concluded that there was no palpable and overriding error because in their minds "[t]he inference that the Appellant applied pressure on the complainant for an improper purpose was available on the record".[20]

THE DISSING JUDGEMENT

13. Slatter, J.A. in dissent confirmed that he had read the reasons of the majority and agreed that the appeal against the conviction for sexual assault be dismissed. Contrary to the majority, with respect to the charge of obstruction, the dissenting justice found "the conviction for attempting to obstruct justice cannot stand".[21] The dissenting justice noted that the appeal Crown did not dispute that if the Appellant's father had passed on the requested information to the complainant rather than the Appellant, that would not amount to obstruction of justice.

14. The dissenting justice found a review of the record revealed the trial judge never rejected the Appellant's testimony on this point and that he generally accepted the Appellant's uncontradicted evidence.

---

[16] Appellant's Record Volume I page 18, para. 17.
[17] Appellant's Record Volume I page 18, para. 17.
[18] Appellant's Record Volume I page 18, para. 17.
[19] Appellant's Record Volume I page 19, para. 17.
[20] Appellant's Record Volume I page 19, para. 17.
[21] Appellant's Record Volume I page 20, para. 21.

15. The dissenting justice found that this record does not support the finding that the Appellant attempted "to dissuade her from giving evidence".[22] Justice Slatter makes clear that neither the Appellant nor the Complainant testified to that. The evidence was that the discussion was about information on how the complainant could withdraw the charges. As the dissenting justice pointed out "if the charges were withdrawn, there would be no need for anybody to testify, but that is not the same thing as trying to dissuade a witness from attending at trial and testifying". [23]

16. The dissenting justice said the trial judge was wrong to assume the case was similar to that of *R v Crazyboy*, 2011 ABPC 369 (CanLII). Contrary to *Crazyboy*, the Appellant advised the Complainant as to the process of going about having a charge withdrawn by contacting the Crown and completing a form. The dissenting justice found the trial judge's key finding in support of the Appellant's conviction was the erroneous conclusion that "[the Appellant's] actions in this regard were wilful and were done in an attempt to dissuade [the complainant] from giving evidence".[24] The dissenting justice found the trial judge's conclusion was erroneous because it reflects palpable and overriding error.

PART II: STATEMENT OF ISSUES

Ground 1: The conviction for attempting to obstruct justice is unreasonable because it is based on an inference or finding that is plainly contradicted by the evidence relied on by the trial judge and is incompatible with evidence that has not otherwise been rejected by the trial judge.

PART III: STATEMENT OF ARGUMENT

17. Section 139 *CC* establishes the offence of intentionally attempting to obstruct justice. Subsection 139(1) *CC* deals specifically with corrupt practices respecting sureties, inapplicable to this case. Subsection 139(2) *CC* establishes the generic offence as: (2) Every person who

[22] Appellant's Record Volume I page 22, para. 28.
[23] Appellant's Record Volume I page 22, para. 28.
[24] Appellant's Record Volume I page 22, para. 28.

intentionally attempts in any manner other than a manner described in subsection (1) to obstruct, pervert or defeat the course of justice is guilty of [an offence]. There are a number of specific examples of obstruction given in subsection 139(3): (3) Without restricting the generality of subsection (2), everyone shall be deemed wilfully to attempt to obstruct, pervert or defeat the course of justice who in a judicial proceeding, existing or proposed,

> (a) dissuades or attempts to dissuade a person by threats, bribes or other corrupt means from giving evidence;
>
> (b) influences or attempts to influence by threats, bribes or other corrupt means a person in his conduct as a juror; or
>
> (c) accepts or obtains, agrees to accept or attempts to obtain a bribe or other corrupt consideration to abstain from giving evidence, or to do or to refrain from doing anything as a juror.

18. The *actus reus* of the offence is the dissuasion or attempted dissuasion by threats, bribes, or other corrupt means of a person from giving evidence. The *mens reas* requires proof of specific intent in that there must be a wilful attempt to "obstruct, pervert, or defeat the course of justice". The Crown must prove that the Appellant wilfully performed the alleged acts with the intention that the course of justice be obstructed irrespective of whether s/he is successful in doing so or not.[25]

19. In *R v Beaudry*, 2007 SCC 5 (CanLII), [2007] 1 SCR 190 at para. 52, Charron J. summarized the proof requirements for these elements under s. 139(2) as follows:

