

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

HER MAJESTY THE QUEEN

RESPONDENT

AND:

PATRICK HENRY FOX

APPELLANT

RESPONDENT'S BOOK OF ARGUMENT AND MATERIALS
re: Summary Conviction Appeal (September 9, 2022)

UPDATED AND CORRECTED

J.L. HORNELAND

Regional Crown Counsel Office
Ministry of Attorney General
500 - 865 Hornby Street
Vancouver, B.C. V6Z 2G3

Telephone: 604-660-4100
Facsimile: 604-660-4198
Email: VancouverSCA@gov.bc.ca

**COUNSEL FOR THE
RESPONDENT**

PATRICK H. FOX

c/o North Fraser Pretrial Centre
1451 Kingsway Avenue
Port Coquitlam, B.C. V3C 1S2

Telephone: 604-468-3500

APPELLANT

TABLE OF CONTENTS

ARGUMENT		<u>Page</u>
PART I:	Overview	1
PART II:	Summary of Trial Proceedings and Evidence	2
PART III:	Issues	7
PART IV:	Law & Argument	7
PART V:	Respondent's Position	20
PART VI:	Nature of Relief Sought	20

APPENDICES

APPENDIX A:	Probation Order 27178-2
APPENDIX B:	Information 244069-5BC
APPENDIX C:	Record of Proceeding
APPENDIX D:	Oral Reasons for Judgment ("RFJ")
APPENDIX E:	JUSTIN Conviction List
APPENDIX F:	Probation Order 244069-5BC

PART I: OVERVIEW

1. On June 28, 2017, Mr. Patrick Fox, the appellant, was found guilty by a jury of criminal harassment and possession of a firearm where not permitted. On November 10, 2017, Associate Chief Justice H. Holmes sentenced him to a term of imprisonment and term of probation (*R v. Fox* 2017 BCSC 2361).

Appendix A – Probation Order 27178-2

2. On May 14, 2019, the appellant was charged with breaching three conditions of Probation Order 27178, as set forth in the Information 244069-5BC.

Appendix B – Information 244069-5BC

3. On June 3, 2019, the appellant appeared in Vancouver Provincial Court and entered pleas of not guilty to all three counts on Information 244069-58C. On August 12, 2019, a trial of the matter commenced before the Honourable Provincial Court Judge D. St. Pierre (the "Trial Judge"), and the trial continued August 13, 14, and 15, 2019. On August 15, 2019, the Trial Judge granted the appellant's application to adjourn. On November 10, 2019, Mr. Fox brought an application to subpoena a witness and his application was denied. On December 11, 2019, Mr. Fox brought another adjournment application, and the Trial Judge granted it.

Appendix C – Record of Proceedings

4. On March 4 and 5, 2020, the trial continued, and on March 6, 2020, the Trial Judge found the appellant not guilty of Count 1 but guilty of Count 2 and Count 3 on Information 244069-5BC.

Appendix D – Oral Reasons for Judgment ("RFJ")

5. On June 12, 2020, the Trial Judge sentenced the appellant to 1-day Jail (12 months jail credited) and 18 months of probation. This sentence applied to each count, and the sentences for each count were to run concurrent to one another.

Appendix E – JUSTIN Conviction List

Appendix F – Probation Order 244069-5BC

6. On June 26, 2020, the appellant filed a Notice of Appeal from his conviction and sentence. On November 17, 2020, an Amended Notice of Appeal was filed by appointed counsel¹.

¹ Ms. M Brown was appointed to assist the appellant with an application he brought pursuant to s.684 of the *Code* for the appointment of counsel to assist him with this appeal. That application was heard on December 1, 2020 by Her Ladyship Madam Justice Gerow, and on January 7, 2021, she dismissed the application.

PART II: SUMMARY OF TRIAL PROCEEDINGS AND EVIDENCE

7. On August 12, 2019, the trial commenced. In his opening remarks, the Trial Judge explained, for the benefit of the appellant, the anticipated trial procedure, and the burden and standard of proof (Book of Transcripts, ("T."), Tab 1, p.1, L12- p2, L28). The Crown commenced its case by calling two Justices of the Peace, the first of whom who testified that he reviewed the Probation Order 27178 with the appellant (T. Tab 1, p.11, L11-p. 15, L47), and the second of whom testified that she reviewed a variation of the Order with him (T., Tab 1, p.17, L40-p.23, L22). The appellant did not cross-examine these witnesses.
8. Next the Crown called RCMP Officer Tyler Hawkins. He testified about his involvement in the investigation concerning the appellant generally and in particular about his arrest and monitoring of an interview that was conducted of the appellant on April 4, 2019, by his colleague Cpl. Jason Potts (T. Tab 1, p.26, L29-p.26, p.45, L9). The appellant cross-examined Officer Hawkins, during which Officer Hawkins confirmed that he had inquired with Border Services personnel as to whether CCTV video footage existed of the appellant crossing the Canada/USA Border. (T. Tab 1, p.48, L18-p.51, L43).
9. On the second day of trial, August 13, 2019, the appellant continued cross examining Officer Hawkins, during which it was established that Cst. Hawkins request for CCTV video was not fulfilled (T., Tab 2, p.2, L3- p.17, L7). Next, the Crown called U.S Customs and Border Protection Officer Obrist, who testified that he had interacted with the appellant after the appellant had crossed the Border and entered into the USA on March 15, 2019. Officer Obrist testified that he ultimately issued the appellant an expedited Removal Order, and transported him to a Detention Center in Tacoma, Washington to see an immigration judge. (T., Tab 2, p.19, L16- p.23, L44). In cross examination Officer Obrist agreed that the first time he saw the appellant was in the lobby of the US Border Services Building, and that he did not see the appellant walking there (T., Tab 2, p.25, L30-p.26, L20).
10. Following Officer Obrist, RCMP Cst. Kirsty Brown gave evidence in the Crown case. She testified that she and Cst. Hawkins conducted an investigation into allegations that the appellant had breached his probation. She testified that during the investigation, she attended the Peach Arch Border Crossing where she and Cst. Hawkins took custody of the appellant from a US Border Patrol agent, and transported him back to the RCMP detachment (T., Tab 2, p.28, L3-p.36, L36). She also testified about her efforts to obtain CCTV footage or records from the Canadian Border Services Agency (CBSA) in relation to the appellant's crossing on March 15, 2019. Her evidence was that she was advised that the CCTV no longer existed

(T., Tab 2, p.36, L43- p.39, L29). The appellant cross examined Cst. Brown, primarily with respect to her efforts to obtain the CCTV video (T., Tab 2, p.42, L27-p.46, L34).

11. Following the evidence of Cst. Brown, Probation Officer Bimji testified, as the sixth witness for the Crown. He testified that he met with the appellant and directed him to report on March 19, 2019 but the appellant did not report to him on that date (T., Tab 2, p. 60, L20- p.67, L17). Probation Officer Bimji's evidence was that he had not given permission to the appellant to be outside of the Province of British Columbia (T., Tab 2, p.67, L18-42). During cross examination, Officer Bimji agreed that on March 15, 2019, the appellant had told him that he [the appellant] "was intending to turn [himself] in to CBSA by the coming Wednesday, which would be the following week, in order or with the expectation of being deported." (T., Tab 2, p. 75, L4-9).
12. On the third day of trial, the Crown called Cpl. Potts. Cpl Potts testified that he met with the appellant and took a warned statement from him on April 4, 2019. (T., Tab 3, p.16, L39-p.32, L32), and during his testimony an audio/video of the interview/statement of the appellant was tendered by the Crown in a *voir dire*. The appellant cross-examined Cpl. Potts, during which Cpl. Potts agreed with the appellant's suggestion that "throughout the interview [the appellant] made a number of references to [his] expectation that CBSA was going to intending to deport [him] if he surrendered himself"(T., Tab 3, p. 36, L1-p.37, L6).
13. Following the evidence of Cpl. Potts, the Crown made submissions on the *voir dire* (T, Tab 4, p.3, L11- p8, L5). The appellant made no submissions (T., Tab 4, p. 9, L32-24). The Trial Judge found that the statement of the appellant to Cpl. Potts was given voluntarily by the appellant, and the statement of the appellant was admitted as evidence in the Crown case in the trial proper for the purpose of cross examination. At that point, the Crown closed its case (T., Tab 4, p.9, L40- p.10, L23).
14. At this juncture, the appellant sought an adjournment of the trial so that he could try to obtain materials to tender as part of the defence case (T., Tab 4, p.11, L46-p.12, L5). The Trial Judge granted the adjournment, after advising the appellant of his *Charter* right to a trial within a reasonable time and inquiring about the nature of the potential evidence to be tendered and its potential relevance (T., Tab 4, p.13, L29- p.24, L38).
15. On November 19, 2019, the appellant brought an application to subpoena Crown Counsel Mark Myhre. Mr. Myhre was Crown Counsel assigned to the substantive offence (Information 244069). The appellant sought to subpoena him because he claimed that, at the sentencing hearing for the substantive offence, Mr. Myhre had asked the court to consider imposing probation conditions which would prohibit the appellant from leaving British Columbia and from

being within 100 meters of the Border. The appellant advised the Trial Judge that he told the sentencing judge he was concerned those types of conditions could cause issues for him because he did not have "any status in Canada", and that in response Mr. Myhre had stated that "if a situation arises where [the appellant] is removed or ordered to leave Canada, then he [Mr. Myhre] would not consider that a breach and would not seek to prosecute [the appellant] based on that" (T. Tab 6, p.4, L19-34).

16. After hearing submissions from the Crown and the appellant (Tab 6, p.11, L9-p.18, L11), the Trial Judge dismissed the application, on the basis that the "the evidence of Mr. Myhre is not necessary at this point to support any relevant fact that is to be proved or disproved by the Crown and it is certainly not relevant to any lawful excuse that might be raised in this matter" (Appellant's "Appeal Book For Section 684 Application for Appointment of Counsel", pg. 107 Reasons for Judgement, para. 4). In the course of giving reasons for this decision the Trial Judge remarked that the matter of subpoenaing Mr. Myhre could be revisited in future, if for example, the Crown were to allege a recent fabrication of the purported lawful excuse raised by the appellant.
17. On December 11, 2019, the trial recommenced and the Trial Judge asked the appellant whether he was going to call any evidence (T., Tab 7, p.1, L.37-p.2, L4). The appellant sought an adjournment on the basis that he was still pursuing further evidence for his defence, including the identity of the CBSA officer who had interacted with him at the Border on March 15, 2019 (T., Tab 7, p.2, L20-35). The Crown opposed this adjournment, and the Trial Judge heard fulsome submissions on this application, following which he allowed the application.
18. The trial continued on March 4, 2020. The Trial Judge permitted the Crown to re-open its case so that an additional witness, CBSA Officer Polisak, could be called. Officer Polisak had been identified by the appellant as having interacted with him on March 15, 2019 at the Douglas Port of Entry (Peace Arch), (T., Tab 8, p. 26, L10-14).
19. Officer Polisak's evidence was that on March 15, 2019 she interacted with the appellant when she was working in the CBSA office at the Douglas Port of Entry. She confirmed that the office was located in Canada. (T., Tab 8, p.28, L14-32; p.29, L34-39). Her evidence was that the appellant told her that he was an American but that he didn't have proof of that. He also told her that he had a Canadian passport in the name of "Richard Reiss" and she confirmed with Passport Canada that a Richard Reiss with the same date of birth was Canadian born. Based on this, she believed the appellant was a Canadian citizen, and that he could enter and exit Canada on his own free will. (T., Tab 8, p.31, L13-24). Officer Polisak testified that she found it "odd...that somebody would have proof that they were a Canadian citizen tell me

they're not a Canadian citizen", so she created an "information alert" about the interaction for the benefit of any other CBSA officer who might deal with the appellant in future. (T., Tab 8, p. 31, L32-40). Her evidence was that the appellant was not removed or deported or denied entry to Canada, and the last she saw of him was when he exited the office (T., Tab 8, p.33, L14-22).

20. The appellant cross-examined Officer Polisak at length, and in particular about the record keeping system used by CBSA (T., Tab 8, p.44, L1-3; L28; p.51, L16-p.56, L42; p.57, L22 p.58, L3). She agreed that if a person was found inadmissible to Canada, there would most likely be record of the fact that they were denied entry to Canada (T., Tab 8, p. 43, L31-45). She was unable recall how it came up that he [the appellant] had a Canadian passport in the name of Richard Reiss, but she confirmed she had made a note that he had been issued one in that name (T., Tab 8, p.44, L28-p.47), and that she had called Passport Canada (T. Tab 8, p.53, L24-35). She confirmed that she had not encountered any evidence that the appellant was not a Canadian citizen (T., Tab 8, p.55, L3 -13), and that she believed he was a Canadian (T., Tab 8, p. 54, L19). Officer Polisak testified that "even though the information that I had besides Mr. Reiss or Mr. Fox's conversation with me, showed that Reiss was a Canadian, he was very adamant he was not a Canadian" (T., Tab 8, p.69, L4-10).

21. During cross-examination, Officer Polisak clarified that the CBSA procedure was as follows:

Canadian citizens enter Canada by right. They cannot be refused or removed from Canada. And.. so if a foreign national enters Canada and they can't prove their citizenship, it's on them to prove what citizenship they are. If somebody says they're a Canadian citizen, it's on us to prove they are not, and I could not prove that he [the appellant] was not Canadian. (T., Tab 8, p. 69, L12-19)

22. Officer Polisak disagreed with the appellant's suggestion that when she interacted with him at the CBSA office she told him that based on the information she had available to her, he was inadmissible to Canada (T. Tab 8, p. 90, L4 -11).

23. On March 6, 2020, the trial continued. The appellant testified. He admitted that there was a probation order that was in existence on March 15, 2019, and that he had tried to change the condition prohibiting him from leaving British Columbia with his Probation Officer's consent, but that his request had been denied. Following that he told the court and his Probation Officer, that he intended to turn himself in to CBSA so that he would be removed from Canada (T., Tab 8, p.107, L17-21; L40-43). He testified that he told Officer Polisak that he was a US citizen, and that he had no status in Canada, and that he was not a Canadian citizen. (T. Tab 8, p.108, L14-27), and that he showed her two documents that he said supported his assertions. He testified that Officer Polisak then made some inquiries, and told him that based on the

information available to her, he appeared to be inadmissible to Canada and he should exit the office from the same door he entered (T., Tab 8, p.109, L28-30; L38-40). From that point, the appellant testified he asked an officer standing at the doorway "how do I get back to the US?" and the officer instructed him to go through some other doors, and he did so, and continued walking to the US side, and into the Border Patrol office (T., Tab 8. p.109, L38- p.110, L9).

