

Deborah Busch and Rory Russell Acquitted Of Trespassing For Being On Neighbor's Porch

The trespassing convictions of Deborah Busch and Rory Russell in Fort Ann, New York for being on their neighbor's porch [have been overturned](#) on appeal.

In July 2014 Russell owned a home on Lake George in Fort Ann. Busch was his girlfriend, and she lived in Berne -- 85 miles south of Fort Ann. Fort Ann is 220 miles due north of New York City.

Russell had an acrimonious relationship with his next-door neighbors — Thomas Bolen and Carole Bolen. Among other things Russell believed the Bolens were poisoning him by not complying with state and federal lead abatement techniques in the scraping of lead-based paint from their vacation house. Russell thought lead dust was drifting into his home and making him ill. He had blood tests that confirmed he had elevated lead levels.

On July 13, 2014 the Bolens arrived at their home [and saw](#) Busch and Russell “crouching down on the porch.” Bolen yelled for them to get off his property, and Busch and Russell immediately left. Bolen found a lead-testing kit where he saw the two had been crouching.

Bolen filed a complaint with the New York State Patrol, and [told them](#) he wanted Busch and Russell “arrested and prosecuted to the fullest extent of the law.” Thomas and Carole Bolen both gave statements to the state patrol that Russell and Busch had repeatedly been told to stay off their property.

Based on the Bolens statements Busch, 51, and Russell, 57, were charged with trespassing. They rejected a plea bargain prior to their trial.

During their two day bench trial in the Fort Ann Town Justice Court, the Bolens testified they never told Russell to stay off their property -- which was the exact opposite of what they told the state patrol. They also testified they had never talked with Busch.

Russell testified that he and Busch were on the porch for two minutes to get paint scrapings to be tested for lead. [He testified](#), “When someone is poisoning you, you should have the right to go on that property and figure out where the poison is coming

from.” Russell [testified regarding](#) Busch being present: “She didn’t do anything but follow me. ... She had nothing to do with this. We just started dating. She didn’t know there was any contentious situation.”

Busch testified she and Russell left as soon as they were asked to do so, and they had spent \$12,000 in legal fees defending themselves.

The prosecution argued it didn’t matter if the Bolens hadn’t specifically told Russell and Busch to stay off their property: the two were guilty because they hadn’t been given permission to be on the Bolen’s property.

Judge James Richardson agreed with the prosecution, and after finding Busch and Russell guilty on November 12, 2014, he fined them \$125 each.

After her conviction Busch blasted town and county officials for refusing to deal with the Bolen’s lead problem, which forced Russell to take proactive action to protect his health and safety. [Busch told a reporter](#), “Though I’m very disappointed in the ruling, I am much more appalled of the way we had such a malicious prosecution over really a bogus charge.”

Busch and Russell appealed their convictions.

On June 29, 2016 Washington County Judge Kelly S. McKeighan [vacated the convictions](#) of Busch and Russell, and acquitted them on the basis the prosecution introduced insufficient evidence they had committed trespassing. Judge McKeighan ruled legal precedent in New York was that being on a neighbor’s porch was not automatically presumed to be trespassing -- when it was “open to the public.” He noted that Busch and Russell immediately left the Bolen’s property when asked to do so, and the Bolens testified they had never told Russell to stay off their property, and they had never “personally communicated” with Busch.

Judge McKeighan [wrote in his ruling](#): “In a free society, a balance must be struck wherein some degree of limited encroachment is tolerated in order to allow people to freely converse, while retaining for the property owner the right to revoke a person’s ability to so advance. As a practical matter, to hold, as the People suggest, would subject to threat of prosecution, any member of the public visiting a person’s porch without prior consent, the chilling



Deborah Busch (Philip Kamrass)

effect upon our society would be intolerable.” In a footnote in his decision Judge McKeighan wrote that if the State’s interpretation of the trespassing statute was accepted, then “Any visiting neighbor, lost individual, office seeker, petition carrier, delivery person, postal employee, salesperson, even those seeking consent to be on the porch would be subject to a charge of trespass.”

With the acquittal of Busch and Russell, Fort Ann Town was required to reimburse the fines they paid.

Busch lives in Berne, New York, and at the time she was prosecuted she was a Republican legislator representing Albany County's largely Democratic Hilltown district. In November 2015 Busch lost her bid for re-election by 200 votes and she credited publicity about the case for her loss. The day after her conviction was overturned [she told reporters](#), “I know the needs of the Hilltowns and served them well. We lost our traction... One thing people in the Hilltowns won’t tolerate is criminal behavior.” She also said, “Mr. Bolen filed a false accusatory instrument, and when you do that to someone who has a political career and professional career such as myself, you injure them and you injure them out of malice and spite.”

After his conviction was overturned, Russell [told reporters](#), “Our professional reputations have been irrevocably tarnished and the expense to defend ourselves financially exhausting. This has been two years of mental distress.” Russell said he plans to seek the filing of charges against Thomas Bolen and his wife for lying to state troopers that they had repeatedly told Russell and Busch to stay off their property. It was those lies that resulted in the filing of the false trespassing charges against Russell and Busch.

Sources: [Judge tosses trespass conviction of ex-Albany County lawmaker](#): Ex-legislator says she lost seat over coverage, *Times Union* (Albany, NY), July 14, 2016

[Busch, boyfriend convicted in Fort Ann trespassing case](#), *Times Union* (Albany, NY), November 12, 2014

[Albany lawmaker calls her conviction](#) ‘a failure of government’: County legislator, boyfriend decry idling on lead issue, *Times Union* (Albany, NY), November 13, 2014



Database of Japanese Cases

The Japan Innocence & Death Penalty Information Center has a database of wrongful Japanese convictions online at, <http://www.jiade.org>