> . . . To sum up, the actus reus of the offence will be established only if the act tended to defeat or obstruct the course of justice (*R. v. May* (1984), 13 C.C.C. (3d) 257 (Ont. C.A.), per Martin J.A.; see also *R. v. Hearn* (1989), 48 C.C.C. (3d) 376 (Nfld. C.A.), per Goodridge C.J.N., aff'd, [1989] 2 S.C.R. 1180). With respect to *mens rea*, it is not in dispute that this is a specific intent offence (*R. v. Charbonneau* (1992), 13 C.R. (4th) 191 (Que. C.A.)). The prosecution must prove beyond a reasonable doubt that the accused did in fact intend to act in a way tending to obstruct, pervert or defeat the course of justice. A

---

[25] *R v Hearn*, 1989 CanLII 3938 (NL CA), aff'd 1989 CanLII 14 (SCC); The difference between "general" and "specific" intent was explained in *R v Tatton*, 2015 SCC 33 at para. 21, that "the distinction lies in the complexity of the thought and reasoning processes that make up the mental element of a particular offence, and the social policy underlying the offence".

> simple error of judgment will not be enough. *An accused who acted in good faith, but whose conduct cannot be characterized as a legitimate exercise of the discretion, has not committed the criminal offence of obstructing justice.* [emphasis added]

20. As Hamilton J.A. explained in *R v Abdullah* (G.) et al, 2010 MBCA 79 at para 39: "What this means is that the acts in question must have been done with the purpose of perverting or obstructing the course of justice … or with knowledge or awareness that the acts in question would or might lead to a perversion or obstruction of justice…". The language of s. 139(3) suggests that commission of the *actus reus* described results in a "presumption" of intention to commit the offence. In *R v Levin*, 2014 ABQB 90 (CanLII), rather than declare the subsection unconstitutional, Martin J.A. (as she then was) held that judicial interpretation has effectively removed the words "shall be deemed willfully to" from the section. Justice Martin further held that "[s]ubsection 139 (3) has thus been interpreted as going to the actus reus of the offence, but has not been held to obviate the need for the Crown to establish the requisite mental element under s. 139(2) of 'willfulness'."[26]

21. In this case the Appellant was charged that he:

> Count 7: On or about the 2nd day of June, 2018 at or near Medicine Hat, Alberta, did unlawfully and willfully attempt to obstruct, pervert or defeat the course of justice in a judicial proceeding by dissuading or attempting to dissuade [the Complainant] by threats, bribes or other corrupt means from giving evidence, contrary to s. 139(2) of the *Criminal Code of Canada*.

22. The dissenting justice appreciated the trial judge accepted the trial Crown's submission and believed the Appellant's uncontradicted testimony on this point. The dissenting justice, however, found upon review even accepting the Appellant's evidence to be true that this record did not support the finding that the Appellant attempted "to dissuade [the Complainant] from giving evidence".[27] The Crown on appeal conceded that in order to make out a charge of attempting to obstruct justice there must be something corrupt or illicit about the conduct of the Appellant. However, as the dissenting justice appreciated, neither the Appellant nor the Complainant testified to corrupt or illicit behaviour, but instead both testified to a discussion

---

[26] *R v Levin*, 2014 ABQB 90 (CanLII) at para 12.
[27] Appellant's Record Volume I page 22, para. 28.

about information on how to withdraw the charge. As the dissenting justice pointed out, "obviously if the charges were withdrawn, there would be no need for anybody to testify, but that is not the same thing as trying to dissuade a witness from attending at trial and testifying".[28]

23. In *R v Reynolds*, 2011 SCC 19 this Court made clear "other corrupt means" need not distinguish too finely between the method used to dissuade the witness from testifying and the means by which the witness avoids court.[29] In *R v Pare*, 2010 ONCA 563 at para. 9, Rosenberg J.A. observed:

> "… attempting to persuade a witness to change their testimony, even to change the testimony to what the accused believes is the truth, is an offence where the means of persuasion is corrupt. Offering money to a complainant in a criminal case to change her testimony is a classic example of corrupt means". [30]

24. The dissenting justice distinguished the Appellant's case from *R v Crazyboy*, 2011 ABPC 369 at para 40, where the accused in that case told the complainant that if she did not show up at trial the charges would be withdrawn. The key finding in support of the conviction of Mr. Crazyboy was that "his actions in this regard were wilful and were done in an attempt to dissuade her from giving evidence". [31] Mr. Crazyboy told the complainant not to come to court, which is distinguishable from the Appellant's case. The uncontradicted evidence on this record is that the Appellant explained to the Complainant the Crown's procedure on how to contact the Crown if she wanted to withdraw the charge – a fact which the appeal Crown conceded would not be an offence had the Appellant's father related that information to the Complainant.