24. When questioned by the Trial Judge, the appellant maintained that Officer Polisak had told him he was "inadmissible" but that she had not instructed him to leave Canada (T., Tab 8, p. 115, L13-46), and he agreed that he attended at the office, which was within Canada. (T., Tab 8, p. 116, L5-8). In cross examination, the appellant agreed that when he walked across the Border he was within 100 meters of it. (T., Tab 8, p. 122-35) and that he knew before he did so that he would not be able to report to his Probation Officer after that point because he would be unable to legally return to the country (T., Tab 8, p.122, L.1-4). The appellant maintained that he did not believe that he was violating the terms of the Probation Order however, because he "did not leave Canada voluntarily" (T., Tab 8, p.135, L12-43). He agreed that once back in the US he would continue to harass his ex-wife, who was the complainant on the substantive offence (T., Tab 8, p. 138, L32-41).
25. During cross examination, Crown counsel established a material inconsistency between the appellant's testimony in chief and his warned statement to Cpl. Potts, and in response the appellant admitted that he had lied to Cpl. Potts when giving his statement, because he was trying to manipulate Cpl. Potts so that he would request the video from the CBSA (T., Tab 8., p. 142, L9 - p.144, L35).
26. Following evidence of the appellant, the appellant called no further evidence, and Crown counsel and the appellant gave closing submissions. (T., Tab 8., p.151, L9-p.175, L24), and the Trial Judge gave Reasons for Judgement ("RFJ") (T., Tab 10; **Appendix D**).

PART III: ISSUES

27. The appellant sets out his grounds of appeal in the Amended Notice of Appeal filed November 17, 2020. The respondent prefers to re-frame the grounds with reference to s. 686(1)(a) of the *Code* as follows:

- a. The verdict was unreasonable or not supported by the evidence, because:
 - i. The Trial Judge erred in "disregarding Crown Counsel's prior agreement that they would not prosecute the appellant for the appellant for breaching his Probation Order, if he were removed or told to leave Canada by Immigration, Refugees, and Citizenship Canada (IRCC), or the Canadian Border Services Agency (CBSA)".
 - ii. The Trial Judge erred by accepting CBSA Officer Polisak's testimony because CBSA policies contradict her testimony.
- b. The Trial Judge erred in law by failing to properly apply "the immigration laws and CBSA's duties as they apply to a person who is physically present at port of entry".
- c. The Trial Judge erred in law in respect of his analysis of whether the appellant had a reasonable excuse for failing to comply with his Probation Order.
- d. The Trial Judge erred in law by providing insufficient reasons for deciding that *mens rea* for the breaches of probation had been proven.

PART IV: LAW & ARGUMENT

Jurisdiction and Standard of Review

28. A person convicted of a summary offence may appeal this Court², and upon hearing the appeal the court may, pursuant to s. 686(1)(a) of the *Criminal Code* dismiss the appeal, or set the conviction aside where: (i) the verdict was unreasonable or cannot be supported by the evidence; (ii) on the ground of a wrong decision on a question of law; or (ii) there was a miscarriage of justice.

29. The essential issue to be addressed by an appellate court in determining whether a verdict is unreasonable or cannot be supported by evidence whether there is any evidence to support the trial judge's findings based on the totality of evidence before him or her and whether the verdict logically flows from those findings: see *R v. Ceal*, 2012 BCCA 19 supra, para. 23. To succeed in an argument under s.686(1)(a)(i) of the *Code*, an appellant must establish that the verdict was not one that a judge could have reasonably rendered, or that the trial judge drew an inference or made a finding of fact essential to the verdict that: (1) was plainly contradicted

² Pursuant to s. 813(a) of the *Code* a defendant may appeal a summary conviction or sentence. Where such an appeal is brought, s. 822 provides that some of the indicatable appeals sections of the *Code* apply to the summary conviction appeal, namely, s.683 – 689, with the exception of s. 683(3) and 686(5).

by the evidence relied on by the trial judge in support of that inference or finding, or (2) is shown to be incompatible with evidence that has not otherwise been contradicted or rejected by the trial judge: *R. v. R.P.*, 2012 SCC 22, para. 9 (**Tab 1**).

30. Where an appellate court is asked to consider whether a verdict is unreasonable or cannot be supported by the evidence, the court ought to engage in a limited review. While the appellate court must re-examine and to some extent reweigh and consider the effect of the evidence the appellate court must not merely substitute its view for that of the trial judge: see *R. v. Yebes*, [1987] 2 S.C.R. 168 at para 25.

Offence: Failure to Comply with Probation Order

31. The *Criminal Code*, section 733.1 (1) provides: An offender who is bound by a probation order and who, without reasonable excuse, fails or refuses to comply with that order, is guilty of ...(b) an offence punishable on summary conviction and is liable to imprisonment for a term of not more than 18 months, or of not more than \$5000, or to both.³

ISSUE 1: Did the Trial Judge err in "disregarding Crown Counsel's prior agreement that they would not prosecute the appellant for the appellant for breaching his Probation Order", thus rendering the verdict unreasonable or unsupported by the evidence?

32. The appellant alleges that the Trial Judge erred by "not considering that during the 2017 Supreme Court sentencing hearing, Crown counsel said that if Immigration, Refugees and Citizenship Canada or the CBSA removed Mr. Fox from Canada or ordered him to leave Canada, then the Crown would not prosecute him for Breach of Probation". (Applicant's Memorandum or Argument filed November 9, 2020 ("Memorandum #1), at para.12), and he maintains in his Amended Notice, that the Trial Judge erred "by disregarding Crown counsel's prior agreement for these breaches".
33. This ground is logically flawed. There was no evidence led at trial or on the application to subpoena Mr. Myhre demonstrating that Mr. Myhre did in fact make the statement the appellant alleges him to have made, or that there was a "prior agreement". Based on the dearth of evidence on this point, there is no merit to the contention that the Trial Judge "failed to consider" or "disregarded" the statement, as the purported statement or agreement was not in evidence.

³ This version was in force from July 17, 2015 to September 18, 2019 and so was the applicable offence provision on the offence dates March 15 and 19, 2019. The current version is revised only by the deletion of the words "and is liable to imprisonment for a term of not more than 18 months, or of not more than \$5000, or to both."

34. Further, even though this purported statement or agreement was not in evidence, the record demonstrates that the Trial Judge considered the appellant's submission that the Crown, Mr. Myhre, made this statement and he permitted the appellant to bring an application to subpoena Mr. Myhre. Further, the Trial Judge allowed fulsome argument at the hearing of the application (T., Tab 6, p.1-18, L11).
35. Following submissions, the Trial Judge dismissed the application on the basis that: "the evidence of Mr. Myhre is not necessary at this point to support any relevant fact that is to be proved or disproved by the Crown and it is certainly not relevant to any lawful excuse that might be raised in this matter" (Applicant's Appeal Book, Reasons for Judgement (Application for Subpoena), p. 109, para 4), however, the Trial Judge provided some guidance to the appellant with respect to the circumstances in which the purported statement or evidence of Mr. Myhre could potentially become relevant (T. Tab 6, p.18, L7-11 ; Applicant's Appeal Book, RFJ Application for Subpoena, para 4).
36. In essence, the Trial Judge invited the appellant to revisit the subject of the purported Crown agreement or statement should its relevance become more apparent. However, the appellant did not raise this issue again and the Trial Judge did not re-consider the issue on his own initiative, most likely because the evidence of the Crown witnesses and of the appellant did not demonstrate that he had been removed or ordered to leave Canada (RFJ, paras 37 – 40), and thereby eliminating the relevance of any statement or agreement which was predicated on such a finding.
37. Essentially, the proposed ground appeal is without merit because even if the appellant could satisfy this Court that Crown counsel made the statement he is alleged to have made, the condition precedent upon which Crown counsel stated the appellant would not prosecute Mr. Fox was found by the Trial Judge to have not been established. More specifically, the Trial Judge found, based on the evidence of the appellant the Crown witnesses, that there was no evidence that Mr. Fox had been removed or ordered to leave Canada.
38. Consequently, the verdict cannot be said to have been unreasonable or unsupported by the evidence based on this ground. There was uncontested evidence at trial which supported the finding of fact made by the Trial Judge that he was not ordered to leave or otherwise removed. There is no basis upon which this Court should interfere with this factual finding made by the Trial Judge that was essential or material to the verdict and that was clearly unreasonable or not capable of being supported by the evidence (see *R. v. Biniaris*, 2000 SCC 15).

ISSUE 2: Did the Trial Judge err by accepting CBSA Officer Polisak's testimony?

39. The appellant contends that the Trial Judge ought not have accepted Officer Polisak's evidence because CBSA policies contradict her testimony. He maintains that "if [the Trial Judge] had considered the CBSA policies concerning examinations of person at a Port of Entry.. he would have found that the policies contradict critical parts of Officer Polisak's testimony, and he would have found her testimony to be not credible or reliable." (Memorandum #1, para. 12, pt. 3). In the Amended Notice of Appeal, this ground is re-stated as "the court erred by accepting CBCA Polisak's testimony, because CBSA policies contradict her testimony".
40. There is little merit to these contentions. The CBSA policies were not in evidence, and the duties of a Trial Judge do not extend to cross-examining witness with reference to materials not in evidence or obtained by a Trial Judge on his or her own volition.
41. In any event, the record demonstrates that Mr. Fox did in fact did question Officer Polisak in respect of "CBCA policy" generally, (T., Tab 8, p.44, L4-8), and specifically with respect to the different requirements to remove a person from Canada who is physically present in Canada or who is "at a port of entry and not otherwise in Canada" (T., Tab 8, p.43, L5-21). The Officer's response to such questions were that the office the appellant attended was in Canada (T., Tab 8,p.43, L5-11), she believed he was a Canadian citizen (T., Tab 8, p.54, L15-19) and that Canadian citizens enter Canada by right and cannot be refused or removed from Canada. She testified that if she didn't believe someone wasn't a Canadian it was up to her (CBSA) to prove that they are not (T., Tab 8, p.69, L12-43). She also testified that people could walk into the office to simply "ask questions" and that the appellant had not been directed to the office from the booth at Douglas Crossing. (T., Tab 8, p.29, L34-p.30, L27). The Trial Judge accepted her evidence on these points, and he did so on a principled basis, free from error.
42. What Mr. Fox is essentially seeking to argue in respect of this ground is that this Court should consider the CBSA policies and conduct an assessment of the credibility of this witness anew, yet it is trite law that on appeal a court will only interfere with credibility findings where there is a palpable and overriding error. This standard was recently described in *R v. Bacon* 2020 BCCA 140 as follows:

On questions of fact and inferences of fact, a reviewing court must ask "whether there is palpable and overriding error: *Housen v. Nikolaisen*, 2002 SCC 33. Madam Justice Bennett explained this standard as it applies in the criminal law in *R v. Nuttall*, 2018 BCCA 479:

[269] To state it simply, a palpable and overriding error is an obvious error that erodes the result.

...

This same standard applies to findings of credibility (*R v. Gagnon*, 2006 SCC 17 at para. 10). That means that a finding of fact based on acceptance by the judge of a witness's testimony may only be interfered with if the trial judge made an error that, as noted by Justice Moldaver in dissent in *R v. Le*, 2019 SCC 34 at para. 206, is "plainly seen" (Housen at para. 6), and is "shown to have affected the result" (H.L. at para. 55).

paras 41-41 (emphasis added)

43. In the present case, when the record is considered alongside the standard of review, it is apparent that no error is "plainly seen" warranting the intervention of this Court in respect the Trial Judge's credibility assessment of Officer Polisak.

ISSUE 3: Did the Trial judge err in law by failing to properly apply "the immigration laws and CBSA's duties as they apply to a person who is physically present at port of entry"?

44. The appellant contends that the Trial Judge "erred how it applied" the immigration laws and CBSA duties as they apply to a person who is physically present at a port of entry.
45. This ground of appeal does not warrant this Court's intervention for three reasons. Firstly, it cannot have been error for the Trial Judge to have failed to consider CBSA policies ENF04 or ENF10 because those specific policies were not referred to at the trial, let alone tendered by the appellant.
46. Secondly, the appellant fails to point to any specific authority to elucidate the specific immigration laws and policies he says applies to a person who is physically present at a port of entry, nor does he articulate in any of the filed materials what his interpretation of immigration law and policies was or is.
47. Some insight with respect to the appellant's own views regarding CBSA policies and immigration law can be gleaned from the record as follows:
- a. The appellant submitted that the Trial Judge that in his view he was "denied admission" at the Douglas border crossing CBSA office, which was a "point of entry", and considered to be on American soil, (T., Tab 4, p.1, L1-p.2, L23; T., Tab 8, p.43, L5-44, p.71-76 L9, p.84).
 - b. The appellant testified that "if I had gone into a CBSA office in Vancouver, then the burden would have been on the CBSA to prove that I'm – that I'm not entitled to be in Canada, before they could arrest or remove me. But at a port of entry, the burden then

is on the person who is seeking entry to Canada, rather than it being on the CBCA". (T., Tab 9, p.114, L29-p115, L4).

- c. The appellant testified that he was at a port of entry and he failed prove he was a Canadian citizen, and therefore he was found inadmissible (T., Tab 9, p.125, L19-32); and had no choice but to leave the country (T., Tab 9, p.163,L33-p.164, L45).
- d. In closing submissions, the appellant re-stated his understanding or interpretation of immigration law and policies, as follows:

It is my understanding that at a port of entry, regardless of whether the person came from outside of the country or came from within the country, once they enter that port of entry the burden is then on them to prove that they - to prove to CBSA that they have the right or the authorization to enter Canada. If they were coming from within Canada already, then it would be -- they would have to prove that they have -- they have the burden of proving that they're -- they have the right to return to Canada.

