

27178-2
Vancouver Registry

In the Supreme Court of British Columbia
(BEFORE THE HONOURABLE MADAM JUSTICE HOLMES AND JURY)

Vancouver, B.C.
June 28, 2017

REGINA

v.

PATRICK HENRY FOX

PROCEEDINGS AT TRIAL

COPY

**BAN ON PUBLICATION - INHERENT
JURISDICTION**

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Crown Counsel:

M. Myhre

Appearing on his own behalf:

P. Fox

Defence Counsel:

A.J. Lagemaat

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Vancouver, B.C.
June 28, 2017

(JURY OUT)

THE SHERIFF: The jury is back, My Lady.

(PROCEEDINGS ADJOURNED TO AWAIT RETURN OF
THE JURY AT 9:03:24 A.M.)
(PROCEEDINGS RECONVENED AT 2:31:01 P.M.)

THE COURT: I understand there's a verdict. Unless
there's anything preliminary, I'll invite the jury
in. Yes.

THE SHERIFF: The jury, My Lady.

(JURY IN)

THE COURT: Madam Registrar.

THE CLERK: Mr. Foreperson, could you please stand.
Members of the jury, have you reached a verdict?

THE JURY FOREPERSON: Yes, we have.

THE CLERK: Mr. Foreperson, what is your verdict in
relation to Count 1? Do you find Mr. Fox guilty
or not guilty of criminal harassment of Desiree
Capuano?

THE JURY FOREPERSON: We find the defendant guilty.

THE CLERK: Mr. Foreperson, what is your verdict in
relation to Count 2? Do you find Mr. Fox guilty
or not guilty of possessing a firearm in a place
other than where authorized to do so?

THE JURY FOREPERSON: We find the defendant guilty.

THE CLERK: Members of the jury, hearken to your
verdict as the court doth record it. Do you find
the accused, Patrick Fox, guilty of criminal
harassment of Desiree Capuano and guilty of
possessing a firearm in a place other than where
authorized to do so? This is your verdict, so say
you all?

THE JURORS: Yes.

THE CLERK: Please stand to confirm your verdict.

(JURY STANDS)

THE CLERK: The verdict is unanimous, My Lady.

THE COURT: Thank you. Please have a seat, members of
the jury.

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1 THE COURT: Mr. Foreperson and members of the jury,
2 over the past two and a half weeks you have
3 fulfilled a very important service to the
4 community. As jurors, you have provided a direct
5 and deciding voice in the administration of
6 justice. You have performed one of the most
7 important duties which a citizen can be called on
8 to perform. You have performed your task
9 diligently and attentively. Your task has been a
10 challenging one. I hope that it has also brought
11 some interest for you concerning the way our
12 system of justice functions. Your presence in the
13 courtroom helps to keep the law in touch with the
14 community and, as I said, it may also have given
15 you a better idea of the way that our system
16 operates.

17 I need to remind you about what you may and
18 may not talk about after you leave the courthouse
19 today. The public portion of the trial, and by
20 that I mean anything that took place in the
21 courtroom, can be discussed with anyone now that
22 the trial is over. So anything that took place in
23 this courtroom you can freely discuss, but your
24 deliberations in the jury room can never be
25 disclosed. It is a criminal offence to disclose
26 your deliberations. They remain confidential
27 forever.

28 On behalf of the court and the people of
29 Canada, I thank you for your time and the careful
30 attention that you've given to this case and in
31 performing your duty as jurors.

32 You are now discharged. Thank you.

33

34 (JURY EXCUSED)

35

36 THE CLERK: [Indiscernible/not near microphone] as an
37 exhibit?

38 THE COURT: We'll deal with that in a minute.

39 Mr. Foreperson, Madam Registrar reminds me
40 you have a verdict sheet. Thank you. And we'll
41 mark that as the final exhibit. Thank you --

42 THE CLERK: It's Exhibit B --

43 THE COURT: -- very much.

44 THE CLERK: -- for ID, My Lady.

45 THE COURT: Thank you. Can I see that, please? Thank
46 you.

47 Thank you. That should be the next

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1 exhibit -- numbered exhibit.

2 THE CLERK: Numbered exhibit?

3 THE COURT: Yes.

4 THE CLERK: That's Exhibit 14, My Lady.

5 THE COURT: Thank you.

6

7 **EXHIBIT 14: Original verdict sheet dated**
8 **June 28, 2017**

9

10 THE COURT: Next steps.

11 MR. MYHRE: My Lady, could I just have a word with my
12 friend?

13 My Lady, I wonder if we could stand down for
14 a few minutes? I just told my friend how I would
15 like to proceed from this point and I think he
16 needs a moment to discuss that with Mr. Fox and --

17 THE COURT: Certainly.

18 MR. MYHRE: -- get his position.

19 THE COURT: We can stand down. How long would you
20 like? Ten minutes? Fifteen?

21 MR. MYHRE: Ten --

22 THE COURT: Twenty?

23 MR. MYHRE: -- minutes maximum, My Lady.

24 THE COURT: All right. We'll stand down.

25

26 (PROCEEDINGS ADJOURNED)

27 (PROCEEDINGS RECONVENED)

28

29 MR. MYHRE: So, My Lady, the Crown would ask that the
30 court order a presentence report with a
31 psychiatric component, which I understand takes
32 approximately four weeks to complete, and that we
33 set a sentencing date after that time.

