

COURT OF APPEAL

ON APPEAL FROM THE PROVINCIAL COURT OF BRITISH COLUMBIA,
FROM THE JUDGMENT OF THE HONOURABLE JUDGE N. PHILLIPS,
PRONOUNCED ON THE 19TH DAY OF AUGUST 2020, AND FROM THE
SENTENCE PRONOUNCED ON THE 19TH DAY OF AUGUST 2020.

REGINA

RESPONDENT

v.

PATRICK HENRY FOX

APPELLANT

APPEAL BOOK

Ministry of Justice, Solicitors for the Crown (Respondent)
Criminal Justice Branch, Criminal Appeals
6th Floor, 865 Hornby Street
Vancouver, B.C. V6Z 2G3
Phone: (604) 660-1126

David Layton, Q.C.

Patrick Fox, Appellant
Appearing on his own behalf

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INFORMATION / DÉNONCIATION

Court Identifier: **2040: PRA**
Court File Number: **244069**
Type Reference: **B**
Inf. Seq Number: **6**
Agency File Number: **401:19-49074**

DNA: ☐ SOR: ☐ K File: ☐

CANADA:

PROVINCE OF BRITISH COLUMBIA
PROVINCE DE LA COLOMBIE-BRITANNIQUE

"By Indictment"

This is the information of / Les présentes constituent la dénonciation de **R Gill**, a / un(e) **Court Liaison Officer** (the "Informant" / le "Dénonciateur") of / de **Vancouver**, 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, between March 7 and March 21, 2019, at or near Vancouver, in the Province of British Columbia, while bound by a probation order made by The Honourable Madame Justice Holmes in the Supreme Court of British Columbia on November 10, 2017, did without reasonable excuse fail to comply with such order by making publicly available the website, www.desicapuano.com, contrary to Section 733.1(1) of the Criminal Code.

Count 2

Patrick Henry FOX, between March 7 and March 21, 2019, at or near Vancouver, in the Province of British Columbia, while bound by a probation order made by The Honourable Madame Justice Holmes in the Supreme Court of British Columbia on November 10, 2017, did without reasonable excuse fail to comply with such order by accessing the internet or any computer or cellular network, contrary to Section 733.1(1) of the Criminal Code.

THE INFORMATION SWORN ON **DECEMBER 4, 2019** CONTAINS A TOTAL OF 2 COUNTS ON 1 PAGE.

SWORN / ~~AFFIRMED~~ BEFORE ME / ~~ASSERMENTÉ / AFFIRMÉ~~ DEVANT MOI
ON / CE **4TH** DAY OF / JOUR DE **DECEMBER, 2019**
AT / À **VANCOUVER**
BRITISH COLUMBIA / COLOMBIE-BRITANNIQUE

D. Toy

2019.12.04 10:11:37
-08'00'

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

Wed Dec 4 2019 10:06:54

SIGNATURE OF INFORMANT /
SIGNATURE DU DÉNONCIATEUR

Patrick Henry FOX: Warrant
PROCESS / ACTE DE PROCÉDURE ISSUED

D. Toy

2019.12.04 10:12:03
-08'00'

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

Provincial Court Record of Proceedings and Endorsement of Information

Court File No.
240:244069-6-B PRA

Court File No.