(T., Tab 9, p.159, L19-29)

- 48. If this is the interpretation of immigration law or policies that the appellant is referring to, then there is very little merit to the contention that the Trial Judge either failed to consider or disregarded his interpretation or understanding or immigration law and policies, as the record clearly demonstrates that he made the court aware of his interpretation or understanding of immigration policies on several occasions at trial. The record also shows that the Trial Judge considered the appellant's evidence and allowed fulsome submissions regarding the relevance of such evidence or submissions (T., Tab 8, p. 79, L18-p.80, L41).
- 49. Finally, although the Trial Judge considered the appellant's evidence and submissions on this point, his factual findings derived from the evidence of what had actually occurred on March 15, 2019, as opposed to what the appellant submitted ought to have occurred according to immigration law or policy. In particular, the Trial Judge found that the appellant was in Canada when he attended at the CBSA office and he was not seeking entry to Canada. The Trial Judge articulated the evidentiary basis for his findings and this Court should find that there is no cause to intervene with these findings on the basis that the verdict or factual findings material thereto were unreasonable or were not support by the evidence.

ISSUE 4: Did the Trial Judge err in respect of his analysis of reasonable excuse for failing to comply with his Probation Order?

50. The appellant contends that the Trial Judge erred in finding that he did not have a reasonable excuse for breaching his Probation Order. (Affidavit, para. 14(c); Amended Notice, Memo #1, para. 12 pt. 4; para 44), and that the Trial Judge "erred in law by not considering whether the Crown had proved beyond a reasonable doubt that the accused had subjective *mens rea* for the breaches of probation, before proceeding to consider whether the accused had a reasonable excuse for breaches otherwise proven".
51. The record demonstrates that the Trial Judge identified and described the "reasonable excuse" defence for the appellant at the outset of the trial and that much of the evidence heard at trial was in respect of this issue. The Trial Judge acknowledged in the RFJ that it was a key issue for him to determine (para 4), and he considered the issue with reference to the relevant trial evidence, ultimately finding that the uncontroverted evidence established that the appellant had not been removed from Canada or ordered to leave, but that he chose to walk across the border. Although the Trial Judge accepted that appellant claimed he walked across the Border because he believed had to do so, the Trial Judge did not accept that the appellant's decision to walk across the border constituted a reasonable excuse for breaching his probation conditions.
52. The RFJ and the record do not reveal that the Trial Judge committed a palpable and overriding error in respect of the factual findings he made and the conclusion he reached in respect of this issue and therefore this Court ought not accede to this ground of appeal.
53. With respect to the applicable legal principles, the trial judge referred to *R v Goleski* 2014 BCCA 80, aff'd 2015 SCC 6. In *Goleski*, the accused was charged with failing to provide a sample of his breath upon demand to a peace officer. The accused relied upon an exception, provided in s.254(5) of the *Criminal Code* which provided that "everyone commits an offence who, *without reasonable excuse*, fails or refuses to comply with a demand under this section." The accused testified that he deliberately refused to provide a breath sample to the officer who demanded it because he believed that the officer would lie about the breath results. At trial, the trial judge was not satisfied that the accused had established a factual foundation underlying his failure to comply and he found the accused guilty. On appeal, the summary conviction appeal judge, relying on *R v. Lewko* 2002 SKCA 121, set aside the conviction on the basis that the accused need only raise the issue of reasonable excuse and that the persuasive burden remained on the Crown to prove the lack of reasonable excuse beyond a reasonable doubt. (see: *R v. Goleski* 2011 BCSC 911).

54. On appeal by the Crown to the BCCA, Mr. Justice Frankel for the court identified the central issue as "where the onus lies when an accused asserts that he had a reasonable excuse for failing or refusing to comply with a breathalyzer demand" (at para. 1). More specifically the court asked: "[m]ust the Crown prove the accused did not have a reasonable excuse beyond a reasonable doubt, or must the accused prove on a balance of probabilities the facts asserted as giving rise to a reasonable excuse? The answer to that question rests on the interpretation of s.794(2) of the *Criminal Code*, R.S.C. 1985, c. C-46. 9" (at para.1).

Tab 2 – *R v Goleski* 2014 BCCA 80, affd 2015 SCC 6

55. At the time Mr. Goleski committed the offence, s.794 of the *Criminal Code* provided as follows:
- (1) No exception, exemption, proviso, excuse or qualification prescribed by law operates in favour of the defence is on the defence, and the prosecutor is not required except by way of rebuttal, to prove the exception, exemption, proviso, excuse or qualification does not operate in favour of the defence, whether or not it is set out in the Information.
 - (2) The burden of proving that an exception, exemption, proviso, excuse or qualification prescribed by law operates in favour of the defendant is on the defendant, and the prosecutor is not required, except by way of rebuttal, to prove that the exception, exemption, proviso, excuse or qualification does not operate in favour of the defendant whether or not it is set out in the information.

**Tab 3 – *Criminal Code*, R.S.C. c. C-46, s. 794
(in force 12-12-1988 to 12-12-2018)**

56. In his analysis regarding the interpretation of s.794(2), Frankel J.A conducted a thorough review of the common law and legislative history concerning "reasonable excuse" and he ultimately disagreed with the ratio in *Lewko* (para. 78). He determined that when Parliament first enacted a provision dealing with exceptions in the context of summary conviction proceedings, it did so, "in a way that affirmed the common law principle which placed the burden of proving such matters on an accused on a balance of probabilities" (at para. 74). He affirmed that the correct approach had been articulated as follows:

...when an accused person raises the issue (or defence if you prefer) of reasonable excuse, he or she is conceding that the Crown has proven beyond a reasonable doubt the existence of the requisite mens rea and actus reus for the offence. Since the excuse must be objectively reasonable, since it only applies if the Crown has proven beyond a reasonable doubt that the accused has committed both the actus reus and mens rea of the offence and since it does not limit resort to other defences, then the onus of establishing the proffered excuse should rest with the accused.

(*Goleski*, supra, at para. 80, quoting from *R v. Sheehan* (2003) 35 MVT (4 th) 61 at para. 13 (NL Prov. Ct).)

57. On a further appeal by Mr. Goleski to the Supreme Court of Canada, the court dismissed his appeal, and affirmed that the law had been correctly stated by Justice Frankel at the BCCA.

More specifically the court held that the proper interpretation of the s. 794(2) places the onus of the defence and not the Crown.

Tab 4 – R v. Goleski 2015 SCC 6

58. On December 13, 2018, Parliament repealed section 794(2)⁴. The offences the appellant is appealing occurred on March 15, 2019 and March 19, 2019, and therefore for the purposes of the present appeal this Court must determine what the applicable law was on the offence dates.
59. Recently, this court in *R v. Dionne* 2022 BCSC 959, cited *Goleski* and affirmed in that "there is no dispute that a "reasonable excuse" is required to be proven by the accused on a balance of probabilities." (at para. 75). In *Dionne*, the accused was charged with failing to remain at the scene of an accident, contrary to s. 320.16(1) of the *Criminal Code*. He argued that he had failed to remain because he was experiencing a medical emergency. The court found that the accused had failed to establish a reasonable excuse on a balance of probabilities. In arriving at this conclusion, the court did not consider the implications of the repeal of s. 794 most likely because the "reasonable excuse" defence was available to the accused in this case by virtue of its express incorporation into the offence provision (s.320.16(1)).

Tab 5 – R v. Dionne, supra.

60. The implications of the repeal of s. 794 have not been considered by the court in any other reported decision of the court in this province⁵, however, the courts in other provinces have considered this issue. For example, the impact of the repeal of this provision was squarely before the court in *R v. McKinnon* 2020 ABPC 86. In *McKinnon*, the accused was charged with failing to provide a breath sample. The court found that the accused had been given a proper demand and had failed to provide a sample of her breath, and that therefore, the sole issue for the court to determine was whether the accused had a reasonable excuse for failing to provide the sample. The court concluded that per *Goleski*, the onus remains on the accused to establish a reasonable excuse on a balance of probabilities. (at para. 27). The court reasoned as follows (at paras.28 -32):

... the Supreme Court of Canada has affirmed *Goleski* as the correct law on appeal. (*R v Goleski*, 2015 SCC 6). The proper interpretation of Section 794(2) places the onus on the defence and not the Crown.

⁴ By *An Act to amend the Criminal Code and the Department of Justice Act and to make consequential amendments to another Act*, SC 2018, c. 29, s.68. There is no specific reference by the Minister of Justice or her designate in Hansard regarding s.794(2) just a general comment about the need to remove obsolete and unconstitutional provisions.

⁵ *Goleski* 2014 BCCA 80, aff'd 2015 SCC 6 was referred to in *R v Kovlaske* 2020 BCSC 2098, at para 73, however, the court determined that the provision was not applicable to that case, and so did not consider the implications of its repeal.

Since the Supreme Court decision, Parliament in 2018 repealed Section 794(2) in its entirety. That then takes us back to the common law as the applicable law. As stated in *Goleski* at para. 74:

... when Parliament first enacted a provision dealing with exceptions, etc. in the context of summary conviction proceedings, it did so in a way that affirmed the common-law principle which placed the burden of proving such matters on an accused on a balance of probabilities.

The common law is preserved in the *Criminal Code* by Section 8(3) which states:

Every rule and principle of the common law that renders any circumstance a justification or excuse for an act or a defence to a charge continues in force ...

This was recognized in *R v Allen*, 2020 ABPC 34, a decision of mine delivered after the repeal of Section 794(2) recognizing the common law prevails as to the law of reasonable excuse and the onus is on the accused to establish such an excuse on a balance of probabilities as it was under Section 794(2) and prior as stated in *Goleski*.

Based on this review, I find I do not accept the defence submission that the onus is on the Crown based on *Plante* being the prevailing law. I find with the greatest respect *Plante*, *Schenk* and *Mercado* are not correct in law as they are based on *Lewko* which is incorrect. Since Section 794(2) is repealed, the common law prevails and the onus continues to be on the accused and remains on the accused.

Tab 6 – *R v McKinnon*, [2020] AJ No 558, 2020 ABPC 86

61. The implications of the repeal of s.794(2) were also considered by the Ontario Court of Justice in *R v. Charles* 2021 175 W.C.B. (2d) 16. In this case, Mr. Charles was driving a motor vehicle when he was stopped by police and asked to provide a sample of his breath into an approved screening device ("ASD"). Mr. Charles refused to provide a sample because he was concerned that some of the officers he interacted with were not following COVID-19 public interaction policies and he was concerned that the ASD was not sanitary. The court considered whether Mr. Charles' refusal to provide a sample of his breath in these circumstances constituted a "reasonable excuse". In so considering, the court noted its view of the results of the repeal on s. 794(2):

...I will note my view of the results of the repeal of s. 794(2) of the Criminal Code in 2017. Mr. Capotosto has argued vigorously that when Parliament repealed that section, noting in a Department of Justice backgrounder that one reason for the repeal was to avoid wrongful convictions, it did away with the effect of *R. v. Goleski*, [2015] 1 SCR 399, and the British Columbia Court of Appeal decision, [2014] BCJ No 347, 307 CCC (3d) 1, it upheld. I agree that the very brief Supreme Court of Canada judgment used language of the meaning specifically and only of s. 794(2) and did not analyze other cases further. However, notwithstanding the language of the backgrounder, with its reference to *Charter* rights that could be impacted by the sections about to be repealed, the repeal of s. 794(2) did not address the detailed analysis by the Court of Appeal per Frankel, JA. That part of the

common law remained to speak for itself. In turn, serious doubt was cast by *R. v. Goleski* in the British Columbia Court of Appeal on the law relating to onus in cases of reasonable excuse, as held in *R. v. Lewko*, 2002 SKCA 121, 169 CCC (3d) 359 (Court of Appeal). If I am correct, the onus in the case at bar was on Mr. Charles to prove his reasonable excuse on the balance of probabilities...

Tab 7 – Charles, supra.

62. A similar conclusion was reached by the court in *R v. Slowinski* 2021 ABPC 160, where the court found that the common law principle underlying the repealed s. 794(2) continued to apply in the context of an Albertan regulatory offence. The court noted that the provision was likely repealed due a concern that it would not withstand *Charter* scrutiny. (at para. 45- 49). Notwithstanding that expectation, the court went on to consider and apply the following two principles of statutory interpretation: (a) a rule of common law is not repealed by a statute that does not mention it and (b) the presumption against changing the common law. The court was of the view that the second principle was of primary importance, because s. 794(2) was found to be the codification of the common law in *Goleski*. (BCCA at para. 62), and so for this reason, and reasons applicable to the Alberta legislative context, the court concluded that the onus remained on the accused to establish a reasonable excuse in the context of public welfare offences.

Tab 8 – Slowinski, supra

63. The Alberta Court of Queens Bench in *Dillman, infra*, also affirmed in *obiter dictum* the continued application of the of the common law principle underlying the repealed 794(2),⁶ (see also, less conclusive *obiter dictum* in *R v. Hweld* 2020 NSCA 367)).

Tab 9 – R v. Dillman 2021 ABQB 363

⁶ In *Dillman* the court considered the meaning of s.84(3)(d) of the *Criminal Code*, which provides an exception, and allows anyone possessing a low powered barrelled weapon to be exempt from the requirement of holding a license or other authorization which may be required for Firearm. The issue considered by the court in *Dillman* therefore, was who bears the onus to prove velocity or energy of the weapon. (at para 6, 7). The court recognized that generally speaking, in a trial the Crown need not disprove an exemption. Citing *Goleski* 2014 BCCA 80, and noting that decision was rendered by the BCCA after an in-depth consideration of the common law, the court in *Dillman* concluded that the principle underlying s. 794(2) entered the common law, and thus neither the limitation contained in the former s.794(2) nor its repeal preclude the application of this principle [in *Dillman*, to indicatable offences] (at para.11).

⁷ In *Hweld* at para. 81- 89, the court considered the significance of the repeal of s. 794(2). The court noted that the provision had not been found to be unconstitutional but had been subject to criticism, and its repeal could be relevant to the question of appropriate remedy if a new trial was ordered. However, the courts comments are *obiter dictum* because the court found (at para 26, 72) that s.794(2) did not apply in this case, and in any event, agreed with Justice Frankel's interpretation of the provision in *Goleski* (see para. 54, 55).

64. The *Goleski* decision was also recently mentioned in *R v. Zora* 2020 SCC 14. The issue before the court in *Zora* was whether the *mens rea* for the offence of breach of bail should be assessed on a subjective or objective standard (para. 3). The court, during its analysis, referred to the fact that the law was clear with respect to the offence of breach of probation, in that a subjective *mens rea* was required for that offence (para 50). The court cited *Goleski*, with approval but did not engage in a consideration of the correct approach to be taken in respect of where the issue or defence of reasonable excuse is raised in respect of a breach of probation, because that offence and that issue were not before the court. (para. 37-50). Thus this *obiter dictum* in *Zora* suggest that post- *Zora*, *Goleski* remains the leading authority in this province in respect of the *mens rea* and reasonable excuse in respect of the offence of breach of probation.

