

**File No: 244069-5-BC
Registry: Vancouver**

In the Provincial Court of British Columbia

REGINA

v.

PATRICK HENRY FOX

**RULING ON VOIR DIRE
OF
THE HONOURABLE JUDGE ST. PIERRE**

COPY

Crown Counsel:

B. Wolfe

Appearing on his own behalf:

The Accused

Place of Hearing:

Vancouver, B.C.

Date of Judgment:

August 15, 2019

[1] THE COURT: The evidence that we heard from witnesses that dealt with Mr. Fox, at least the investigators that we heard from, Constable Tyler Hawkins and Constable Brown indicated that their interactions with Mr. Fox were relatively limited to delivering the arrest script and with general conversation about his welfare as he was in custody and they were asking about whether he had eaten or had anything to drink. They transported him uneventfully back to the detachment and that was on April 4th.

[2] This particular statement was taken by Corporal Potts, who was briefed by investigators, had no other contact or involvement in the investigation itself but was simply tasked to interview Mr. Fox because he had a certain skillset with respect to interviewing. He interacted with Mr. Fox at 228 hours on April 4, 2019 -- that is 2:28 p.m. on April 4, 2019, that is when the interview commenced and went on for a couple of hours.

[3] We heard from Corporal Potts about his entire interactions with Mr. Fox. He recorded his entire interaction with Mr. Fox by use of a small portable digital recorder, which he used when he went to retrieve Mr. Fox from the cell to the interview room, and then also overlapping that with the recording equipment that is contained inside the interview room. At some point during the course of the interview they left, the two of them, for a smoke break and we heard the audio from the entirety of that exit for the smoke break. Then back to the interview room, and then we heard the audio from the digital recorder with respect to taking Mr. Fox back to the cell unit.

[4] It is clear that he was asked on several occasions by both the investigators

and Cpl.. Potts about counsel, about his right to remain silent and that anything he said could be used against him. It is clear from their conversation, and I agree with Crown on this point, that Mr. Fox appeared to be very comfortable. He appeared to be very generous with his comments to Corporal Potts and on many occasions, without prompting and without response to any clear question, Mr. Fox would supply information about events that were voluntary, it appeared, or just simply without any prompting whatsoever. So he seemed to be aware during that questioning about the nature of some of the questions and he himself carefully considered the questions and on several occasions told Corporal Potts that that particular question, "I don't want to answer," and had considered whether he wanted to answer that question or not. He was very forthcoming.

[5] So the issue at common law again is voluntariness. Voluntariness has taken on essentially a reliability assessment. The rules with respect to admissibility of confessions have always been concerned with reliability but before cases like *Oickle* and [indiscernible], it was traditionally more focused on things like bald threats or coercive action and now it is quite a wider inquiry in the development of the rule as explained in *Oickle*. In summary, the courts have to remember that the police may often offer some kind of inducements to a suspect to obtain a confession.

This is at paragraph 57 of *Oickle*:

. . . Few suspects will spontaneously confess to a crime. In the vast majority of cases, the police will have to somehow convince the suspect that it is in [their] best interests to confess [or to talk about it]. This becomes improper only when the inducements, whether standing alone or in combination with other factors, are strong enough to raise a reasonable doubt about whether the will of the subject has been overborne. ...

The most important consideration in all questions is to look for those factors regardless of whether it comes specifically or strictly from some kind of threat or promise. There can be a number of other different factors.

[6] So I have considered the entirety of the interactions that Mr. Fox had with the police. I have considered whether on a common law basis his will was overborne by any of the interactions or the circumstances surrounding the giving of his interview with Corporal Potts. I have endeavoured to take into account all those circumstances and asked myself whether they give rise to a reasonable doubt as to the voluntariness of the “confession”, as it were, taking into account all the aspects of the jurisprudence which Mr. Wolfe has set out in his submissions regarding voluntariness and some additional submissions referring to the facts. It is clear to me that the Crown has proved that Mr. Fox provided this statement voluntarily, as that notion is known at common law, and has met the onus on them to prove that fact beyond a reasonable doubt.

[7] So the statement is voluntary. It is held back for the purposes of cross-examination, is my understanding. Is that right, Mr. Wolfe?

[8] MR. WOLFE: Yes.

[9] THE COURT: So it is not part of the Crown's case at this point. It is simply held back for the purposes of what we often refer to as impeachment or cross-examination of Mr. Fox. If you were to call evidence on your behalf, the Crown could use that statement to cross-examine you.

[10] So with that ruling complete, Mr. Wolfe, the statement being admissible for

the purposes of cross-examination as it is found voluntary, is the Crown calling any other evidence?

[11] MR. WOLFE: No. With respect to my application to have Hawkins' and Brown's evidence from the voir dire admitted, what is the court's ruling, please.

[12] THE COURT: Right. Okay. So with respect to the evidence of Hawkins and Brown, their testimony, any admissible evidence that was given by those two during the voir dires is going to become part of the trial proper.

(REASONS CONCLUDED)