Police Agency and File No.
401:19-49074

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
04-DEC-19	9:00AM	REG	APP		N		N			WH		NIC	D Toy		✓
Appearance Notes and Orders Warrant held to Dec.11.2019; Heard at: Vancouver Provincial Court (2040)															
11-DEC-19	9:00AM	304	APP		N		N	Bernie Wolfe		SBS		IC	H Wullum		✓
Appearance Notes and Orders Heard at: Vancouver Provincial Court (2040)															
11-DEC-19	9:30AM	101	APP		P		N	Crown Ad Hoc		IBC		IC	J Oulton		✓
Appearance Notes and Orders Heard at: Vancouver Provincial Court (2040) WARRANT EXECUTED: Held Warrant deemed executed by order of Judge. ;															
19-DEC-19	9:30AM	101	JIR		P		N	Crown Ad Hoc		IBC		IC	L N Bakan		✓
Appearance Notes and Orders Heard at: Vancouver Provincial Court (2040)															
08-JAN-20	9:30AM	101	JIR		P		N	Crown Ad Hoc		IBP		IC	D Senniwi		✓
Appearance Notes and Orders Heard at: Vancouver Provincial Court (2040)															
03-FEB-20	9:30AM	101	JIR		P		N	Bernie Wolfe		IBJ		IC	J Bahen		✓
Appearance Notes and Orders Heard at: Vancouver Provincial Court (2040)															
10-FEB-20	9:30AM	101	FXD		PV		N	Bernie Wolfe		IBP		IC	B A Dyer		✓
Appearance Notes and Orders Heard at: Vancouver Provincial Court (2040)															
11-FEB-20	9:30AM	101	FXD		PV		N	Bernie Wolfe		IBC		IC	J F Werier		✓
Appearance Notes and Orders Detention Order by Consent. Crown does not oppose future bail application.; Heard at: Vancouver Provincial Court (2040)															
21-FEB-20	2:00PM	102	AHR		PV		N	Crown Ad Hoc		IBJ		IC	J Sutherland		✓
Appearance Notes and Orders Heard at: Vancouver Provincial Court (2040) March 11, 2020 2:00PM FXD REG at Vancouver Law Courts;															
21-FEB-20	2:20PM	102	APP		PV		N	Crown Ad Hoc		IBJ		IC	J Sutherland		✓
Appearance Notes and Orders Heard at: Vancouver Provincial Court (2040)															
24-FEB-20	9:30AM	102	CTD		PV		N	Crown Ad Hoc		IBJ		IC	J Bahen		✓
Appearance Notes and Orders Heard at: Vancouver Provincial Court (2040)															
19-MAY-20	9:30AM	102	APP		PV		N	Rosanne Sinclair	T	IBC		IC	P L Doherty		✓
Appearance Notes and Orders Csl - Bridal, C; Heard at: Vancouver Provincial Court (2040)															
25-MAY-20	2:00PM	303	CLC		PV	Bridal, C	C	Bernie Wolfe		IBJ		IC	D St. Pierre		✓
Appearance Notes and Orders Heard at: Vancouver Provincial Court (2040)															

Provincial Court Record of Proceedings, 244069-6-B

01-JUN-20	2:00PM	101	CTD		PV		N	Bernie Wolfe	T	IBJ		IC	J Sutherland		✓
Appearance Notes and Orders Heard at: Vancouver Provincial Court (2040)															
15-JUN-20	2:00PM	101	APP		PV		N	Crown Ad Hoc	T	IBC		IC	J Sutherland		✓
Appearance Notes and Orders Heard at: Vancouver Provincial Court (2040)															
18-JUN-20	9:30AM	101	APP		PV		N	Crown Ad Hoc	T	IBJ		IC	D Senniw		✓
Appearance Notes and Orders Heard at: Vancouver Provincial Court (2040)															
06-JUL-20	9:00AM	304	FT									IC			
Appearance Notes and Orders Heard at: Vancouver Provincial Court (2040)															
06-JUL-20	9:30AM	305	FT		P		N	Crown Ad Hoc		IBJ		IC	K Denhoff		✓
Appearance Notes and Orders Heard at: Vancouver Provincial Court (2040) Strike 8-jul-2020 CNT date ; Crown adjournment application granted per J. Denhoff;															
07-JUL-20	9:30AM	304	CNT									IC			
Appearance Notes and Orders Heard at: Vancouver Provincial Court (2040)															
15-JUL-20	9:30AM	307	FT		PV		N	Crown Ad Hoc		IBD		IC	J Bahen		✓
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 Patrick Henry FOX is ordered to deliver the prisoner to the Sheriff for court attendance on August 19, 2020. After court, the prisoner is then to be returned to the person having custody.; Accused appears by video from NFPTC.;															
19-AUG-20	9:30AM	510	FT		P		N	Crown Ad Hoc		END		IC	N Phillips		✓
Appearance Notes and Orders Heard at: Vancouver Provincial Court (2040) Judge orders that the probation order be reviewed with the offender by a JP and his signature be taken. ;															

ARRAIGNMENT

Date DD-MMM-YY	Event	Detail
21-FEB-20	Arraignment	Waives Reading
19-AUG-20	Arraignment	Information Read

JUDICIAL INTERIM RELEASE OR DETENTION

☐ Additional JIRs FollowingDate Ordered
DD - MMM - YY

11-FEB-20

Ordered by Judge / Justice: J F Werier

☒ Detention Order☐ Detained under s. 524(4) or (8)☐ Previous ConvictionRelease Date
DD - MMM - YY☐ Bail covers these informations:☐ Named Sureties:

Amount:

☐ Deposit:☐ Sureties:☐ Alternate Bail:☐ Conditions (See below)☐ POR☐ CFC☐ Passport

Remarks:

Document Status:

Date:

Provincial Court Record of Proceedings, 244069-6-B

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: By Indictment

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
19-AUG-20	1		✓					
19-AUG-20	2		✓					

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
19-AUG-20	1	✓									

FINAL DISPOSITION

Date DD-MMM-YY	Count	Proceed on New Information Number	Mental Disorder	Stay of Proceedings by						T I P	T O P	With- drawn	Abated	Nullity	Quashed	Charges Dismissed	Acquitted
				J S P	K S P	S O P	Prosecutor	Judge									
19-AUG-20	2																✓

SENTENCE

Date DD-MMM-YY	Count	Description	Sentence Term	Amount	Due / TTP Date
19-AUG-20	1	Jail	1 Day(s)		
Date DD-MMM-YY	Count	Description	Sentence Term	Amount	Due / TTP Date
19-AUG-20	1	Actual Pre-Sentence Time in Custody	4 Month(s)		
Date DD-MMM-YY	Count	Description	Sentence Term	Amount	Due / TTP Date
19-AUG-20	1	Credited Pre-Sentence Time in Custody	6 Month(s)		
Date DD-MMM-YY	Count	Description	Sentence Term	Amount	Due / TTP Date
19-AUG-20	1	Jail Term that would have been imposed before Credit Granted	6 Month(s)		
Date DD-MMM-YY	Count	Description	Sentence Term	Amount	Due / TTP Date
19-AUG-20	1	Probation Order	6 Month(s)		
Details: Conditions - See below					

CONDITIONS

APPEARANCE: 19-AUG-2020 09:30 AM SENTENCE: Probation Order COUNT: 1

Keep the peace and be of good behaviour.

Provincial Court Record of Proceedings, 244069-6-B

APPEARANCE: 19-AUG-2020 09:30 AM SENTENCE: Probation Order COUNT: 1

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.

Within 48 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 or any of her friends, relatives employers or co-workers, including the websites published under the domain www.desireecapuano.com and www.desicapuano.com are no longer available via the internet or by any other means.

Patrick Fox
1451 Kinsseey Ave
Port Coquitlam, BC
V3C 1S2

June 6, 2019

Attn: Detective Jennifer Fontana
Vancouver Police Dept.
2120 Cambie St.
Vancouver, BC V5Z 4N6

Re: Investigation into Patrick Fox,
desicapiano.com website

Dear Det. Fontana:

I have been informed by Kirsty Brown of the
Burnaby RCMP that you are in charge of the
investigation into the website hosted at www.
desicapiano.com.

I assume by now you've reviewed the website and,
in particular, the "R. v. Fox" section of it. And,
I further assume you have reviewed the affidavit
in support of my claims of ineffective assistance of
counsel; as well as the HTML versions of the transcripts

wherein I've highlighted many of Capraano's perjurious statements and explained where the proof is (especially right on the very website) that her sworn statements were false (and that Tony Capraano and Mark Myhr knew she was lying).

And, having reviewed all of that, I am guessing you have come to the only reasonable conclusion - that there is absolutely no way we'll be able to have another criminal harassment trial which will depend on Capraano's testimony. Obviously, I'm going to make sure she's cross-examined on every one of those instances of perjury.

Obviously, with the proof of Capraano's excessive perjury and blatant manipulation of the jury at the first trial, she will have absolutely no credibility at another trial. In other words, I think we all know there is absolutely no way of getting a conviction on another criminal harassment charge (this is, of course, why the Barnaby Rump dumped the case on you).

On the other hand, how do you and the Crown explain NOT pressing another criminal harassment charge to the many angry feminists and Canadian news media who adamantly refuse to accept that Capraano is simply an evil person? Particularly,

since by publishing the new website I have engaged in exactly the same conduct which Justice Heather Holmes declared formed much of the basis of the guilty verdict in 2017 (at the first criminal harassment trial). I mean, if the website constituted criminal harassment at that point then it must certainly still constitute criminal harassment now! Right?