Tab 10 – *Zora*, supra

65. Given the ratios in *McKinnon*, *Charles*, *Slowinski*, the *obiter dicta* in *Dillman* and *Hweld*, *Zora*, and based on an application of first principles of statutory interpretation, the position of the respondent is that although s. 794(2) was not in force at the time the accused committed these offences, the above noted passage in *Goleski* (BCCA, at para 80) nevertheless accurately described the applicable common law at that time which operated to place the onus of establishing a reasonable on the accused. Therefore, notwithstanding that s.794(2) had been repealed at the time the offences occurred, *Goleski* was the applicable law at the time the appellant committed these offences and it is clear on the face of the RFJ that the Trial Judge correctly apprehended and applied the law in this regard, and did not err in the manner contended by the appellant.

66. If this Court is satisfied that the Trial Judge properly applied the law, per *Goleski* in respect of where the onus lies to establish reasonable excuse, then the appellant's contention that the Trial Judge erred in law by not considering whether the Crown had proved beyond a reasonable doubt that the accused had subjective *mens rea* for the breaches of probation, before proceeding to consider whether the accused had a reasonable excuse for breaches otherwise proven, cannot succeed, because as stated by Justice Frankel "when an accused person raises the issue (or defence if you prefer) of reasonable excuse, he or she is conceding that the Crown has proven beyond a reasonable doubt the existence of the requisite mens rea and actus reus. In the present case, it was not necessary for the Trial Judge to consider whether *mens rea* had been proven beyond a reasonable doubt, because the appellant had raised reasonable excuse, and so was conceding that *mens rea* had been proven beyond a reasonable doubt.

ISSUE 5: Did the Trial Judge err by providing insufficient reasons for deciding that *mens rea* for the breaches of probation had been proven?

67. The appellant contends that the Trial Judge erred "by providing insufficient reasons for deciding that *mens rea* for the breaches of probation had been proven". As stated, this contention cannot succeed if this Court accepts, per *Goleski*, that where an accused raises a reasonable excuse, he or she is conceding that the Crown has proven the *actus reus* and the *mens rea*, as it seems nonsensical to require that a trial judge provide reasons for finding that an element of an offence has been proven beyond a reasonable doubt, if that element has in fact, been conceded.
68. In the alternative, if this Court finds that some reasons were required in respect of this element, then a review of the record ought to provide comfort to this Court that the Trial Judge did not err by failing to provide sufficient reasons on this point.
69. The approach to assessing whether reasons are adequate is a functional one (see *R v Sheppard* 2002 SCC 26, paras 41-42). The functional approach does not require that a judge articulate every finding or conclusion they reached in the process of arriving at the ultimate verdict. What is required is that the reasons show that the judge has seized the substance of the issue: *R v. R.E.M.* *infra*, at para. 18.

Tab 11 – *R v. R.E.M.*, 2008 SCC 51

70. In the present case, the record assists in providing context for the Trial Judge's reasons that he had found that the appellant had intentionally failed to abide by his probation conditions. The Trial Judge and Crown had the following colloquy regarding *mens rea* immediately before closing submissions:

THE COURT: ...and I think there's no issues that there was physically an act that - which was prohibited by the...probation order in that there was an attendance within a hundred metres and a crossing and a failure to report on the 19th ... Really what it comes down to is whether the accused knowingly or recklessly or voluntarily performed or failed to perform.

MR.WOLFE: I see - I agree with you so far. So the -- the case resolve [sic] down to intent, mens rea, whether he - Mr. Fox knowingly intended to breach the order. The actus seems clear with respect to the three counts. As so he either knowingly did it or as subcomponents to the mens rea was either willfully blind or reckless with respect to intent, and I will have submissions on those points.

(Emphasis added, T.E. Tab 9, p. 149, L7-26).

71. Following submissions, the Trial Judge gave the RFJ, wherein he specifically referred to the applicable *mens rea* (at para 4), and appellant's intentions and actions and whether he was

acting voluntarily or intentionally (para 14, 19, 36, 39, 40), ultimately finding in his concluding paragraph in respect of Count 2, and 3, that "[t]here was no evidence that he was involuntarily removed from the country or asked to leave or directed to leave. He voluntarily performed the action of walking himself across the border and by doing so, he committed the breaches in Count 2 and 3 of the information [sic]."

72. Further, it is clear that the Trial Judge did not err in his articulation or application of the legal principles that apply to the *mens rea* component of this offence. He noted "the issue that still remains...is whether Mr. Fox knowingly, recklessly or with wilful blindness involuntarily performed or failed to perform an act or omission which constitutes the *actus reus* of the offence. So essentially, in this particular issue, whether there was a reasonable excuse for failing to comply" (RJF).
73. When considered in context, the Trial Judge's reasons in respect of *mens rea* were sufficient to show that he had seized the substance of the issue.

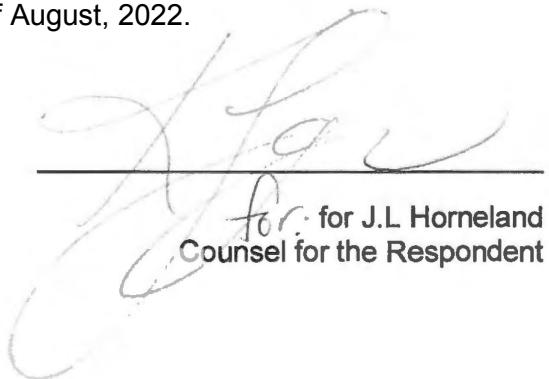
PART V: RESPONDENT'S POSITION

74. The respondent submits that none of the grounds of appeal raised by the appellant warrant the interference of this Court.

PART VI: NATURE OF RELIEF SOUGHT

75. The appeal against conviction should be dismissed.

All of which is respectfully submitted on this 23rd day of August, 2022.


for J.L. Horneland
Counsel for the Respondent

APPENDIX A:

Probation Order 27178-2

Probation Order (Prison)

Canada: Province of British Columbia

Ban - none

☐ Interpreter present

Whereas on **June 28, 2017** at **Vancouver**, British Columbia,

Police File No.
704:16-25379

Court File No.
6011:27178-2
VLC
(244069-2-KC) Van

IND

Primary Enf. Agency:

D.O.B.: **November 24, 1973**

Proceeded: **By Indictment**

Patrick Henry Fox

(the "offender") was convicted or found guilty, as the case may be, upon the following charge(s) and on **November 10, 2017** the Court adjudged that the offender be **imprisoned** in the Province of British Columbia as follows:

Count 1, between January 11, 2015 and May 27, 2016, at or near Burnaby BC, did commit an offence of criminal harassment, contrary to section 264 Criminal Code.

SENTENCE: Jail: [Jail Term that would have been imposed before Credit Granted: 3 Year(s); Actual Pre-Sentence Time in Custody: 17 Month(s); Credited Pre-Sentence Time in Custody: 25.5 Month(s); Victim Surcharge: \$200.00 Due Date: October 10, 2019; DNA Order Secondary; Probation Order 3 Year(s); Prohibition, Firearms, Mandatory Lifetime;

I have read or have had read to me and understand a total of 1 Charge

VARIED 6011: 27178-2 on FEBRUARY 6, 2019. See Variation Order dated February 6, 2019

and in addition thereto, that the said offender comply with the conditions hereinafter prescribed:

Now, therefore, the said offender shall for the period stated above, from the date of expiration of imprisonment, comply with the following conditions, namely, that the said offender shall:

I have read or have had read to me and understand a total of 17 Conditions on 2 Conditions Attachment Pages

Dated / Fait le **November 10, 2017** at / à **Vancouver**, British Columbia / Colombie-Britannique

I, the undersigned offender, acknowledge that I have received:

- a copy of the Probation Order
- an explanation of the substance of the sections dealing with changes to the Probation Order and failing to comply with the Probation Order (Sec 732.2(3) and (5), and Sec 733.1), and
- an explanation of the procedures for applying for changes to the Probation Order,

and that I understand the terms of this Probation Order and the explanations which I have received.

DECLINED TO SIGN

Offender / Contrevenant(e)
Address / Adresse :

**203-2846 Sunset St
Burnaby, BC V56 1T3**

Phone Number / Numéro de téléphone :

Je, le(la) contrevenant(e) soussigné(e), reconnais que j'ai reçu :

- une copie de l'Ordonnance de probation
 - une explication du contenu des articles ayant trait aux changements apportés à l'Ordonnance de probation et au défaut de se conformer à l'Ordonnance de probation (Art. 732.2(3) et (5), et Art 733.1), et
 - une explication des procédés à suivre pour faire une demande de changements à l'Ordonnance de probation,
- et que je comprends les conditions de cette Ordonnance de probation et les explications que j'ai reçues.

H. Holmes

A Clerk of the Court on behalf of / Un greffier du tribunal au nom du
The Honourable Mr./ Madam Justice / Monsieur/ Madame le(la) juge H
Holmes, in and for the Province of British Columbia / dans et pour la
province de la Colombie-Britannique

Probation (Prison)

Ordonnance de probation (prison)

Nu. de dossier de la police Nu. de dossier du greffe
704:16-25379 6011:27178-2
VLC
(244069-2-KC) Van

IND

Canada: Province de la Colombie-Britannique

☐ Interprète présent
Interdit -

Org. prim. d'app. de la loi :

D.D.N. : November 24, 1973
Procédé : **par mise en accusation**

Attendu que le **June 28, 2017** à **Vancouver**, Colombie-Britannique,

Patrick Henry Fox

(le(la) <<contrevenant(e)>>) a été condamné(e) ou reconnu(e) coupable, selon le cas, de l'(des) infraction(s) suivante(s) et le **November 10, 2017** le tribunal a décidé que le(la) contrevenant(e) soit **incarcéré(e)** dans la province de la Colombie-Britannique comme suit :

Count 1, between January 11, 2015 and May 27, 2016, at or near Burnaby BC, did commit an offence of criminal harassment, contrary to section 264 Criminal Code.

SENTENCE: Jail: [Jail Term that would have been imposed before Credit Granted: 3 Year(s); Actual Pre-Sentence Time in Custody: 17 Month(s); Credited Pre-Sentence Time in Custody: 25.5 Month(s); Victim Surcharge: \$200.00 Due Date: October 10, 2019; DNA Order Secondary; Probation Order 3 Year(s); Prohibition, Firearms, Mandatory Lifetime;

J'ai lu ou j'ai m'a lu et je comprends 1 inculpation

et, de plus, que ledit (ladite) contrevenant(e) se conforme aux conditions prescrites suivantes :
Pour ces motifs, ledit (ladite) contrevenant(e) devra pour la période ci-dessus prescrite à compter de la date d'expiration de la sentence d'emprisonnement, se conformer aux conditions suivantes, notamment que ledit (ladite) contrevenant(e) devra :

J'ai lu ou j'ai m'a lu et je comprends 17 conditions sur 2 page de l'Annexe des conditions

Probation (prison)

**Probation Order/
Ordonnance de probation**

(Prison/ prison)

Canada: Province of British Columbia

Province de la Colombie-Britannique

Police File No./
Nu. de dossier de la police
704:16-25379

Court File No./
Nu. de dossier du greffe
6011:27178-2
VLC
(244069-2-KC) Van

D.O.B./ D.D.N. : November 24, 1973

Interdit -

Re/ Objet : Fox

**Conditions Attachment/
Annexe des conditions**

Condition 1: Keep the peace and be of good behaviour.

Condition 2: Appear before the Court when required to do so by the Court.

Condition 3: Notify the Court or the Probation Officer in advance of any change of name or address, and promptly notify the Court or the Probation Officer of any change of employment or occupation.

POR Condition 4: You must have no contact or communication, directly or indirectly, with Desiree Capuano, James Pendleton, or Sage Capuano, or any of their friends, relatives, employers, or co-workers. Except you may have contact with Gabriel Reiss.

Condition 5: You must report in person to a probation officer at 275 East Cordova ST., Vancouver, B.C., within 48 hours of you release from custody, and after that, you must report at least once every 4 days, in person, as directed by the probation officer.

Condition 6: You must attend, participate in and successfully complete any intake, assessment, counselling or program as directed by the probation officer, including but not limited to attendance at Forensic Psychiatric Services for assessment, counselling, or treatment, except that you should not be required to submit to any treatment or medication prescribed by the Psychiatric Services to which you do not consent. If you do not consent to the treatment or medication, you shall forthwith inform your probation officer as to why you do not consent.

Condition 7: When first reporting to the probation officer, you must inform him or her of your residential address and phone number. You must not change your residence or phone number without written permission from your probation officer given in advance.

Condition 8: You must provide your probation officer with the particulars of your employment including any self-employment. You must inform your probation officer within two business days of any change in your employment.

Condition 9: You must not leave British Columbia unless you have the written permission of the probation officer, and you must carry the permission when you are outside the province and you must carry the permission when you are outside of the province.

Condition 10: You must not be within 100 metres of the United States border.

Conditions continue on next Conditions Attachment Page/ Suite à la prochaine page de l'Annexe des conditions

Probation (prison)/ Probation (Prison)

Probation Order/ Ordonnance de probation

(Prison/ prison)

Canada: Province of British Columbia

Province de la Colombie-Britannique

Police File No./
Nu. de dossier de la police
704:16-25379

Court File No./
Nu. de dossier du greffe
6011:27178-2
VLC
(244069-2-KC) Van

D.O.B./ D.D.N. : November 24, 1973

Interdit -

Re/ Objet : Fox

Conditions Attachment/ Annexe des conditions

Conditions continued from previous Conditions Attachment Page/ Suite de la page précédente de l'Annexe des conditions

Condition 11 : Immediately upon your release from custody, you must attend the Burnaby RCMP Detachment at 6355 Deer Lake Avenue. You must present a copy of this order to a peace officer there, and you must accompany a peace officer to the location of all travel documents in your possession, including any passport, Nexus card, travel visa, or enhanced driver's license. You must surrender all such items to the peace officer and thereafter not obtain any further travel documents.

Condition 12: You must not disseminate, distribute, publish or make publicly available in any manner whatsoever, directly or indirectly, information, statements, comments, videos, or photographs which refer to or depict, by name or description, Desiree Capuano, James Pendleton, Sage Capuano, or any of their friends, relatives, employers, or co-workers.

