

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

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PROCEEDINGS AT TRIAL

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| <p><b>BAN ON PUBLICATION - INHERENT<br/>JURISDICTION</b></p> |
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JURISDICTION

Crown Counsel:

M. Myhre

Appearing on his own behalf:

P. Fox

Defence Counsel:

A.J. Lagemaat

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**Proceedings****BAN ON PUBLICATION - INHERENT JURISDICTION**

1  
2 Vancouver, B.C.  
3 June 28, 2017  
4  
5 (JURY OUT)  
6  
7 THE SHERIFF: The jury is back, My Lady.  
8  
9 (PROCEEDINGS ADJOURNED TO AWAIT RETURN OF  
10 THE JURY AT 9:03:24 A.M.)  
11 (PROCEEDINGS RECONVENED AT 2:31:01 P.M.)  
12  
13 THE COURT: I understand there's a verdict. Unless  
14 there's anything preliminary, I'll invite the jury  
15 in. Yes.  
16 THE SHERIFF: The jury, My Lady.  
17  
18 (JURY IN)  
19  
20 THE COURT: Madam Registrar.  
21 THE CLERK: Mr. Foreperson, could you please stand.  
22 Members of the jury, have you reached a verdict?  
23 THE JURY FOREPERSON: Yes, we have.  
24 THE CLERK: Mr. Foreperson, what is your verdict in  
25 relation to Count 1? Do you find Mr. Fox guilty  
26 or not guilty of criminal harassment of Desiree  
27 Capuano?  
28 THE JURY FOREPERSON: We find the defendant guilty.  
29 THE CLERK: Mr. Foreperson, what is your verdict in  
30 relation to Count 2? Do you find Mr. Fox guilty  
31 or not guilty of possessing a firearm in a place  
32 other than where authorized to do so?  
33 THE JURY FOREPERSON: We find the defendant guilty.  
34 THE CLERK: Members of the jury, hearken to your  
35 verdict as the court doth record it. Do you find  
36 the accused, Patrick Fox, guilty of criminal  
37 harassment of Desiree Capuano and guilty of  
38 possessing a firearm in a place other than where  
39 authorized to do so? This is your verdict, so say  
40 you all?  
41 THE JURORS: Yes.  
42 THE CLERK: Please stand to confirm your verdict.  
43  
44 (JURY STANDS)  
45  
46 THE CLERK: The verdict is unanimous, My Lady.  
47 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:**

7  
8  
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:**

13  
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 seen  
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:**

33  
34  
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  
44 2:00 P.M., TO FIX DATE FOR SENTENCING)

45

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.

A handwritten signature in blue ink, appearing to read 'S. Goossens', written in a cursive style.

S. Goossens  
Court Transcriber