34 THE COURT: Set it now or set it after that time?

35 MR. MYHRE: I'd be happy to set it today for a date
36 that is --

37 THE COURT: Yes.

38 MR. MYHRE: -- four weeks or more out, but I understand
39 Mr. Fox is opposed to there being such a report.
40 Would you like to hear further from me on that
41 point? I can explain why the ...

42 THE COURT: Mr. Lagemaat, are you representing Mr. Fox
43 at this point or are -- do I ask for Mr. Fox's
44 submission?

45 MR. LAGEMAAT: I'm not representing Mr. Fox for the
46 purpose of sentencing, but I will speak to this
47 matter right now. He opposes an order of a

Proceedings**BAN ON PUBLICATION - INHERENT JURISDICTION**

1 presentence report. He wishes to proceed to
2 sentencing. Not immediately, but to set it much
3 sooner than four weeks for sentencing.
4 THE COURT: All right. Then, I'll need to hear from
5 you, Mr. Myhre.
6

SUBMISSIONS RE ASSESSMENT FOR CROWN BY MR. MYHRE:

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9 MR. MYHRE: So, My Lady, the Crown's concerns are how
10 to keep Ms. Capuano harassment-free going forward,
11 to the extent possible, with court orders and
12 treatment, if necessary. And, for that reason, my
13 submission is that the court needs as much insight
14 into what's going on with Mr. Fox as possible.
15 There is, in addition to what the Crown has
16 characterized as an obsession, an obsessive hatred
17 for Ms. Capuano.

18 As I have read over the website and the
19 interactive of Mr. Fox, I am also concerned
20 about -- it's hard to say on the website what is
21 hyperbole and what is delusional. It seems to me
22 that Mr. Fox genuinely believes some of the things
23 that he writes.

24 Like, for example, Desiree Capuano is a white
25 supremacist because her ex-boyfriend had a
26 swastika on a ceremonial dagger or Ms. Capuano is
27 a drug addict because she has a medical marihuana
28 card and her ex-boyfriend had a conviction for
29 possession of crystal methamphetamine, so much so,
30 as you saw in the statement of Constable Potts,
31 that he said, "This woman won't come to trial.
32 She's a drug addict." But she's clearly not a
33 drug addict. She clearly raises two kids, holds
34 down a job.

35 So, when Mr. Fox appears to be that out of
36 touch with reality, the Crown is concerned about
37 the type of conditions that will help to give Ms.
38 Capuano some peace moving forward. That's the
39 basis for the Crown's request.

40 THE COURT: Uh --

41 MR. LAGEMAAT: If I could reply briefly, My Lady?

42 THE COURT: Well, I'd like to ask a question --

43 MR. LAGEMAAT: Okay.

44 THE COURT: -- or two first.

45 MR. LAGEMAAT: Yes.

46 THE COURT: How would a presentence report assist in
47 arriving at a sentencing measure that would help

Submissions re Assessment for Crown by Mr. Myhre**BAN ON PUBLICATION - INHERENT JURISDICTION**

1 keep Ms. Capuano free of further harassment?
2 MR. MYHRE: Well, if, for example, Mr. Fox -- Mr. Fox
3 may or may not be suffering from some kind of
4 mental health issue. I can't tell that because
5 I'm not an expert in that field. But if there was
6 such a thing, then maybe a condition like
7 reporting to forensics would be appropriate. And
8 if there isn't, then maybe the court needs to just
9 clamp down on say his Internet usage to the
10 maximum extent possible.

11 THE COURT: All right. Thank you. Mr. Lagemaat.

12

SUBMISSIONS RE ASSESSMENT FOR ACCUSED BY MR. LAGEMAAT:

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14

15 MR. LAGEMAAT: Well, My Lady, there's no history of
16 mental illness. There's no previous diagnosis.
17 And, as far as the insults, those were back and
18 forth. That's, in my submission, not a -- not
19 indicative of mental health concerns.

20 THE COURT: It's not the insults. What Mr. Myhre
21 referred to was obsessive hatred and what he
22 described as hyperbole, becoming possibly
23 delusional.

24 MR. LAGEMAAT: Well, I don't think we can diagnose that
25 at this point as delusional. It was -- not to
26 dwell on the evidence, but this was back and
27 forth, where she was calling him mythical
28 characters and they were engaging in this back and
29 forth. It's my submission there's no -- we can't
30 diagnose this at this point as delusional and, as
31 I said, Mr. Fox opposes . . .

32 THE COURT: Is there a method of getting some sort of
33 psychiatrist assessment without ordering a
34 presentence report? That -- in my own recent
35 experience, seem -- they seem to take longer than
36 four weeks to prepare and they cover a range of
37 issues and concerns.