25. The Appellant urges this Court to accept the dissenting justice's conclusion that the trial judge's decision reflects a palpable and overriding error and an erroneous application of the law. Merely giving information about withdrawal of charges, especially where that information was requested by the Complainant is not be an attempt to obstruct justice. Such an exchange of

---

[28] Appellant's Record Volume I page 22, para. 28.
[29] *R v Reynolds*, 2010 ONCA 576 (CanLII) revs'd by *R v Reynolds*, 2011 SCC 19.
[30] *R v Pare*, 2010 ONCA 563 at para. 9.
[31] *R v Crazyboy*, 2011 ABPC 369 (CanLII) at para 40.

information is not "other corrupt means", particularly where there is evidence that the information was requested by the complainant without provocation from the accused.

26. As previously stated obstruction of justice is a specific intent offence.[32] The dissenting judge appreciated the question at trial was not whether the Appellant's conduct was "wilful" as the Appellant clearly intended to give the Complainant the information she had requested. Rather, the question the trial judge was required to ask was whether the Appellant's attempt "to use their relationship and his affection for her as a means to convince her to have the charges dropped" was illicit or corrupt.

27. Justice Slatter did not disagree with the majority that context is important. He appreciated and distinguished the Appellant's context and circumstances from the case of *R v Esau*, 2009 SKCA 31 (CanLII). While in custody Mr. Esau phoned the complainant from jail, wanting her to drop the charges. She testified that he said she "was going to look real stupid in court. And he said that even the cops knew I was going to look real stupid." The court in *Esau* found that the accused's past intimidation of the complainant and violations of court orders gave his words sufficient force that they would have "a tendency to obstruct or pervert the course of justice." The dissenting justice in the Appellant's case distinguished *Esau* because in the case at bar it was the Complainant who initiated the discussion about how she would go about withdrawing charges and the Appellant's words were informational not illicit.

28. The dissenting judge elaborated at paras. 30 and 31:

> On this point, the context is critical. Again, it was the complainant who initiated the discussion about withdrawing the charges. That distinguishes cases like *R. v Esau*, 2009 SKCA 31, 324 Sask R 95. Secondly, appealing to emotion or affection clearly does not fall within the "threats, bribes or other corrupt means" referred to in subsection 139(3). Thirdly, the only reasonable inference that can be drawn from this record is that her inquiry about withdrawing charges was motivated by her affection for the appellant. Their relationship may have been over, and it may have ended unhappily, but the complainant did not want the appellant to be subjected to the criminal process. She just wanted to be left alone. Any prospect of dropping the charges was derailed when the appellant turned the meeting away from the topic of dropping the charges, and attempted

---

[32] *R v Beaudry*, 2007 SCC 5 (CanLII), [2007] 1 SCR 190 at para. 52; *R v Abdullah* (G.) et al, 2010 MBCA 79 at paras. 38-39; and *R v Esau*, 2009 SKCA 31 (CanLII).

> to turn it into an attempt to rekindle their relationship, resulting in the sexual assault for which he was properly convicted.
>
> There is obviously a point where providing information about withdrawing charges is accompanied by pressure or other corrupt motivations, and turns into an attempt to obstruct justice. On this record, the appellant's communication of information about withdrawing charges was not illicit. When the meeting evolved into the appellant's attempt to kiss the complainant, his acts were not directed at obstructing justice. They were an attempt to reconnect with the complainant, and since they occurred without her consent, they were criminal in nature. The physical contact that occurred, however, was not sufficiently directed to the withdrawal of the charges to make out an attempt to obstruct justice.[33]

29. The dissenting justice correctly concluded that the conviction for attempting to obstruct justice was not made out on this record. He found that the conviction was unreasonable because it is based on an inference or finding that is plainly contradicted by the evidence relied on by the trial judge, and is incompatible with evidence that has not otherwise been rejected by the trial judge.[34] The trial judge reasoned that the Appellant was guilty because in his view, the Appellant's "actions in this regard were wilful and were done in an attempt to dissuade her from giving evidence. He clearly was the potential main beneficiary of his actions" when neither the Appellant nor the Complainant testified that the Appellant attempted to "dissuade her from giving evidence". Furthermore, whether the Appellant was the "beneficiary" of his actions was not the issue determinative of criminal culpability.