I suppose the VPD and the Crown could simply admit that Capuano lied extensively; that Lapointe and Myhre colluded extensively to suppress critical evidence, and to offer perjured testimony; and that Justice Holmes repeatedly and blatantly refused to acknowledge or consider any evidence in my favor. I mean, the proof of all of that is on the website any way; it's all publicly accessible; there's no point in denying it any more.

So, any way, in closing, I respectfully request your charge me with criminal harassment and with violating probation by publishing the new website. Alternatively, I would like to request your declare publicly that such charges will not be forthcoming. Either way, I would certainly appreciate the return of my property (phone, tablet, et cetera), at your convenience.

I thank you for your time and assistance in these matters and I look forward to hearing from you soon.

Sincerely,

A handwritten signature in dark ink, appearing to be 'Patrick Fox', enclosed within a large, loopy oval flourish.

Patrick Fox

P.S. I apologize if this letter comes across as sarcastic or antagonizing. That is not my intention. I am merely attempting to communicate regarding the status of the investigation.

Probation Order (Prison)

Canada: Province of British Columbia

Ban - See Attachment

☐ 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 :

**203-3846 Sunset St
Burnaby, BC, Canada V5G 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. Dyer

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)

Canada: Province de la Colombie-Britannique

☐ Interprète présent
Interdit -

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

IND

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 pages 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 your 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. HD

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 17 Conditions on 2 Conditions Attachment Pages/ J'ai lu ou j'ai m'a lu et je comprends 17 conditions sur 2 pages 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
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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 eighteen months, 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 d'au plus dix-huit mois, 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.

Ministry of Attorney General JUSTIN Conviction List

Accused: Fox, Patrick Henry**DOB:** 24-NOV-1973**FPS Number:** 275788G**CS #:** 10582500**Alias:** Riess, Ricky Steve; Riess, Richard

Filters Applied Exclude Youth: ☐ Include 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. ; Probation Order 3 Year(s); 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				

File No: 244069-6-B
Registry: Vancouver

In the Provincial Court of British Columbia

REGINA

v.

PATRICK HENRY FOX

**REASONS FOR JUDGMENT
OF
THE HONOURABLE JUDGE N. PHILLIPS**

COPY

Crown Counsel: C. Johnson

Appearing on his own behalf: Patrick Fox

Place of Hearing: Vancouver, B.C.

Date of Judgment: August 19, 2020

[1] **THE COURT:** Mr. Patrick Henry Fox is before the court today for trial on Information 244069-B-6. This is a matter that the Crown has proceeded by indictment, but it is within the absolute jurisdiction of this Provincial Court. There are two counts on the information, both of which allege that Mr. Fox breached a term of his probation without reasonable excuse between March 7 and March 21, 2019. I will turn to the specifics of the two allegations in front of the court more in the course of giving my decision following this brief trial that was held this morning.

[2] Before the Crown called its only witness in the case, Mr. Fox, who is self-represented, admitted that he was on probation at the times set out in the information. That probation order, which was referred to in some further detail over the course of this trial, is from now Associate Chief Justice Holmes of the Supreme Court of British Columbia, which was imposed by Justice Holmes on November 10, 2017.

[3] The only witness called for the Crown was Detective Constable Jennifer Fontana. Constable Fontana told the court, amongst other things, that she had met with Mr. Fox after being assigned the investigation of this matter, and she identified him in the courtroom. There is no issue taken with respect to the question of identity in the context of this trial.

[4] The officer told the court that she was tasked with investigating a specific website, "www.desicapuano.com," and said that she was aware through that investigation of a person by the name Desiree Capuano, who she understood to be Mr. Fox's ex-partner. The officer also told the court she was aware that Mr. Fox had been before Justice Holmes in 2017 and placed on probation by the Supreme Court

and she was aware of the conditions of that probation order.

[5] After being assigned as the investigator in this matter, she said, amongst other things, that she went onto the Internet and conducted a Google search and found the website, which address I have just stated on the record, quite easily. She said that occurred on March 18, 2019. Subsequent to that time she has checked that website frequently throughout her investigation and checked the morning of this trial, and determined it is still active and available to the public.

[6] She said the gist of the website when she has viewed it is that it contains quite a bit of information. Most of it is about Ms. Capuano stating such things as her address, her phone number, and her email. She said it depicts Ms. Capuano in a very negative light, with negative postings about her and her personal life. The officer said because she has not met with Ms. Capuano but only spoken with her on the phone, she could not comment on whether the website was truthful or not. She said it also included pictures of Ms. Capuano's home and documents from what the officer understood to have been the 2017 Supreme Court trial, including audio clips of certain witnesses' testimony from that trial.

