

Information No. 09-0539
09-0346

ONTARIO COURT OF JUSTICE

HER MAJESTY THE QUEEN

v.

PAUL CUTMORE
ALEC DENYS

EXCERPT OF PROCEEDINGS
AT WITHDRAWAL OF
CRIMINAL CHARGES

BEFORE HIS WORSHIP JUSTICE OF THE PEACE D. LEE,
on January 26, 2010, at CAYUGA, Ontario

APPEARANCES:
A.M. Carere

Counsel for the Crown

R. v. Paul Cutmore and Alac Denys

TUESDAY, JANUARY 26, 2010

MS. CARERE: There is a pre-enquete, the private informant, Gary Nichols, is here, and the Crown has brought forward criminal charges under information 09-539.

THE COURT: Okay.

MS. CARERE: Your Honour, the, the Crown, or I'm sorry, Your Worship, the Crown is seeking to intervene on the pre-enquete. What the private informant has asked for is that process issue on a charge, I believe it's 145(2), where Mr. Cutmore did not attend court in the criminal proceeding. However, my understanding is that there had been a bench warrant to hold that day by the Justice of the Peace, and in any event, the Crown is seeking to withdraw that information, with respect to the charges against both of the co-accused.

*> THE COURT: And, the Crown wishes to withdraw these charges?

*> MS. CARERE: Yes. They're, the Crown is of the view that there's no reasonable prospect of conviction, and is seeking to withdraw those charges.

THE COURT: All right. I, I don't imagine that's going to impress Mr. Nichols any. Sir?

*> GARY NICHOLS: No, Your Worship, I totally disagree with the Crown's position. This involves some serious criminal charges that were filed for process on November 24th, of 2009. Mr. Cutmore was served with the summons. Mr. Denys has not yet been served, and I don't know if he's

R. v. Paul Cutmore and Alec Denys

evading service or, or what the problem is, but this was set over to be heard on February the 3rd. Appearance was at January 6th, and Mr. Cutmore, who had been served, did not appear. We have not heard any reason, or logical reason, why he did not appear on that date. So, as a result I filed this private information, under Section 145(4).

* THE COURT: All right. The, the, unfortunately, the prosecution has the right, at any time, to intervene, either to proceed with the matters or to withdraw the matters, and, and it is their sole right. The court does not have any overriding power to, you know, bring them back and say, "Hey look, it is in the public interest to proceed with this matter. I'm ordering you." I, the court just does not have that power and jurisdiction. And unfortunately, the only acts I can do are what are within the book, I, I have to find my authority, and I just don't have an authority, and I can understand your frustration. And, I don't know what the prosecution has said, that there's no reasonable grounds to believe that this matter can be successfully prosecuted. And, what has led to that conclusion I'm not sure, but that is their position.

GARY NICHOLS: Well, the thing is they got....

THE COURT: I don't even know if I've the right or the power to say, I need more explanation than that.

GARY NICHOLS: Well, I, I think we, we all do, Your Worship. To just override all the evidence

R. v. Paul Cutmore and Alec Denys

and, and waltz in here and say they want to withdraw the prosecution. This has happened on a number of times in the past on other private informations that I have filed. And, my understanding under 507(3)(a), that the evidence must be heard, there was a ruling to this effect by Justice Marshall. And, here we are the, the Crown continues in contempt of that ruling.

THE COURT: Well, okay, now I, I believe the evidence has been heard on these matters.

COURTROOM CLERK: That's correct.

GARY NICHOLS: On what matters? I'm not aware of what she's...

THE COURT: Oh, on the, on the, on the....

GARY NICHOLS: ...trying to withdraw.

THE COURT: Okay. The, the Crown wishes to withdraw the information, the information under which Mr. Denys and Mr. Cutmore were served summonses.

GARY NICHOLS: Well, they haven't even been served yet. How, how can they withdraw this?

THE COURT: Well, because there must have been a hearing...

GARY NICHOLS: There wasn't.

THE COURT: ...to get, no, no, to get to the point of issuing the information. You, you must have had a pre-enquete, and there is your, done September 29th, '09, did you not have a hearing back then on these matters?