Condition 13: Within 24 hours of your release from custody you will take all necessary steps to ensure that any website, social media page, or other publication, which you have authored, created, maintained or contributed to, which contains any information, statements, comments, videos, pictures which refer to or depict, by name or description, Desiree Capuano, James Pendleton, or Sage Capuano, or any of their friends, relatives, employers, or co-workers, including the website published under the domain www.desireecapuano.com, is no longer accessible via the internet or by any other means.

Condition 14: You must not use the internet or any computer or cellular network except as required to fulfill condition 13, for the purpose of employment, or for sending personal emails.

Condition 15: Provide any email address you use, and a list of any email addresses you correspond with to your probation officer.

CFC Condition 16: You must not possess, either personally or through another person, any firearm, crossbow, prohibited weapon, restricted weapon, prohibited device, ammunition or explosive substance, anything that resembles a weapon or firearm, any weapon as defined in section 2 of the Criminal Code, or any related authorizations, licences or registration certificates.

CFC Condition 17: Immediately upon your release from custody, you must attend the Burnaby RCMP Detachment at 6355 Deer Lake Avenue, you must present a copy of this order to a peace officer there, and you must accompany a peace officer to the location in Canada of all firearms, crossbows, prohibited weapons, restricted weapons, prohibited devices, ammunition or explosive substances and all weapons, imitation weapons including imitation firearms possessed by you or through another person, and any related authorizations, licences, or registration certificates. You must surrender all such items to the peace officer. You are also to advise the peace officer of the location outside of Canada of any of the items described in this condition.

I have read or have had read to me and understand a total of 6 Conditions on 1 Conditions Attachment Page/ J'ai lu ou j'ai m'a lu et je comprends 6 conditions sur 1 page de l'Annexe des conditions

Probation (prison)/ Probation (Prison)

Probation Order/ Ordonnance de probation

(Prison/ prison)

Canada: Province of British Columbia

Province de la Colombie-Britannique

☒ Ban

D.O.B./ D.D.N. : **November 24, 1973**

Re/ Objet : **Fox**

Related File/Ban Attachment/ Annexe de dossiers connexes/Interdit
--

Police File/ Dossier de la police	Court File/ Dossier du greffe	Proceeded/ Procédé	Ban/Interdit
704:16-25379	6011:27178-2	IND	Publication CCC 517(1) Publication CCC 486.5(1) Publication CCC 539(1) Inherent Jurisdiction Other
	VLC		
	(244069-2-KC) Van		

Probation (prison)/ Probation (Prison)

Important Information for a Person Placed on Probation

1. Changes to a Probation Order

Criminal Code Section 732.2(3)

You may apply to change or cancel a condition of your *Probation Order*, or reduce the time you will be on probation. Ask the Court Registry for an *Application to a Judge* form, to make this request.

The probation officer or the prosecutor may also ask to change or cancel a condition of your *Probation Order*, or to reduce the time you will be on probation.

You may have to appear in court, and the Court may issue a *Warrant* or *Summons* to make you appear.

If any changes are made, you will have to sign the changed *Probation Order* and you will receive a copy.

Criminal Code Section 732.2(5) and Section 730(4)

The prosecutor may ask to have you come back to court if you are convicted of another offence, including breach of probation, as long as:

- you have not appealed that conviction, or
- you are out of time to appeal it, or
- your appeal was dismissed, or
- you do not intend to appeal.

The Court may then:

- revoke a *Suspended Sentence* or a *Conditional Discharge* and give you a different sentence, or
- change the additional conditions, or
- extend your probation by up to one more year.

2. Failure to Comply with a Probation Order

Criminal Code Section 733.1

If you are on probation and fail to comply with the order, you can be charged with "breach of probation". If the Court finds you guilty of a breach of probation, you can be sentenced to:

- a jail term for up to four years, if the Crown proceeds by indictment, or
- a jail term for up to two years less a day, or a fine of up to \$5,000.00, or both if the Crown proceeds by summary conviction.

Your court appearance for a breach charge does not have to be where your *Probation Order* was made. You may appear in the court closest to where the offence happened, or where you were found, arrested, or in custody.

3. Changes to Personal Information

If you change your name or address, you must notify the Court or your probation officer of any change in advance. Any changes to other personal information, including your employment or occupation must be reported to the Court or your probation officer. To report any changes, you should ask the Court Registry or your probation officer for a *Notice of Change of Personal Information* form.

This is an information sheet. In the event of any conflict between this information and any Act(s) or law, the provisions of the Act(s) apply.

Renseignements importants à l'intention d'une personne mise en probation

1. Modification d'une ordonnance de probation

Article 732.2(3) du Code criminel

Vous pouvez faire une demande de modification ou d'annulation d'une condition de votre *ordonnance de probation* ou de réduction de la durée de votre mise en probation. Pour ce faire, demandez un formulaire de Demande à un juge au greffe de la cour.

L'agent de probation ou le(la) poursuivant(e) peut également demander de modifier ou d'annuler une condition de votre ordonnance de probation, ou de réduire la durée votre mise en probation.

Vous devrez peut-être comparaître devant un tribunal et le tribunal peut émettre *un mandat* ou une *somation* pour vous obliger à comparaître.

En cas de changement, vous devrez signer *l'ordonnance de probation* modifiée et vous en recevrez une copie.

Articles 732.2(5) et 730(4) du Code criminel

Le(la) poursuivant(e) peut demander votre comparution devant le tribunal si vous êtes déclaré(e) coupable d'une autre infraction, y compris un manquement aux conditions de la probation, pourvu que :

- vous n'avez pas interjeté appel de cette déclaration de culpabilité, ou
- le délai d'appel soit expiré, ou
- votre appel ait été rejeté, ou
- vous n'avez pas l'intention d'interjeter appel.

Le tribunal peut alors :

- révoquer une *condamnation* avec sursis ou une *libération conditionnelle* et vous infliger une peine différente, ou
- modifier les conditions supplémentaires, ou
- prolonger la durée de votre probation d'au plus un an.

2. Défaut de se conformer à une ordonnance de probation

Article 733.1 du Code criminel

Si vous avez été mis(e) en probation et que vous omettez de vous conformer à l'ordonnance, vous pouvez être inculpé(e) d'un manquement aux conditions de la probation. Si le tribunal vous reconnaît coupable d'un manquement aux conditions de la probation, vous pouvez être condamné(e) à :

- une peine d'emprisonnement d'au plus quatre ans, si la Couronne procède par mise en accusation, ou
- une peine d'emprisonnement pouvant deux ans moins un jour, ou une amende d'au plus 5 000 \$, ou les deux, si la Couronne procède par déclaration sommaire de culpabilité.

Votre comparution devant le tribunal pour manquement aux conditions de l'ordonnance ne doit pas nécessairement se faire au lieu où l'ordonnance de probation a été rendue. Vous pouvez comparaître devant le tribunal le plus près du lieu où l'infraction a été commise, ou du lieu où vous avez été trouvé(e), arrêté(e) et mis(e) sous garde.

3. Changements de renseignements personnels

Si vous changez de nom ou d'adresse, vous devez en aviser le tribunal ou votre agent de probation à l'avance. Vous devez également informer le tribunal ou votre agent de probation de tout autre changement de renseignements personnels, y compris un changement d'emploi ou de métier ou profession. Afin de signaler un changement quelconque, vous devriez demander le formulaire *Avis de changement de renseignements personnels* au greffe de la cour ou à votre agent de probation.

La présente est une feuille de renseignements. En cas de conflit entre ces renseignements et une ou plusieurs lois, les dispositions de la (des) loi(s) s'appliquent.

APPENDIX B:

Information 244069-5BC

INFORMATION / DÉNONCIATION

CANADA:
PROVINCE OF BRITISH COLUMBIA
PROVINCE DE LA COLOMBIE-BRITANNIQUE

Court Identifier:	2040: PRA				
Court File Number:	244069				
Type Reference:	BC				
Inf. Seq Number:	5				
Agency File Number:	VCRT:16-25379-1 704:19-10877				
DNA:	☐	SOR:	☐	K File:	☐

This is the information of / Les présentes constituent la dénonciation de **R Ahira**, a / un(e) **Court Liaison Officer** (the "Informant" / le "Dénonciateur") of / de **Burnaby**, British Columbia / Colombie-Britannique.

The informant says that the informant has reasonable and probable grounds to believe and does believe that / Le dénonciateur déclare qu'il a des motifs raisonnables et probables et croit effectivement que

Count 1

Patrick Henry FOX, on or about the 19th day of March, 2019, at or near Vancouver, in the Province of British Columbia, while bound by a probation order made by The Honourable Madam Justice H. Holmes on the 10th day of November, 2017, and as amended by The Honourable Madam Justice H. Holmes on the 6th day of February, 2019, did without reasonable excuse fail to comply with such order by failing to report as directed, contrary to Section 733.1(1) of the Criminal Code.

Count 2

Patrick Henry FOX, on or about the 15th day of March, 2019, at or near Surrey, in the Province of British Columbia, while bound by a probation order made by The Honourable Madam Justice H. Holmes on the 10th day of November, 2017, and as amended by The Honourable Madam Justice H. Holmes on the 6th day of February, 2019, did without reasonable excuse fail to comply with such order by leaving British Columbia without the written permission of the probation officer, contrary to Section 733.1(1) of the Criminal Code.

Count 3

Patrick Henry FOX, on or about the 15th day of March, 2019, at or near Surrey, in the Province of British Columbia, while bound by a probation order made by The Honourable Madam Justice H. Holmes on the 10th day of November, 2017, and as amended by The Honourable Madam Justice H. Holmes on the 6th day of February, 2019, did without reasonable excuse fail to comply with such order by being within 100 metres of the United States border contrary to Section 733.1(1) of the Criminal Code.

THE INFORMATION SWORN ON **MAY 14, 2019** CONTAINS A TOTAL OF 3 COUNTS ON 1 PAGE.

SWORN BEFORE ME / ASSERMENTÉ DEVANT MOI
ON / CE **14TH** DAY OF / JOUR DE **MAY, 2019**
AT / À **VANCOUVER**
BRITISH COLUMBIA / COLOMBIE-BRITANNIQUE

K. Anderson 2019.05.14 09:11:09
-07'00'

A JUSTICE OF THE PEACE IN AND FOR THE
PROVINCE OF BRITISH COLUMBIA /
UN JUGE DE PAIX DANS ET POUR LA
PROVINCE DE LA COLOMBIE-BRITANNIQUE

other signer
Tue May 14 2019 09:10:57

SIGNATURE OF INFORMANT /
SIGNATURE DU DÉNONCIATEUR

**Patrick Henry FOX: Previous Process Applies
PROCESS / ACTE DE PROCÉDURE ISSUED**

K. Anderson 2019.05.14 09:11:19
-07'00'

A JUSTICE OF THE PEACE IN AND FOR THE
PROVINCE OF BRITISH COLUMBIA /
UN JUGE DE PAIX DANS ET POUR LA
PROVINCE DE LA COLOMBIE-BRITANNIQUE

APPENDIX C:

Record of Proceeding

Provincial Court Record of Proceedings and Endorsement of Information

Court File No. 2040:244069-5-BC PRA
Court File No.
Police Agency and File No. 704:19-10877

Name of Accused: Fox, Patrick Henry

D.O.B.: November 24, 1973

Language:

For:

COURT APPEARANCES

Date DD-MMM-YY	Time	Room	Reason	Interpreter Required	A N T P V	Counsel	A C S D T N V	Prosecutor	T V	Results	No JIR by Consent	Custody Status	Prov. Court Judge	T V	Confirmed
14-MAY-19	8:30AM	REG	JIR		N		N			IBJ		NIC	K Anderson		✓
Appearance Notes and Orders PPA (Detention Order); Heard at: Vancouver Provincial Court (2040)															
03-JUN-19	9:30AM	101	PTC		P		N	Bernie Wolfe		IBC		NIC	P L Janzen		✓
Appearance Notes and Orders Heard at: Vancouver Provincial Court (2040)															
20-JUN-19	9:30AM	101	APP		PV		N	Bernie Wolfe		IBJ		IC	J Bahen		✓
Appearance Notes and Orders Heard at: Vancouver Provincial Court (2040) TRANSCRIPT ORDERED: A transcript of the Pre-Trial Conference of June 20, 2019 proceedings is to be prepared and placed on the file.;															
02-JUL-19	9:30AM	512	PTC		P	Self-Represented	N	Bernie Wolfe		IBJ		IC	D St. Pierre		✓
Appearance Notes and Orders Heard at: Vancouver Provincial Court (2040) ORDER FOR ATTENDANCE: Pursuant to Section 527 of the Criminal Code of Canada, the person having custody of PRISONER is ordered to deliver the prisoner to the Sheriff for court attendance on July 4, 2019. After court, the prisoner is then to be returned to the person having custody.;															
04-JUL-19	9:30AM	512	CNT		P	Self-Represented	N	Bernie Wolfe		IBJ		IC	D St. Pierre		✓
Appearance Notes and Orders Heard at: Vancouver Provincial Court (2040) Crown's application for an Order regarding Crown disclosure, Mr. Fox opposed, Application granted per Judge D St. Pierre.;															
19-JUL-19	2:00PM	306	PTC		P		N	Bernie Wolfe		IBJ		IC	D St. Pierre		✓
Appearance Notes and Orders Accused self-represented; Heard at: Vancouver Provincial Court (2040)															
09-AUG-19	9:30AM	306	PTC		P		N	Bernie Wolfe		IBJ		IC	D St. Pierre		✓
Appearance Notes and Orders Heard at: Vancouver Provincial Court (2040)															
12-AUG-19	9:00AM	304	FT		N		N	Bernie Wolfe		SBS		IC	K Marcher		✓
Appearance Notes and Orders Adjourned to JCM; Heard at: Vancouver Provincial Court (2040)															
12-AUG-19	9:30AM	514	FT		P		N	Bernie Wolfe		IBJ		IC	D St. Pierre		✓
Appearance Notes and Orders Voi Dire #1 - currently suspended; Heard at: Vancouver Provincial Court (2040)															
13-AUG-19	9:30AM	514	CNT		P		N	Bernie Wolfe		IBC		IC	D St. Pierre		✓
Appearance Notes and Orders Heard at: Vancouver Provincial Court (2040)															
14-AUG-19	9:30AM	514	CNT		P		N	Bernie Wolfe		IBC		IC	D St. Pierre		✓
Appearance Notes and Orders Heard at: Vancouver Provincial Court (2040)															