[7] The officer said, as part of her investigative duties in this matter, she determined that the host for the website was an outfit named GoDaddy. She was able to ask them or require them to take the site down for 90 days. However, because the site only allows for a longer disabling by way of an American court order and because of her work demands, she has not been able to obtain such an order so the site is back operating.

[8] Officer Fontana told the court that in June of 2019, she received a

handwritten letter from Mr. Fox, a four-page letter, which was marked Exhibit 1 in this trial. That letter was addressed to her and it was about the investigation into the website in question. She said on June 24, 2019, she met with Mr. Fox and they discussed, amongst other things, the letter. She said in the course of that meeting, which was audio-recorded, Mr. Fox acknowledged being the creator of the website. She was asked by the Crown whether Mr. Fox told her he was the author and she answered, "He asked me if I had received his letter." She said, "I gave him a chance to review the letter and he said, 'Oh, yes,'" and handed it back to her. She said she asked him if he was running it, in other words, the website, and if he created it and he said he had.

[9] Mr. Fox cross-examined Officer Fontana about the matter of the website and she agreed that there had been an earlier website that had a slightly different name and that his June 6, 2019 letter to her referenced the name of the new website, which is "desicapuano" rather than "desireecapuano.com."

[10] The officer was cross-examined about whether she knew when the website was published or created and, in particular, whether it was published or created before or after December 30, 2018. The officer said, in essence, that she did not know when it was published, but she believed it had had to have been after the 2017 trial because it contained information related to that trial. She also referenced knowing it was made public in March from her own examination because she said some information had been sent out to multiple news markets as well as to the Crown.

[11] The officer said that the probation order from Justice Holmes had been

varied. The variation, according to the copy of the order which was marked Exhibit 2 in this hearing, references the date of February 6, 2019, from which she thought an inference could be drawn that Mr. Fox would have been on probation at that time.

[12] The officer was also cross-examined on whether there was anything in the conditions on the probation order that prohibit Mr. Fox from having someone else engage in conduct on his behalf that would put him in violation of Condition 12. In other words, whether there was something in the probation order that would prohibit him, for example, from asking a jail guard to look up something on an innocuous website, such as the CBSA address, on his behalf. The officer answered, "I think accessing an address and posting personal information about someone are very different things." However, when pressed further about whether information could have been put onto the Internet by someone other than Mr. Fox, the officer answered, "Yes, anything is possible."

[13] The officer was questioned about whether she had any idea whether the website in question was made publicly accessible before or after the probation order took effect, to which she said, "I don't have that information." She was also cross-examined about whether Mr. Fox himself made the site publicly available or someone else on his behalf did so, to which she answered, "Well, when we met," that is, in June 2019, Mr. Fox had told her he created the website. She was asked whether it was her understanding that Mr. Fox wanted to be prosecuted for criminal harassment based on the current website, to which she answered, "Yes," and that she understood Mr. Fox had brought the website to light knowing that an investigation would follow.

[14] In re-direct, the officer finally was asked about the new, that is the "desi.com" not the "desiree.com," website. She believed it included information from the old website and new information leading her to think that information would have been uploaded to the new website after Mr. Fox was out of custody. That was an inference she drew.

[15] Mr. Fox's letter to the officer, as I said, was marked Exhibit 1 in this proceeding. It should be read in its entirety in conjunction with my reasons for judgment. I am going to highlight two specific excerpts from that letter. I should say at the outset that the first paragraph of Mr. Fox's letter references investigation into the website hosted as www.desicapuano.com. Starting with the last sentence at the bottom of page 2:

Particularly since my publishing the new website, I have engaged in exactly the same conduct which Justice Heather Holmes declared formed much of the basis of the guilty verdict in 2017 (at the first criminal harassment trial). I mean, if the website constituted criminal harassment at that point, then it must certainly still constitute criminal harassment now. Right?

[16] At the bottom of page 3, the first sentence of the final paragraph states:

So, anyway, in closing, I respectfully request you charge me with criminal harassment and with violating probation by publishing the new website.