38 MR. MYHRE: As far as I know, the court has the power
39 to order one or both. They -- I've never seem
40 them -- a psychiatric report without a PSR, but I
41 know that they can just be ordered. I mean,
42 they're separate. I have to fill out a separate
43 form to send to forensics to make that happen, so
44 I --

45 THE COURT: Well, what's the jurisdictional basis for
46 ordering a psychiatric report without a
47 presentence report?

Submissions re Assessment for Accused by Mr. Lagemaat**BAN ON PUBLICATION - INHERENT JURISDICTION**

1 MR. MYHRE: I confess, My Lady, I can't tell you that
2 off the top of my head. I've never looked up the
3 section. I'd have to go look at it.
4 THE COURT: Do you need time, Mr. Lagemaat? If you do,
5 we can easily --
6 MR. LAGEMAAT: No --
7 THE COURT: -- stand down.
8 MR. LAGEMAAT: No, My Lady.
9 THE COURT: Is the concern, Mr. Lagemaat, the length of
10 time that it would take to --
11 MR. LAGEMAAT: Yes, that is --
12 THE COURT: -- be prepared?
13 MR. LAGEMAAT: -- the concern.
14 THE COURT: Is that the only concern?
15 MR. LAGEMAAT: Yes, and it's -- it's my understanding,
16 too, that they're taking much longer than four
17 weeks.
18 THE CLERK: My Lady, I asked the --
19 MR. MYHRE: In custody?
20 MR. LAGEMAAT: Yes.
21 THE CLERK: -- supervisor downstairs. It's six to
22 eight weeks for a PSR.
23 THE COURT: That's what I thought.
24 MR. MYHRE: Pardon me, My Lady. And that was in
25 custody, Madam Registrar?
26 THE CLERK: Yes. It's usually about six weeks.
27 THE COURT: Well, I'd be interested in knowing -- well,
28 Mr. Myhre, let me back up. Would a presentence
29 report have any -- would it add anything in this
30 particular case, leaving aside the psychiatric
31 component?
32

REPLY RE ASSESSMENT FOR CROWN BY MR. MYHRE:

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35 MR. MYHRE: Well, My Lady, as I've seen presentence
36 reports, what they can sometimes do is give some
37 insight into whether the offender has any insight,
38 and that depends on the extent to which the
39 offender is cooperative with a presentence report.
40 In this particular case, we've already seen
41 from the website that Mr. Fox remained unrepentant
42 throughout. The website is still up, being hosted
43 in Iceland, and so I'll be making the submission
44 that his attitude hasn't changed since that blog
45 that he wrote in May of 2016. So I don't see the
46 value of the presentence report component.
47 That's...

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1 THE COURT: Well, two questions, then. Is there
2 jurisdiction, authority in the *Criminal Code*, to
3 order some sort of psychiatric report alone? And,
4 if there is, is it something that need be done
5 with the convicted person's consent or not? Or is
6 it something, Mr. Lagemaat, that, if it can be
7 done quickly, Mr. Fox would agree to?
8 MR. LAGEMAAT: If it could be done quickly, I believe
9 he would agree to it. He would consent.
10 THE COURT: Then, I wonder whether we should simply
11 adjourn until tomorrow or Friday and, Mr. Myhre,
12 you could perhaps make inquiries and see what's
13 possible, and it may be that a psychiatric
14 assessment could be done on a speedy basis and
15 done with Mr. Fox's consent. Does that seem like
16 a sensible way to go?
17 THE ACCUSED: I have no objection to that.
18 MR. MYHRE: My Lady, could we have till tomorrow
19 afternoon?
20 THE COURT: I think so. Assuming we have court time,
21 which I imagine we do, are you thinking three
22 o'clock?
23 MR. MYHRE: At two o'clock if --
24 THE COURT: All right.
25 MR. MYHRE: -- if you're available.
26 THE COURT: Madam Registrar, would you mind phoning
27 down and seeing if we could reconvene at two
28 o'clock tomorrow for -- to -- we'll call it to fix
29 a date for sentencing, before me.
30 THE CLERK: That's fine, My Lady.
31 THE COURT: All right. So nobody's moved into our
32 courtroom yet.
33 THE CLERK: And did we want Mr. Fox here in person or
34 by video?
35 THE ACCUSED: I would rather be here in person.
36 THE CLERK: Person.
37 THE COURT: And, Mr. Lagemaat, will you be here?
38 MR. LAGEMAAT: Yes, I will.
39 THE COURT: All right. Thank you. Is there anything
40 else we should deal with now? All right. Thank
41 you.

42

43

(PROCEEDINGS ADJOURNED TO JUNE 29, 2017, AT
2:00 P.M., TO FIX DATE FOR SENTENCING)

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46 Transcriber: S. Goossens

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I hereby certify the foregoing to be a true and accurate transcript of the evidence recorded on a sound recording apparatus, transcribed to the best of my skill and ability.



S. Goossens
Court Transcriber