15-AUG-19	9:30AM	514	CNT		P		N	Bernie Wolfe		IBC		IC	D St. Pierre		✓
Appearance Notes and Orders peremptory on accused; Heard at: Vancouver Provincial Court (2040)															
08-OCT-19	9:00AM	304	CNT		P		N	Bernie Wolfe		SBS		IC	H Wullum		✓
Appearance Notes and Orders Heard at: Vancouver Provincial Court (2040)															
08-OCT-19	9:30AM	306	CNT		P		N	Bernie Wolfe		IBD		IC	D St. Pierre		✓
Appearance Notes and Orders Details of Date Changed Details of Change: STRIKE 10 OCT 2019 9:30 306 CNT; Heard at: Vancouver Provincial Court (2040)															
09-OCT-19	9:00AM	307	FXD		PV		N	Bernie Wolfe		SBS		IC	K Marcher		✓
Appearance Notes and Orders Self represented; Heard at: Vancouver Provincial Court (2040)															
10-OCT-19	9:30AM	306	CNT									IC			
Appearance Notes and Orders Heard at: Vancouver Provincial Court (2040)															
29-OCT-19	9:30AM	514	CTD		P	Self	N	Bernie Wolfe		IBC		IC	D St. Pierre		✓
Appearance Notes and Orders Heard at: Vancouver Provincial Court (2040)															
19-NOV-19	2:00PM	306	APP		P	Self	N	Bernie Wolfe		IBC		IC	D St. Pierre		✓
Appearance Notes and Orders Heard at: Vancouver Provincial Court (2040)															
11-DEC-19	9:00AM	304	CNT		N	Self	N	Bernie Wolfe		IBJ		IC	H Wullum		✓
Appearance Notes and Orders Heard at: Vancouver Provincial Court (2040)															
11-DEC-19	9:30AM	306	CNT		P	Self	N	Bernie Wolfe		IBJ		IC	D St. Pierre		
Appearance Notes and Orders Heard at: Vancouver Provincial Court (2040) TRANSCRIPT ORDERED: A transcript of the December 11, 2019 proceedings is to be prepared and placed on the file. A copy to be forwarded to Judge D. St Pierre, Mr. Fox and the Crown. Expedited.; Defence application to adjourn trial dates, Crown opposed. Application granted per Judge D St. Pierre. December 12, 2019 trial date struck. Adjourned to the JCMS to set 3 new days for trial with an interim appearance.;															
12-DEC-19	9:00AM	307	CTD		PV	Self	N	Bernie Wolfe		SBD		IC	M Fong		✓
Appearance Notes and Orders Heard at: Vancouver Provincial Court (2040)															
12-DEC-19	9:30AM	304	CNT									IC			
Appearance Notes and Orders Heard at: Vancouver Provincial Court (2040)															
28-JAN-20	9:30AM	102	CTD		P	Self	N	Bernie Wolfe		IBJ		IC	D St. Pierre		✓
Appearance Notes and Orders Heard at: Vancouver Provincial Court (2040) Transcript Ordered Expedited;															
11-FEB-20	9:30AM	101	CTD		PV	Self	N	Bernie Wolfe		IBJ		IC	J F Werier		✓
Appearance Notes and Orders Heard at: Vancouver Provincial Court (2040)															
02-MAR-20	9:00AM	304	CNT		N	Self	N	Bernie Wolfe		SBS		IC	K Marcher		✓
Appearance Notes and Orders Heard at: Vancouver Provincial Court (2040)															
02-MAR-20	9:30AM	514	CNT		P	Self	N	Bernie Wolfe		IBJ		IC	D St. Pierre		✓
Appearance Notes and Orders Heard at: Vancouver Provincial Court (2040) As per Judge St. Pierre application granted for Crown to re-open their case.;															

04-MAR-20	9:30AM	514	CNT		P	Self	N	Bernie Wolfe		IBD		IC	D St. Pierre		✓
Appearance Notes and Orders Heard at: Vancouver Provincial Court (2040)															
06-MAR-20	9:30AM	514	CNT		P	Self	N	Bernie Wolfe		END		IC	D St. Pierre		✓
Appearance Notes and Orders Heard at: Vancouver Provincial Court (2040)															
06-MAR-20	9:30AM	514	CNT		P	Self	N	Bernie Wolfe		IBP		IC	D St. Pierre		✓
Appearance Notes and Orders Heard at: Vancouver Provincial Court (2040)															
09-MAR-20	2:00PM	307	FXD		PV		N	Bernie Wolfe		SBD		IC	K Marcher		✓
Appearance Notes and Orders Heard at: Vancouver Provincial Court (2040)															
20-MAR-20	9:30AM	101	APP		PV	Self	N	Bernie Wolfe		IBJ		IC	D Senni		✓
Appearance Notes and Orders Heard at: Vancouver Provincial Court (2040) Strike March 23, 2020. Defense application to adjourn SNT granted; NFPTC VIDEO;															
23-MAR-20	1:45PM	304	SNT									IC			
Appearance Notes and Orders Heard at: Vancouver Provincial Court (2040)															
02-APR-20	2:00PM	102	FXD		PV	Self	N	Bernie Wolfe		IBD		IC	J Bahen		✓
Appearance Notes and Orders Heard at: Vancouver Provincial Court (2040)															
15-APR-20	2:00PM	102	FXD		PV	Bridal, C	CT	Bernie Wolfe		IBC		IC	P L Doherty		✓
Appearance Notes and Orders Heard at: Vancouver Provincial Court (2040)															
24-APR-20	2:00PM	102	FXD		PV	Bridal, C	CT	Bernie Wolfe		IBC		IC	R P Harris		✓
Appearance Notes and Orders Heard at: Vancouver Provincial Court (2040)															
13-MAY-20	2:00PM	101	FXD		PV	Bridal, C	CT	Bernie Wolfe		IBJ		IC	D St. Pierre		✓
Appearance Notes and Orders Heard at: Vancouver Provincial Court (2040)															
25-MAY-20	2:00PM	303	FXD		PV	Bridal, C	C	Bernie Wolfe		IBJ		IC	D St. Pierre		✓
Appearance Notes and Orders Heard at: Vancouver Provincial Court (2040)															
01-JUN-20	2:00PM	101	FXD		PV	Bridal, C	N	Bernie Wolfe		IBJ		IC	J Sutherland		✓
Appearance Notes and Orders Heard at: Vancouver Provincial Court (2040)															
03-JUN-20	2:00PM	101	APP		PV		N	Bernie Wolfe		IBJ		IC	J Sutherland		✓
Appearance Notes and Orders Heard at: Vancouver Provincial Court (2040)															
12-JUN-20	2:00PM	303	SNT		PV	Self	N	Bernie Wolfe		END		IC	D St. Pierre		✓
Appearance Notes and Orders Heard at: Vancouver Provincial Court (2040)															
22-JUL-20	2:31PM	REG	DSP							END		IC			✓
Appearance Notes and Orders Heard at: Vancouver Provincial Court (2040)															

ARRAIGNMENT

Date DD-MMM-YY	Event	Detail
03-JUN-19	Arraignment	Information Read

BANS

Order for Publication Ban

Date DD - MMM - YY	Ban
20-JUN-19	Publication CCC 517(1)
20-JUN-19	Other

JUDICIAL INTERIM RELEASE OR DETENTION☐ Additional JIRs Following

Date Ordered DD - MMM - YY
14-MAY-19

Ordered by Judge / Justice: K Anderson

☐ Detention Order☐ Detained under s. 524(4) or (8)☐ Previous Conviction

Release Date DD - MMM - YY

☒ PPA Previous Process Applies☐ Bail covers these informations:Amount: ☐ Deposit:☐ Sureties:☐ Named Sureties:☐ Alternate Bail:☒ Conditions (See below) ☐ POR ☐ CFC ☐ Passport

Remarks:

Document Status:

Date:

CONDITIONS

Date DD - MMM - YY	Condition
14-MAY-19	Pursuant to Section 523 CCC the Detention Order on Information # 244069-3- B, 244069-4-BC applies to this Information.

COMMENTS

Result Comments

22 Jun 2016; 244069-1 proceeded on 244069-2-CK
244069-3-B-Fox-Patrick Counts 1 | 244069-4-BC-Fox-Patrick Counts 1, 2, 3 | 244069-5-BC-Fox-Patrick Counts 1, 2, 3

Finding: PNI -Proceeded on New Information or New Ticket
To: 244069-5-BC

PLEAS

Crown Proceeded: Summarily

Date DD-MMM-YY	Count	PLEA				Re-enters / Changes Plea		
		Guilty	Not Guilty	Not guilty as charged but guilty of section	Other Description	Guilty	Not Guilty	Not guilty as charged but guilty of section
03-JUN-19	1		✓					
03-JUN-19	2		✓					
03-JUN-19	3		✓					

FINDINGS

Date DD-MMM-YY	Count	Guilty	Not Guilty	Not guilty as charged but guilty of section	Dangerous Offender	Long-Term Offender	Mental Disorder	Mistrial	No Action Taken	Detention Review Ineligible	Detention Review Waived
06-MAR-20	2	✓									
06-MAR-20	3	✓									

FINAL DISPOSITION

Date DD-MMM-YY	Count	Proceed on New Information Number	Mental Disorder	Stay of Proceedings by			Prosecutor	Judge	With- drawn	Abated	Nullity	Quashed	Charges Dismissed	Acquitted
				J S P	K S P	S O P								
06-MAR-20	1												✓	
22-JUL-20	2													
22-JUL-20	3													

SENTENCE

Date DD-MMM-YY	Count	Description	Sentence Term	Amount	Due / TTP Date
12-JUN-20	2	Jail	1 Day(s)		
Date DD-MMM-YY	Count	Description	Sentence Term	Amount	Due / TTP Date
12-JUN-20	2	Actual Pre-Sentence Time in Custody	8 Month(s)		
Date DD-MMM-YY	Count	Description	Sentence Term	Amount	Due / TTP Date
12-JUN-20	2	Credited Pre-Sentence Time in Custody	12 Month(s)		
Date DD-MMM-YY	Count	Description	Sentence Term	Amount	Due / TTP Date
12-JUN-20	2	Probation Order	18 Month(s)		

Details:

Conditions - See below

Date DD-MMM-YY	Count	Description	Sentence Term	Amount	Due / TTP Date
12-JUN-20	3	Jail	1 Day(s)		
Date DD-MMM-YY	Count	Description	Sentence Term	Amount	Due / TTP Date
12-JUN-20	3	Actual Pre-Sentence Time in Custody	8 Month(s)		
Date DD-MMM-YY	Count	Description	Sentence Term	Amount	Due / TTP Date
12-JUN-20	3	Credited Pre-Sentence Time in Custody	12 Month(s)		
Date DD-MMM-YY	Count	Description	Sentence Term	Amount	Due / TTP Date
12-JUN-20	3	Probation Order	18 Month(s)		

Details:

Conditions - See below

CONDITIONS

APPEARANCE: 12-JUN-2020 02:00 PM SENTENCE: Probation Order COUNT: 2

Keep the peace and be of good behaviour.

Appear before the Court when required to do so by the Court.

Notify the Court or the Probation Officer in advance of any change of name or address, and promptly notify the Court or the Probation Officer of any change of employment or occupation.

You are not to attend within 500 metres of the Canada - United States Border.

APPEARANCE: 12-JUN-2020 02:00 PM SENTENCE: Probation Order COUNT: 3

Keep the peace and be of good behaviour.

Appear before the Court when required to do so by the Court.

Notify the Court or the Probation Officer in advance of any change of name or address, and promptly notify the Court or the Probation Officer of any change of employment or occupation.

APPEARANCE: 12-JUN-2020 02:00 PM SENTENCE: Probation Order COUNT: 3

You are not to attend within 500 metres of the Canada - United States Border.

APPENDIX D: Oral Reasons for Judgment ("RFJ")

File No: 244069-5-BC
Registry: Vancouver

In the Provincial Court of British Columbia

REGINA

v.

PATRICK HENRY FOX

**ORAL REASONS FOR JUDGMENT
OF
THE HONOURABLE JUDGE ST. PIERRE**

COPY

BAN ON PUBLICATION 517 CCC

Crown Counsel:

B. Wolfe

Appearing on his own behalf:

Patrick Fox

Place of Hearing:

Vancouver, B.C.

Date of Judgment:

March 6, 2020

[1] **THE COURT:** It is not going to be eloquent, but it will be done. I counted some 17 court appearances, not all of which we heard some evidence, but I think it is at least 17 court appearances on this matter, which include pretrial appearances and others. All of these appearances were for the three breach charges that Mr. Fox faces, which normally could be dealt with in a summary fashion, but the unique circumstances, I suppose, of this case and of the evidence that Mr. Fox was seeking led this matter down a very, well, long path towards conclusion and, hopefully, it is going to be concluded today. I think that I have my first appearance, at least, as July 2, 2019.

[2] In any event, the charges were sworn May 14, 2019, and these are charges on 244069 and it is a 5-BC information. Mr. Fox faces three allegations, one arising out of March 19, 2019, where it is alleged he failed to report as required by a probation order of Justice Holmes that she issued on November 10, 2017, and it was amended, that order; and Count 2 is March 15, 2019, the allegation is that contrary to Justice Holmes' order that Mr. Fox not leave British Columbia, that he failed to comply with that order. Count 3 is on the same date and in respect to the same probation order. The allegation is that Mr. Fox did without reasonable excuse fail to comply with Justice Holmes' order not to be within 100 metres of the United States border. These charges are all on under s. 733.1 of the *Criminal Code*.

[3] Proving these kind of charges, a breach of probation under 733.1, the Crown -- and we have had this discussion -- because Mr. Fox has given evidence in this proceeding and before submissions, we had a discussion on what the extant issues were with respect to the essential elements, and the essential elements of this

offence are identity, are date and time of the incident. The jurisdiction needs to be proved. It has to be proved that the accused was previously convicted of an offence for which there was a sentence that included a period of probation. It has to be proven the accused was bound by a probation order on the dates in question. It has to be proved that the accused committed an act which was prohibited by the probation order or that the accused failed to perform an act that was required by the probation order. All of those things are not in issue. The Crown has established proof beyond a reasonable doubt on those issues.

[4] The issue that still remains and that has become the crux of the matter in this whole case is whether Mr. Fox knowingly, recklessly, or with wilful blindness, involuntarily performed or failed to perform an act or omission which constitutes the *actus reus* of the offence. So, essentially, in this particular instance, whether there was a reasonable excuse for failing to comply. So 733.1(1) expressly provides that a failure to comply with a condition of a probation order will be an offence only if it was without reasonable excuse. What constitutes an acceptable excuse will vary, obviously, according to the circumstances.