30. The majority said, the "gravamen of this offence is the doing of any act for the purpose of, or which has a tendency to, obstruct justice", however, the majority missed the part of that test that requires the conduct to be "done for that purpose". [35] Secondly, the majority based their reasons on findings not made by the trial judge or founded in the evidence, stating:

---

[33] Appellant's Record Volume I page 22, paras 30-31.
[34] *R v R.P.*, 2012 SCC 22 at para 9.
[35] Section 139(2) creates the substantive offence, the gravamen of which is the doing of an act which has a tendency to prevent or obstruct the course of justice, and which is done for that purpose: *R v May*, 1984 CanLII 3489 (ON CA), leave to appeal to SCC refused, [1984] 2 S.C.R. viii (note) (S.C.C.).

> "The trial judge inferred that the appellant knew his attendance at the complainant's home would have a significant impact on her and concluded that his actions were undertaken with intent to dissuade the complainant from proceeding with the prosecution."[36]

31. The above was not a finding the trial judge made, nor was it available on this record. There was no evidence of dissuading the Complainant from proceeding with the prosecution and as the dissenting justice highlighted assuming that this Appellant formed the specific intent to obstruction justice is erroneous.

32. There was nothing about the Appellant's conduct to bring it under the other corrupt means consistent within this Court's decision in *R v Reynolds*, 2011 SCC 19 and the Ontario Court of appeal in *R v Pare*, 2010 ONCA 563.

33. Furthermore, this Court considered the charge of obstruction of justice in *R v Goddard*, 1995 CanLII 136 (SCC), wherein the Court found Mr. Goddard did not make a false statement to court or withhold information he was obliged to disclose. In allowing the appeal and re-instating his acquittal, Sopinka J. speaking for the Court said, "the conduct while not criminal was ethically inexcusable".[37] The Appellant raises this point to highlight that not all ill-advised behaviour is criminal.

PART IV: COSTS

34. The Appellant makes no submissions for costs.

PART V: ORDER SOUGHT

35. The appeal should be allowed and the conviction for attempting to obstruct justice should be set aside.

---

[36] Appellant's Record Volume I page 19, para. 17.
[37] *R v Goddard*, 1995 CanLII 136 (SCC) at para 2.

PART VI: PUBLICATION BAN OR SEALING ORDER

36. The publication ban under s. 486.4 *CC* prohibits publication of information that could identify the victim. The Court should not publish the name of the victim, or any other information tending to identify the victim.

RESPECTFULLY SUBMITTED THIS 16th DAY OF February, 2021

H. Markham Silver Q.C. and Andrea L. Serink
Counsel for the Appellant

PART VII: TABLE OF AUTHORITIES

CASES

TAB		**Paragraph**
1	*R v Abdullah* (G.) et al, 2010 MBCA 79 at paras. 38-39	20, 26
2	*R v Beaudry*, 2007 SCC 5 (CanLII), [2007] 1 SCR 190 at para. 52	19, 26
3	*R v Crazyboy*, 2011 ABPC 369 (CanLII) at para 40	24, 25
4	*R v Esau*, 2009 SKCA 31 (CanLII)	9, 26, 27, 28
5	*R v Goddard*, 1995 CanLII 136 (SCC)	33
6	*R v Hearn*, 1989 CanLII 3938 (NL CA)	18
7	*R v Hearn*, 1989 CanLII 14 (SCC)	18
8	*R v Levin*, 2014 ABQB 90 (CanLII) at para 12	20
9	*R v May*, 1984 CanLII 3489 (ON CA), leave to appeal to SCC refused, [1984] 2 S.C.R. viii (note) (S.C.C.)	30
10	*R v Pare*, 2010 ONCA 563	23, 32
11	*R v Reynolds*, 2010 ONCA 576 (CanLII)	23
12	*R v Reynolds*, 2011 SCC 19	23, 32
13	*R v R.P.*, 2012 SCC 22 at para 9	29
14	*R v Tatton*, 2015 SCC 33	18

LEGISLATION

Criminal Code (R.S.C., 1985, c. C-46), ss. 139(1), 139(2), 139(3) and 486.4 *Code criminel* (L.R.C. (1985), ch. C-46), ss. 139(1), 139(2), 139(3) and 486.4	17, 19, 20, 21, 28, 30