

WARNING

The President of the panel hearing this appeal directs that the following should be attached to the file:

An order restricting publication in this proceeding under ss. 486(1), (2), or (3) of the *Criminal Code* shall continue. These sections of the *Criminal Code* provide:

486. (1) Any proceedings against an accused shall be held in open court, but the presiding judge or justice may order the exclusion of all or any members of the public from the court room for all or part of the proceedings if the judge or justice is of the opinion that such an order is in the interest of public morals, the maintenance of order or the proper administration of justice or is necessary to prevent injury to international relations or national defence or national security.

(2) For the purpose of subsection (1), the “proper administration of justice” includes ensuring that.

(a) the interests of the witnesses under the age of eighteen years are safeguarded in all proceedings; and

(b) justice system participants who are involved in the proceedings are protected.

(3) If an accused is charged with an offence under section 151, 152, 153, 153.1, 155 or 159, subsection 160(2) or (3) or section 163.1, 171, 172, 172.1, 173, 212, 271, 272 or 273 and the prosecutor or the accused applies for an order under subsection (1), the judge or justice shall, if no such order is made, state, reference to the circumstances of the case, the reason for not making an order. R.S., c. C-34, s. 442; 174-75-76, c. 93, s. 44; 1980-81-82-83, c. 110, s. 74, c. 125, s. 25; R.S.C. 1985, c. 19 (3rd Supp.), s. 14; c. 23 (4th Supp.), s. 1; 1992, c. 21, s. 9; 1993, c. 45, s. 7; 1997, c. 16, s. 6; 1999, c. 25, s. 2; 2001, c. 32, s. 29; 2001, c. 41, s. 16, 34 and 133(13), (14); 2002, c. 13, s. 20; 2005, c. 32, s. 15; 2005, c. 43, ss. 4 and 8(3)(a).

CITATION: R. v. Pearson, 2011 ONCA 70
DATE: 20110127
DOCKET: C50884

COURT OF APPEAL FOR ONTARIO

Doherty, Laskin and Gillese JJ.A.

BETWEEN

Her Majesty the Queen

Respondent

and

Derek Pearson

Applicant (Appellant)

Nicholas A. Xynnis, for the applicant (appellant)

Frank Au, for the respondent

Heard: January 24, 2011

On appeal from the conviction entered by Justice McWilliam of the Superior Court of Justice dated November 1, 2007 and the sentence imposed on December 11, 2007.

APPEAL BOOK ENDORSEMENT

[1] This was a straightforward case. The trial judge was faced with the difficult problem of assessing the competing testimony of the appellant and the complainant. His

reasons are brief but, in our view, they demonstrate the basis for the conviction. The trial judge referred to the evidence surrounding a “will” admittedly written by the appellant and to the evidence of one of the other siblings as supportive of the complainant’s evidence. In essence, the trial judge convicted the appellant because he concluded that the other evidence in the case was consistent with the complainant’s evidence and not the appellant’s evidence. The “other” evidence led the trial judge to believe the complainant and disbelieve the appellant. Those findings of credibility explain the verdicts.

[2] There is no merit to the submission that the trial judge misapplied the burden of proof or that the trial judge somehow applied different standards in assessing the credibility of the complainant and the appellant.

[3] The appeal is dismissed.