[5] Once the Crown has established a *prima facie* case, then the accused is required to establish the factual foundation for his asserted reasonable excuse on a balance of probabilities and, even after establishing that factual foundation, the reasonableness of the accused's non-compliance has to be shown to exist on a balance of probabilities. So the function of s. 794 of the *Criminal Code*, essentially, imports a persuasive burden on the defence to establish the reasonable excuse and it is not the Crown's burden, and that may be a source of contention around the

country still, but it was resolved in this province as far as how to analyze that burden.

[6] It was resolved, essentially, by Justice Frankel in a case called *Goleski* [2014] B.C.J. No. 347, from our Court of Appeal and at least in British Columbia, the function of 794 is that the persuasive burden rests on the defence to establish reasonable excuse. In other words, in this case, in order to succeed as a defence, the excuse has to be a reasonable one and must mean that, viewed objectively, the explanation given provided some kind of reasonable basis for the violation of the court order.

[7] On November 10, 2017, Madam Justice Holmes sentenced Mr. Fox with respect to a criminal harassment conviction. In addition to a period of incarceration, there was also a probation order with certain conditions.

[8] That document -- what is the exhibit number, Madam Registrar? Can I have that?

[9] THE CLERK: [Indiscernible].

[10] THE COURT: Yes, I am just trying to remember what the -- I do not think I wrote it down. The exhibit number of Madam Justice's probation order.

[11] MR. WOLFE: I believe it is two.

[12] THE COURT: Exhibit 2, it was earlier on, that is right, earlier on in the proceeding. Yes, Exhibit 2, it was entered through Ms. Dhinjal from the registry. Thank you. Okay, thank you. Yes.

[13] Ms. Dhinjal was the justice of the peace at the registry. One of her duties was to review the conditions of the probation order that might be given to an inmate who

is about to be released on probation. Through her, Exhibit 2 was entered. It is a probation order; it relates to Mr. Fox, the accused in this case. She reviewed the order with Mr. Fox and, when it came time for him to sign the order, he refused to do so, but of course there is no issue here with respect to that refusal to sign such an order, it certainly does not release the individual from being legally obligated to comply with court-ordered conditions. So those conditions are set out in that document, Exhibit 2.

[14] On March 14, 2019, Mr. Fox appeared in front of Madam Justice Holmes again seeking a variation to the probation conditions relating to his prohibition from attending within 100 metres of the border and his prohibition from entering the U.S. and, after a full hearing on that matter, that application was dismissed. Mr. Fox testifies, and I accept, that he told the court at that time that whatever the outcome of that application was, his intention was to present himself in the Canada Border Services office with the hope that they would find him inadmissible to Canada and they would deport him from Canada. He has asserted all along that he has no status in this country and was attempting in front of Madam Justice Holmes to establish that fact so that she would vary those prohibitive conditions on his probation order and that would allow him to go back to the U.S.

[15] On March 15, 2019, the evidence shows, he presented himself from within Canada to the Canada Border Services office at the Douglas Border Crossing. After speaking to an initial officer, he was directed to deal with Officer Polisak, who also testified in these proceedings. He told the officer that he had no status in Canada and gave her some information that led her to conduct an inquiry on her computer.

[16] She checked several databases, searching both the names of Patrick Fox and the name of Richard Reiss, R-e-i-s-s, an alias, for lack of a better characterization. Officer Polisak testified that Mr. Fox had not appeared at her wicket seeking entry into Canada; in other words, he had not been directed by any pedestrian booth attendant or other entry border guard who deals with folks entering Canada from the U.S. He was already in Canada when he appeared in the office.

[17] She testified that she could not confirm, after her inquiries, that he was not a Canadian citizen. She was clear in her evidence that her recollection of the interaction was largely dependent on the notes that she made on that date, specifically, the notes that come in a paragraph under the heading, "Text," in these log entries that she made.

[18] She also testified that she told him that if his desire was to go to the United States that that was going to be problematic due to the fact that he had been removed several times by the American authorities, by U.S. Immigration, and he did not appear to have a U.S. passport on his person. She said that once she delivered this information to Mr. Fox he simply walked out of the office and she did not see where he went from there. At no time, she testified, did she direct or advise him or require him to leave the country of Canada. In fact, she said that she had no valid reason for doing something like that given her inquiries.

[19] Mr. Fox, on the other hand, says that he showed certain documentation to Officer Polisak and that, as a result, she told him that he was inadmissible to Canada. He agrees that she did not have him taken into custody or specifically ask or direct him to leave Canada, but that once he was told he was inadmissible, he felt

that he now had no lawful basis to remain in Canada and that he felt compelled to leave the country, and he did just that. He went out of the Canada Border Services office and he walked towards the United States Customs and Border Protection office.

[20] Officer Geoff Obrist from Customs and Border Protection on the U.S. side testified that Fox had come into their office at the border at Blaine, Washington and because he had a prior immigration record he was tasked with dealing with him. He was given identification from Fox. He made several inquiries. The name of Reiss and Fox came up. After those inquiries, they issued what was called an expedited removal order from the U.S. back to Canada.

[21] After that order was served on Mr. Fox, he was transferred to a Tacoma Detention Centre and he was held there for several weeks and then returned to Canadian authorities. In the meantime, Mr. Fox had missed a meeting that he had prescheduled with his probation officer for March 19, 2019, and that refers to Count 1 in the information. He was returned to Canadian police on April 4, 2019. So he was in U.S. custody from March 15 through April 4, 2019.

[22] Kirsty Brown is a constable with Surrey RCMP. She and Constable Hawkins went down to the border on April 4, 2019, essentially to retrieve Mr. Fox. They attended on that date to take him into custody. There had been an arrest warrant that was issued for Mr. Fox and they were executing that warrant.

[23] She testified that she requested CCTV footage of Mr. Fox's attendance at the Canada side of the border on March 15, 2019. The information as to what happened to that request was, quite frankly, less than satisfactory. She said she

followed up her initial request with a second request when there was no response to the first request. She was told the initial request was misplaced or not actioned upon. She also asked for information from Canada Border Services as to what kind of contact they had with Mr. Fox on March 15, 2019. She received no response to that request. In fact, she was never provided any records of any kind.

[24] She then requested video footage of their attendance -- of the police attendance on April 4, 2019, during the arrest of Mr. Fox and she was told that was also not available. She agreed in cross-examination that CCTV footage would support the notion that Mr. Fox had some kind of interaction with Canada Border Services prior to entering the U.S. She was never able to get a confirmation from Canada Border Services with respect to his attendance there on March 15.

[25] She was, in my mind, doing her due diligence as a police officer, as an investigator, and following up not only the information that Fox was providing to police about his dealings at the border, but also Constable Brown had testified that she herself had received some information from a border agent about a possible attendance by Mr. Fox on that date at the Canada Border Services office.

[26] Probation Officer Bhimji testified that he certainly did not give Mr. Fox any permission to be outside the province on that date in question. He also said that if someone is in custody on a day they are to report, he would advise the Crown that the client failed to show but was in custody at the time. He also said he would not submit a request for a breach charges if a client was in custody.

[27] Corporal Potts was called to support the voluntariness of a warned statement that was provided by Mr. Fox, and that statement has been admitted into evidence

for the purpose of cross-examining Mr. Fox when he testified.

[28] After the Crown closed their case, there was much back and forth and we had several court attendances, all sort of relating to Mr. Fox's attempts to get information, based on his assertions that he had dealings with Canada Border Services on March 15, 2019. He needed that information, he said, to support his contention that he had reported to that office prior to leaving Canada.

[29] I was worried about his liberty, quite frankly, given the matter had gone on for so long, and he asked me not to be so concerned and that he was concerned primarily with "justice" being done, and that he required certain evidence to be disclosed prior to the defence being called. So we had some adjournments for that reason. After several adjournments, I was told on December 11, 2019, that Constable Brown had now at that time confirmed there were no documented dealings between Fox and Canada Border Services on March 15, 2019.

[30] On February 11, 2020, we appeared in court and Mr. Fox indicated he now had the results of his *Freedom of Information* request (or ATIP) request and, in fact, there were documented dealings. Well, again, that goes back to my earlier comment, for what it is worth, that all of that, that whole scenario and how it played out, is really less than satisfactory, and all of it has to be laid at the feet of Canada Border Services. I cannot see anybody else who did not do their duly diligent job in this whole affair..

[31] Crown, in the best traditions of the bar, asked the court to reopen their case to call the Canada Border Services agent who had dealings with Mr. Fox on that date, Officer Polisak , and in fact, that is what happened. Polisak was called. She

testified that she did, in fact, have dealings with Mr. Fox on that day. The documents that she had to refer to to refresh her memory are the subject of Exhibit 13 and her memory is really largely, as I indicated before, constrained to that document.

[32] She said he came in and indicated that he wanted to go back to the U.S.A., indicated that there was an issue with his admissibility to Canada. So she conducted an inquiry, came up -- she looked at several databases and that eventually she could not confirm that the subject was not a Canadian citizen. So because he had presented himself from within Canada to that office, there was no basis for directing him to go anywhere; certainly, no basis for directing him to go back to the U.S.

[33] She informed Mr. Fox, she says, that again, as I indicated earlier, that since he does not have any proof of U.S. citizenship and since he has been removed several times before, he is unlikely to get entry to the U.S. So his initial desired request when he attended at the office to go back to the U.S. she thought was not likely to be realized.

[34] Part of her evidence is that, she was clear, they can refuse foreign nationals that are seeking entry. In other words, Canada Border Services can remove from that office, at the secondary inspection there, any foreign nationals who are seeking entry and send them back to their place of origin and, in the case of the Douglas Border Crossing, that would be the United States. If that occurs, this refusal of a foreign national entering the country, a paper trail is created, she said. There must be a report and that report is forwarded to Immigration who ultimately make the

determination. That makes sense, her evidence. I accept that evidence. I mean, all of that makes logical sense.

[35] In fact, the gist of Mr. Fox's submission at the end of the day is essentially the same. Mr. Fox testified. The point of dispute in his evidence as compared to the evidence of Polisak is he says that she clearly told him that he was inadmissible in Canada and that, as a result of that, he felt compelled to leave the country as he had, in his mind, no status to remain in the country. He testified that he explained to the officer he had no status in Canada and that he gave her a number of documents and pointed her to a number of informational sources that would establish that he was, in fact, a U.S. citizen, and he testified that she told him something to the effect of, "based on the information available to me, you appear to be inadmissible to Canada."

[36] He said he went outside at that point, talked to a border officer who asked him where he was going, and he says, "Well, I guess I have to leave because I do not have any -- I am inadmissible in Canada," and he walked to the Customs and Border Patrol on the U.S. side. All of that happened on March 15, 2019, around 4:30 to 5:30, he says.

[37] The issue is essentially, and you know, it is as simple and as complicated as --, does that scenario amount to a reasonable excuse for non-compliance with the order? Mr. Fox's submission is he was effectively removed by Canada Border Services and yet the evidence is that -- and Mr. Fox agrees that he was never directly directed to do anything. It is Immigration Canada who make the decision on whether a person who is already in the country is required to exit or not. That is a

decision of Immigration Canada. Only the Immigration and Refugee Canada authorities can say if someone is admissible, is going to be allowed to remain in Canada once they are inside Canada.

[38] Different concerns arise when somebody is seeking entry to Canada from the U.S. That is not the fact pattern that is before me. Before me is a fact pattern that leads to the inexorable conclusion that Mr. Fox had -- even if I accept his evidence at its highest point that somebody told him while he was inside this country that he was inadmissible to Canada, he had a choice at that time. He could leave the country or he could stay in the country and fight that designation or be arrested by Immigration.

[39] A number of different scenarios could arise out of what decision was made in that circumstance, but the point is, is that the decision that he did make was to walk across the Canada-U.S. border, and he did that without any objectively reasonable excuse, and that is the crux of the whole thing and when it comes down to it the question is, did he voluntarily breach this order or not? The answer is, he clearly did.

[40] There is no evidence that he was involuntarily removed from the country or asked to leave or directed to leave. He voluntarily performed the action of walking himself across the border and, by doing so, he committed the breaches contained in Counts 2 and 3 on the information. Count 2 was the one that said he should not leave British Columbia and he did. Count 3 is that he should not be within 100 metres of the U.S. border and the clear inference, from his own evidence and from all the other evidence, is that he was clearly within 100 metres of the border by

walking across that border to the U.S. side.

[41] The more difficult question to answer is Count 1; did he, without reasonable excuse, fail to comply with an order to report? As Mr. Fox stated in his submission, he said his arrest by, and detention by the U.S. Customs and Border Patrol in the U.S. is analogous to him committing an offence within the country and subsequently being detained at a facility like North Fraser Pretrial and being physically unable to report. In that case, it would hardly be a valid reason for finding that somebody voluntarily did without reasonable excuse, in any event, fail to report, and I have to say there is some merit to that argument and I have a reasonable doubt on Count 1. There is clear evidence that he did not report, but I have to say that I accept that he has met the persuasive burden that is on him to establish a reasonable excuse that he failed to comply for whatever reason even though he knew that he was going to be in custody when he got arrested down there.

[42] Lots of folks commit crimes and know they are going to jail when they are on probation orders and they are still imbued with the ability to argue that there was a reasonable excuse for them not physically showing up at the probation office on a certain date and, in that case, I am going to have a reasonable doubt on Count 1.

[43] I find him not guilty on Count 1, but he is guilty on Counts 2 and 3.