[17] That was the evidence led by the Crown at this trial against Mr. Fox. Mr. Fox elected not to call any evidence. The Crown position at the conclusion of the trial was as follows. The Crown acknowledged it had not proven when the new website was created, but said that was not necessary. It was submitted that the Crown had, in fact, proven that Mr. Fox contributed to the website and that the evidence at the

trial leads overwhelmingly to the inference that must be the case. In the letter of Mr. Fox from June 6, 2019, to the officer he acknowledges being the author of the website. He spoke with the officer subsequent to that letter later and admitted to the authorship as conclusive and direct proof to that effect.

[18] Mr. Johnson also noted that the officer testified that when she spoke with Mr. Fox, he told her he had created the website. Based on his admissions to the officer and his letter and the fact that the website remains in existence, should lead this court to find that there has been a clear contravention of the probation order and thus Mr. Fox should be found guilty of Count 1 on the information.

[19] With respect to Count 2, the Crown submitted it is clear that Mr. Fox must have had access to the Internet in order to update the website and post materials on the Internet and, thus the Crown has proven its case on Count 2.

[20] Before turning to Mr. Fox's submissions, I think it is helpful to review the specific wording of both Counts 1 and 2 on the information. Count 1 in its entirety reads:

Patrick Henry FOX, between March 7 and March 21, 2019, at or near Vancouver, in the Province of British Columbia, while bound by a probation order made by The Honourable Madam Justice Holmes in the Supreme Court of British Columbia on November 10, 2017, did without reasonable excuse fail to comply with such order by making publicly available the website, www.desicapuano.com, contrary to Section 733.1(1) of the *Criminal Code*.

[21] Count 2 is almost identical except the breach alleged there is as follows:

... did without reasonable excuse fail to comply with such order by accessing the Internet or any computer or cellular network ...

[22] Mr. Fox submitted in his closing submissions that the Crown does not only

have to prove that he was on probation at the time, which he effectively admitted, but that he was on probation when he engaged in the prohibited conduct, in other words, "by making publicly available," and that the Crown had failed to do so in this trial. Mr. Fox said in his closing that there is no dispute that he published the website and he has been open about that, but he submitted that if he engaged in that conduct before the probation order took effect, then he cannot be found guilty.

[23] He said the fact that the website continued to be publicly available still does not put him in contravention of the probation order which he said only proscribes certain conduct not captured by that ongoing conduct. He highlighted that the Crown admitted that it did not prove when the website was created or published. Mr. Fox submitted that is a very important issue as to whether his guilt has been established to the requisite degree.

[24] Mr. Fox further acknowledged in his submissions that the court heard that there is content on the website which would have come into being after the 2017 trial. He said that there is no dispute about that, but said all of that information was in his possession before release from jail so that does not prove the website was published before or after that. I am not sure that the evidence established that, but for the purpose of this argument, I will carry on in that vein.

[25] Mr. Fox also submitted that the Crown had failed to prove that he had uploaded or made any of the content on the website which is publicly available. Although he has been transparent about acknowledging creating and publishing the website, he has not admitted to having uploaded specific content and has not done so upon his release from custody.

[26] Finally, Mr. Fox noted condition Number 13 on his probation order, pointing out that he is not charged with violating the specific language in Condition. He said it is open to the Crown to start the process all over again.

[27] Those were the submissions that I heard, the competing submissions, at this trial. Turning, then, to my analysis in this case, I found, first of all, Detective Constable Fontana to be a credible and reliable witness. She gave a brief, but careful, recounting of her involvement in this investigation. Perhaps more importantly as to my conclusion that she was credible and reliable, she was careful not to overstep her knowledge with respect to the technology behind the allegations in front of the court.

[28] Turning specifically now to Count 1 on the information. As I have already referenced, there is no issue that Mr. Fox has been identified as the person charged. There is no issue with respect to jurisdiction having been established beyond a reasonable doubt, nor with the fact that Mr. Fox would have been on probation under Justice Holmes' order between March 7 and March 21, 2019, in Vancouver, British Columbia, as charged on the information.

[29] I want now to turn to the specific language in the probation order. Condition 12 states:

You must not disseminate, distribute, publish, or make publicly available in any manner whatsoever direct or indirectly information, statements, comments, videos, or photographs which refer to or depict by name or description Desiree Capuano, James Pendleton, S. [because there is a publication ban with respect to the next person's name] or any of their friends, relatives, employers, of coworkers.