GARY NICHOLS: November 24th, there was process issued for Mr. Denys and Mr. Cutmore.

THE COURT: Okay. But that, so you've had a

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R. v. ~~Paul Cutmore and Alec Demps~~

hearing on that, and that is the information that the prosecution wishes to withdraw. Not on your new matter to charge Paul Cutmore with failing to respond to the summons.

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GARY NICHOLS: Does the Crown not have an obligation to inform me of this in advance?

THE COURT: I, again....

GARY NICHOLS: Like, I've received, I've received nothing.

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THE COURT: The, the niceties of the matter I'm not sure, sir. I, I don't suppose there's any legal requirement other than to come here and do it.

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*> MS. CARERE: Your Worship, just for your information, I understand that Mr. Osier had been at the last court and spoke to the adjournment, though I don't know that he was formally retained. And, he was notified on January 21st, that we would be bringing this matter forward. The, the Crown, as you know, under the Crown Policy Manual, we have an obligation to screen these matters, and if there is no reasonable prospect of conviction, and if it's not in the public interest, we can't prosecute. And, Mr. Nichols has referred to a number of other private informations, this so to speak, was the one that fell through the cracks. The other informations, none of them, had process issued. The facts that he relies on are the same over and over again, and in the Crown's view it's frivolous proceedings that he's repeatedly bringing, changing the names of the defendants who are all

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R. v. ~~Paul Cutmore~~ and Alec Denys

Ministry of Natural Resources, or by and large, I'm not sure if every one of them employees. So there's, there's, the Crown has, you know, is well aware of the information that Mr. Nichols relies upon and this is certainly, as well as not, there being no reasonable prospect of conviction, it's not in the public interest to proceed, in the Crown's view. If that, I don't know if that assists or if I can be of any more assistance than....

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...COMMENTS BETWEEN THE COURT AND GARY NICHOLS
NOT REQUIRED

CHARTER
5-7. ?

MS. CARERE: Your Worship, if I might just add, just to clarify. In the Crown's, it's the Crown's view, we had attempted to notify Mr. Nichols through Paul Osier, out of courtesy, but in the Crown's view, Mr. Nichols has no standing once that process is issued, other than perhaps a victim, a, an alleged victim. And, also as Your Honour noted, just to further that the test as Your Honour, or as Your Worship is very much aware on a pre-enquete is just a *prima facie* case, which is a very, very low threshold, whereas, when the Crown is screening these matters they are looking at cases where the test is beyond a reasonable doubt, a reasonable prospect of conviction on that test. So, I just wanted to clarify that although we wanted to give Mr. Nichols an opportunity to know what was happening, in the Crown's view, he has no status

R. v. ~~Rayl Cutmore and Alec Emery~~

in that, that proceeding.

? * ... COMMENTS BETWEEN THE COURT AND GARY NICHOLS CHARTER NOT REQUIRED S-7?

MAY 2011

* THIS EVIDENCE USED BY THE CROWN TO OBTAIN A COURT DECISION THAT GARY NICHOLS IS NOW DECLARED A VEXATIOUS LITIGANT AND CANNOT PROCEED TO BRING LITIGATION BEFORE THE COURTS WITHOUT COURT AND MINISTRY OF THE ATTORNEY GENERAL PERMISSION. DECISION MAY 2011.

* THIS ACTION VIOLATED THE PRINCIPAL OF FUNDAMENTAL JUSTICE AND THE RIGHT TO MAKE FULL ANSWER AND DEFENCE BY GARY NICHOLS CHARTER S.7.

* KANGAROO COURT JUSTICE PROVINCE OF ONTARIO.

A.I.K.

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Certification

FORM 2

Certificate of Transcript
Evidence Act, Subsection 5(2)

I, Beverly Vanmarrum, certify that this document is a true and accurate transcription of the recording of R. v. Paul CUTMORE and Alec DENYS in the Ontario Court of Justice held at 55 Munsee St.N. Cayuga, Ontario, taken from Recording No. 1111-01-13/10 which has been certified in Form 1.

May 1, 2010

(Date)

B. Vanmarrum

(Signature of authorized person)