(REASONS CONCLUDED)

APPENDIX E: JUSTIN Conviction List

Ministry of Attorney General

JUSTIN Conviction List

Accused: Fox, Patrick Henry

DOB: 24-NOV-1973

FPS Number: 275788G

CS #: 10582500

Alias: Fox, Patrick Henry; Riess, Ricky Steve; Fox, Patrick; Riess, Richard

Filters Applied Exclude Youth: ☐ Include 524/512.3: ☐ Include 810: ☐ Include MVA: ☐ Include NCR: ☒
 Include Non-Disclosure: ☐ Include Unknown Statutes: ☐

File Number	Charge	Offence Date	Disposition Date	Disposition Type	Sentence
27178-2 SRA Vancouver	(1) CCC 264- Criminal Harassment	11-JAN-2015	10-NOV-2017	Guilty	Jail - Jail Term that would have been imposed before Credit Granted: 3 Year(s); Actual Pre-Sentence Time in Custody: 17 Month(s); Credited Pre-Sentence Time in Custody: 25.5 Month(s) The Jail Term that would have been imposed before credit granted on Count 2 is: 10 months which is to be served CONSECUTIVELY to Count 1. ; Prohibition, Firearms, Mandatory Lifetime
	(2) CCC 93 1- Possess Firearm etc. where not allowed	17-MAY-2016			Jail - Jail Term that would have been imposed before Credit Granted: 10 Month(s); Actual Pre-Sentence Time in Custody: 17 Month(s); Credited Pre-Sentence Time in Custody: 25.5 Month(s) The Jail Term that would have been imposed before credit granted on Count 2 is: 10 months which is to be served CONSECUTIVELY to Count 1. ; Prohibition, Firearms, Mandatory Lifetime
			06-FEB-2019		(1,2) Change to Court Order
244069-5-BC PRA Vancouver	(1) CCC 733.1 1- Breach of Probation Order	15-MAR-2019	12-JUN-2020	Guilty	(1,2) Jail 1 Day(s) - Actual Pre-Sentence Time in Custody: 8 Month(s); Credited Pre-Sentence Time in Custody: 12 Month(s); Probation Order 18 Month(s)
	(2) CCC 733.1 1- Breach of Probation Order				

Ministry of Justice JUSTIN Conviction List

Accused: Fox, Patrick Henry

DOB: 24-NOV-1973

File Number	Charge	Offence Date	Disposition Date	Disposition Type	Sentence
244069-6-B PRA Vancouver	(1) CCC 733.1 1-Breach of Probation Order	07-MAR-2019	19-AUG-2020	Guilty	Jail 1 Day(s) - Jail Term that would have been imposed before Credit Granted: 6 Month(s); Actual Pre-Sentence Time in Custody: 4 Month(s); Credited Pre-Sentence Time in Custody: 6 Month(s); Probation Order 6 Month(s)
244069-7-B PRA Vancouver	(1) CCC 733.1 1-Breach of Probation Order	19-AUG-2020	12-APR-2021	Guilty	Jail 6 Month(s) - Jail Term that would have been imposed before Credit Granted: 16 Month(s); 15 Day(s); Credited Pre-Sentence Time in Custody: 10 Month(s); 15 Day(s); Probation Order 1 Year(s)
32532-1-W SRA Vancouver	(1) CCC 525 1-application: review detention where trial delay	17-NOV-2021	23-DEC-2021		Order Made See Court Inquiry for Order Made details
244069-8-B PRA Vancouver	(1) CCC 733.1 1-Breach of Probation Order	15-AUG-2021	25-FEB-2022	Guilty	Jail 2 Month(s), 18 Day(s) - Jail Term that would have been imposed before Credit Granted: 12 Month(s); Actual Pre-Sentence Time in Custody: 6 Month(s); 8 Day(s); Credited Pre-Sentence Time in Custody: 9 Month(s); 12 Day(s); Probation Order 3 Year(s)

This report may contain information regarding youth matters provided to you pursuant to Sections 124 and 125 of the *Youth Criminal Justice Act* (Canada). Disclosure of this information to other parties may be subject to Sections 119 and 123 of the *Youth Criminal Justice Act* (Canada).

This report does not contain information about any offences for which a pardon has been granted.

This report does not contain any information about orders or obligations under the *Sex Offender Information Registration Act*.

APPENDIX F:
Probation Order
244069-5BC

Probation Order (Prison)

Police File No.
704:19-10877

Court File No.
2040:244069-5-BC

SUM

Canada: Province of British Columbia

Ban Other
Ban on Publication CCC 517(1)

Primary Enf. Agency:

D.O.B.: November 24, 1973

☐ Interpreter present

Proceeded: **Summarily**

Whereas on **March 6, 2020** at **Vancouver**, British Columbia,

Patrick Henry Fox

(the "offender") was convicted or found guilty, as the case may be, upon the following charge(s) and on **June 12, 2020** the Court adjudged that the offender be **imprisoned** in the Province of British Columbia as follows:

Count 2, on or about March 15, 2019, at or near Surrey BC, did commit an offence of Failure to comply with probation order, contrary to section 733.1(1) Criminal Code.

SENTENCE: Jail: 1 Day(s) [Actual Pre-Sentence Time in Custody: 8 Month(s); Credited Pre-Sentence Time in Custody: 12 Month(s)]; Probation Order: 18 Month(s);

Count 3, on or about March 15, 2019, at or near Surrey BC, did commit an offence of Failure to comply with probation order, contrary to section 733.1(1) Criminal Code.

SENTENCE: Probation Order: 18 Month(s); Jail: 1 Day(s) [Actual Pre-Sentence Time in Custody: 8 Month(s); Credited Pre-Sentence Time in Custody: 12 Month(s)];

I have read or have had read to me and understand a total of 2 Charges

UPDATED 2040: 244069-5--BC on JUNE 12, 2020: Order explained to offender and acknowledged in court

and in addition thereto, that the said offender comply with the conditions hereinafter prescribed:

Now, therefore, the said offender shall for the period stated above, from the date of expiration of imprisonment, comply with the following conditions, namely, that the said offender shall:

Condition 1: Keep the peace and be of good behaviour.

Condition 2: Appear before the Court when required to do so by the Court.

Condition 3: Notify the Court or the Probation Officer in advance of any change of name or address, and promptly notify promptly notify the Court or the Probation Officer of any change of employment or occupation.

=====

Condition 4: You are not to attend within 500 metres of the Canada - United States Border.

I have read or have had read to me and understand a total of 4 Conditions

Dated / Fait le **June 12, 2020** at / à **Vancouver**, British Columbia / Colombie-Britannique

I, the undersigned offender, acknowledge that I have received:

- a copy of the Probation Order
- an explanation of the substance of the sections dealing with changes to the Probation Order and failing to comply with the Probation Order (Sec 732.2(3) and (5), and Sec 733.1), and
- an explanation of the procedures for applying for changes to the Probation Order,

and that I understand the terms of this Probation Order and the explanations which I have received.

Signature not required



Offender / Contrevenant(e)

Address / Adresse :

NFA

Vancouver, BC, Canada

Phone Number / Numéro de téléphone :

Je, le(la) contrevenant(e) soussigné(e), reconnais que j'ai reçu :

- une copie de l'Ordonnance de probation
 - une explication du contenu des articles ayant trait aux changements apportés à l'Ordonnance de probation et au défaut de se conformer à l'Ordonnance de probation (Art. 732.2(3) et (5), et Art 733.1), et
 - une explication des procédés à suivre pour faire une demande de changements à l'Ordonnance de probation,
- et que je comprends les conditions de cette Ordonnance de probation et les explications que j'ai reçues.

K. Anderson 2020.06.12 15:33:19
-07'00'

A Clerk of the Court on behalf of / Un greffier du tribunal au nom du
Judge / juge D St. Pierre, in and for the Province of British Columbia /
dans et pour la province de la Colombie-Britannique

Probation (Prison)

Ordonnance de probation (prison)

Nu. de dossier de la police Nu. de dossier du greffe
704:19-10877 2040:244069-5-BC

SUM

Canada: Province de la Colombie-Britannique

☐ Interprète présent

Ban Other

Ban on Publication CCC 517(1)

Org. prim. d'app. de la loi :

D.D.N. : November 24, 1973

Procédé : **par procédure sommaire**

Attendu que le **March 6, 2020** à **Vancouver**, Colombie-Britannique,

Patrick Henry Fox

(le(la) <<contrevenant(e)>>) a été condamné(e) ou reconnu(e) coupable, selon le cas, de l'(des) infraction(s) suivante(s) et le **June 12, 2020** le tribunal a décidé que le(la) contrevenant(e) soit **incarcéré(e)** dans la province de la Colombie-Britannique comme suit :

Count 2, on or about March 15, 2019, at or near Surrey BC, did commit an offence of Failure to comply with probation order, contrary to section 733.1(1) Criminal Code.

SENTENCE: Jail: 1 Day(s) [Actual Pre-Sentence Time in Custody: 8 Month(s); Credited Pre-Sentence Time in Custody: 12 Month(s)]; Probation Order: 18 Month(s);

Count 3, on or about March 15, 2019, at or near Surrey BC, did commit an offence of Failure to comply with probation order, contrary to section 733.1(1) Criminal Code.

SENTENCE: Probation Order: 18 Month(s); Jail: 1 Day(s) [Actual Pre-Sentence Time in Custody: 8 Month(s); Credited Pre-Sentence Time in Custody: 12 Month(s)];

J'ai lu ou j'ai m'a lu et je comprends 2 inculpations

et, de plus, que ledit (ladite) contrevenant(e) se conforme aux conditions prescrites suivantes :

Pour ces motifs, ledit (ladite) contrevenant(e) devra pour la période ci-dessus prescrite à compter de la date d'expiration de la sentence d'emprisonnement, se conformer aux conditions suivantes, notamment que ledit (ladite) contrevenant(e) devra :

Condition 1: Keep the peace and be of good behaviour.

Condition 2: Appear before the Court when required to do so by the Court.

Condition 3: Notify the Court or the Probation Officer in advance of any change of name or address, and promptly notify promptly notify the Court or the Probation Officer of any change of employment or occupation.

=====

Condition 4: You are not to attend within 500 metres of the Canada - United States Border.

J'ai lu ou j'ai m'a lu et je comprends 4 conditions

Probation (prison)

Important Information for a Person Placed on Probation

1. Changes to a Probation Order

Criminal Code Section 732.2(3)

You may apply to change or cancel a condition of your *Probation Order*, or reduce the time you will be on probation. Ask the Court Registry for an *Application to a Judge* form, to make this request.

The probation officer or the prosecutor may also ask to change or cancel a condition of your *Probation Order*, or to reduce the time you will be on probation.

You may have to appear in court, and the Court may issue a *Warrant* or *Summons* to make you appear.

If any changes are made, you will have to sign the changed *Probation Order* and you will receive a copy.

Criminal Code Section 732.2(5) and Section 730(4)

The prosecutor may ask to have you come back to court if you are convicted of another offence, including breach of probation, as long as:

- you have not appealed that conviction, or
- you are out of time to appeal it, or
- your appeal was dismissed, or
- you do not intend to appeal.

The Court may then:

- revoke a *Suspended Sentence* or a *Conditional Discharge* and give you a different sentence, or
- change the additional conditions, or
- extend your probation by up to one more year.

2. Failure to Comply with a Probation Order

Criminal Code Section 733.1

If you are on probation and fail to comply with the order, you can be charged with "breach of probation". If the Court finds you guilty of a breach of probation, you can be sentenced to:

- a jail term for up to four years, if the Crown proceeds by indictment, or
- a jail term for up to two years less a day, or a fine of up to \$5,000.00, or both if the Crown proceeds by summary conviction.

Your court appearance for a breach charge does not have to be where your *Probation Order* was made. You may appear in the court closest to where the offence happened, or where you were found, arrested, or in custody.

3. Changes to Personal Information

If you change your name or address, you must notify the Court or your probation officer of any change in advance. Any changes to other personal information, including your employment or occupation must be reported to the Court or your probation officer. To report any changes, you should ask the Court Registry or your probation officer for a *Notice of Change of Personal Information* form.

This is an information sheet. In the event of any conflict between this information and any Act(s) or law, the provisions of the Act(s) apply.

Renseignements importants à l'intention d'une personne mise en probation

1. Modification d'une ordonnance de probation

Article 732.2(3) du Code criminel

Vous pouvez faire une demande de modification ou d'annulation d'une condition de votre *ordonnance de probation* ou de réduction de la durée de votre mise en probation. Pour ce faire, demandez un formulaire de Demande à un juge au greffe de la cour.

L'agent de probation ou le(la) poursuivant(e) peut également demander de modifier ou d'annuler une condition de votre ordonnance de probation, ou de réduire la durée votre mise en probation.

Vous devrez peut-être comparaître devant un tribunal et le tribunal peut émettre *un mandat* ou une *somation* pour vous obliger à comparaître.

En cas de changement, vous devrez signer *l'ordonnance de probation* modifiée et vous en recevrez une copie.

Articles 732.2(5) et 730(4) du Code criminel

Le(la) poursuivant(e) peut demander votre comparution devant le tribunal si vous êtes déclaré(e) coupable d'une autre infraction, y compris un manquement aux conditions de la probation, pourvu que :

- vous n'avez pas interjeté appel de cette déclaration de culpabilité, ou
- le délai d'appel soit expiré, ou
- votre appel ait été rejeté, ou
- vous n'avez pas l'intention d'interjeter appel.

Le tribunal peut alors :

- révoquer une *condamnation* avec sursis ou une *libération conditionnelle* et vous infliger une peine différente, ou
- modifier les conditions supplémentaires, ou
- prolonger la durée de votre probation d'au plus un an.

2. Défaut de se conformer à une ordonnance de probation

Article 733.1 du Code criminel

Si vous avez été mis(e) en probation et que vous omettez de vous conformer à l'ordonnance, vous pouvez être inculpé(e) d'un manquement aux conditions de la probation. Si le tribunal vous reconnaît coupable d'un manquement aux conditions de la probation, vous pouvez être condamné(e) à :

- une peine d'emprisonnement d'au plus quatre ans, si la Couronne procède par mise en accusation, ou
- une peine d'emprisonnement pouvant deux ans moins un jour, ou une amende d'au plus 5 000 \$, ou les deux, si la Couronne procède par déclaration sommaire de culpabilité.

Votre comparution devant le tribunal pour manquement aux conditions de l'ordonnance ne doit pas nécessairement se faire au lieu où l'ordonnance de probation a été rendue. Vous pouvez comparaître devant le tribunal le plus près du lieu où l'infraction a été commise, ou du lieu où vous avez été trouvé(e), arrêté(e) et mis(e) sous garde.

3. Changements de renseignements personnels

Si vous changez de nom ou d'adresse, vous devez en aviser le tribunal ou votre agent de probation à l'avance. Vous devez également informer le tribunal ou votre agent de probation de tout autre changement de renseignements personnels, y compris un changement d'emploi ou de métier ou profession. Afin de signaler un changement quelconque, vous devriez demander le formulaire *Avis de changement de renseignements personnels* au greffe de la cour ou à votre agent de probation.

La présente est une feuille de renseignements. En cas de conflit entre ces renseignements et une ou plusieurs lois, les dispositions de la (des) loi(s) s'appliquent.