[30] Let me go back, then, to Mr. Fox's letter. At the top of page 3, Mr. Fox states:

Particularly since my publishing the new website, I have engaged in exactly the same conduct which Justice Heather Holmes declared formed much of the basis of the guilty verdict in 2017 ...

[31] From that, I find that he was acknowledging, as he did again when he spoke in person with the officer later in the month of June 2019, that he engaged in the production of the website. The question for the court is whether that puts him in violation of the probation order as drawn and referencing Count 1 on the information which states that he:

... did without reasonable excuse fail to comply with such order by making publicly available the website, www.desicapuano.com ...

[32] In that regard, I find that by Mr. Fox's own admission in his letter, "Since my publishing the new website, I have engaged in exactly the same conduct," he has clearly been proven beyond a reasonable doubt to have without reasonable excuse failed to comply with Justice Holmes' order in Condition 12 by making publicly available the website. Condition 12 provides an expansive definition of what that would entail, and I find Mr. Fox has breached that term in a number of ways. Specifically Condition 12 states "directly or indirectly publish or make it publicly available in any manner whatsoever." In my view, based upon the evidence in front of the court, there can be no doubt that Mr. Fox engaged in the prohibited conduct under the probation order that is set out in Count 1 on the information and I find the Crown has proven that offence and each element of that offence required beyond a reasonable doubt, and I convict Mr. Fox on Count 1.

[33] Turning to Count 2, and I want to now pause and read Condition 14 of the probation order. It states:

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.

[34] I give no consideration to Condition 13. I think Mr. Fox is persuasive with respect to what he said about Condition 13. The specific question for me in this analysis is whether Mr. Fox has breached Condition 12 because that is the way Count 2 references the probation order. So the only issue that is still in dispute is whether Mr. Fox accessed the Internet or any computer or cellular network.

[35] While on the evidence before the court today, I find it is likely that Mr. Fox had to engage in such conduct to publish the new website, I am unable to conclude that is the only inference which can be drawn. It is possible that he had someone else do so on his behalf. While that conduct may have run contrary to Justice Holmes' order, it does not, in my opinion, amount to proof beyond a reasonable doubt that he accessed the Internet or any computer or cellular network in accordance with how Count 2 is worded. Accordingly, I have a doubt on that matter and I enter an acquittal with respect to Count 2.

(REASONS CONCLUDED)

File No: 244069-6-B
Registry: Vancouver

In the Provincial Court of British Columbia

REGINA

v.

PATRICK HENRY FOX

**REASONS FOR SENTENCE
OF
THE HONOURABLE JUDGE N. PHILLIPS**

COPY

Crown Counsel: C. Johnson

Appearing on his own behalf: Patrick Fox

Place of Hearing: Vancouver, B.C.

Date of Judgment: August 19, 2020

[1] **THE COURT:** The record will reflect that having just found Mr. Fox guilty on Count 1, the court embarked upon a brief sentencing hearing. Mr. Johnson on behalf of the Crown filed Mr. Fox's criminal record, which is relatively new. Counsel on behalf of the Crown is seeking a six-month jail sentence and, given credit for time served, Mr. Fox would not be obligated to serve any further time if the court accedes to that six-month jail sentence. The Crown asked for a very focused and relatively short duration probation order to follow that jail sentence.

[2] Mr. Fox, on his own behalf, submitted that the six-month sentence was not agreeable, but in a somewhat unusual fashion, submitted he should be sentenced to a longer period of custody. He submitted that given that Justice Holmes ordered him to serve a jail sentence of 12 months and that he is now a repeat offender should cause this court to sentence him to something greater than that 12-month sentence. Mr. Fox underscored that by stating, clearly, he has not learned his lesson and that he was trying at least to be consistent or invited the court to be consistent with respect to sentencing.

[3] He also said with respect to taking down the website, which is the heart of the conviction under Count 1 today, that there was absolutely no way the website was going to be coming down. He said that his likely release from jail at the end of this year will lead him to going to the United States, which he seemed to be suggesting would cause the website to remain up.

[4] He submitted that the Count 1 offence that I am sentencing him on now, the breach of probation, was arguably more serious than what Justice Holmes sentenced him to 12 months in jail for. Mr. Johnson provided the court (at that point

in time) with a copy of Justice Holmes' sentencing decision. I have briefly had the chance while standing down to review Justice Holmes' decision. I have considered her description, in particular, of the criminal harassment count on which she convicted Mr. Fox, or a jury convicted Mr. Fox before Justice Holmes. In my view, that criminal harassment charge is qualitatively different from the breach of probation count which I just convicted Mr. Fox of. In my view, the criminal harassment matter is of a much more serious nature, not to minimize the breach of probation. The campaign described by Justice Holmes in her decision that Mr. Fox embarked upon against his former wife or partner, Ms. Capuano, was a very serious criminal harassment that led to that 12-month sentence. Combined with the weapons offence of which Mr. Fox was also convicted --

[5] MR. JOHNSON: Sorry, Your Honour, Mr. Fox is on his feet.

[6] THE COURT: Yes, sorry.

[7] THE ACCUSED: I am sorry, there seems to be some misunderstanding or confusion here. The criminal harassment sentence was three years I was sentenced to.

[8] THE COURT: I am sorry, thank you.

[9] THE ACCUSED: The 12 months that you are talking about was for the two other probation violations that I was just convicted of --

[10] THE COURT: Thank you --

[11] THE ACCUSED: -- a few months ago.

[12] THE COURT: -- for clarifying that, Mr. Fox. Thank you. Yes. So, just to

back up, then, because I should speak about that. Mr. Fox -- and I appreciate you clarifying that. I was not clear at the time that you were speaking of the prior probation breaches, and thank you. I think Mr. Johnson did refer to that. I just misunderstood.

[13] Looking at Mr. Fox's substantive offence that led to the probation order, I do think puts this matter into context. It is difficult for me to assess the significance of those prior breaches of probation convictions that led to 12-month sentences. As Justice Holmes stated, and as Mr. Johnson also noted, sentencing is really an individualized process that requires the court to look at the offender and the offences in front of the court. Although it is possible that Mr. Fox could be looking at a sentence that is greater than what the Crown has asked, in the circumstances here, I am not going to depart from what the Crown has suggested would be an appropriate sentence.

[14] Mr. Fox now has another conviction on his record for breaching a court order. He engaged in conduct here which is serious. It continues. It is prolonged and completely inexplicable behaviour in relation to Ms. Capuano. Rather than moving on, why he chooses not to do so is completely baffling to the court, but it is clear from his comments just now that he intends to do so. I am satisfied that a six-month sentence of jail reflected on his record is enough of a specific deterrent to Mr. Fox. Frankly, I am not sure, given his stated intent both before Justice Holmes and again at this point in time, whether six months or 12 months or 18 months is really going to matter. It is going to take something in Mr. Fox's own mind that is required before he stops. Again, why he continues to do this is completely baffling.

[15] He must be specifically deterred. That will always, in my view, lead to a likely sentence of jail and, in these circumstances, I am not going to depart from the six-month sentence that has been advanced by the Crown. I am mindful of the fact Mr. Fox is a self-represented litigant. I am also mindful, however, that he is a sophisticated and smart self-represented litigant.

[16] On Count 1, I am satisfied that Mr. Fox's record should reflect that he has served four months in custody and to be credited, and his record will reflect a six-month sentence of jail. To make it a lawful sentence, he will be required to serve one day to be followed by a period of probation for six months. The terms of the probation order will be the statutory terms: keep the peace and be of good behaviour; appear before the court when required.

[17] Mr. Fox will also be subject to the following terms.

[18] Mr. Registrar, I am really following closely Justice Holmes' Condition 13, with some minor changes.

[19] Rather than "Within 24 hours," it will say, "Within 48 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," and not the other two names, "or any of her friends, relatives, employers, or coworkers including the websites published under the domain 'www.desireecapuano.com' and 'www.desicapuano.com' are no longer available via the Internet or by any other means."

[20] I have heard what Mr. Fox has said. I have already referred to it. That is a court order. He will be expected to comply with that court order. Given his comments today, if there was a copy of the transcript obtained, if Mr. Fox was charged with breaching that term of probation, his wilfulness would be exceedingly high and I would think a court would conclude that. He would be looking at a considerable period of custody so to attempt to further deter Mr. Fox from subsequent offending behaviour that continues to create a problem in the community.

[21] Mr. Registrar, because Mr. Fox is in custody -- sorry, Mr. Johnson, I think you heard from Mr. Fox as to when his anticipated next appearance is in Port Coquitlam?

[22] MR. JOHNSON: [Indiscernible] in December.

[23] THE COURT: It is in December. What I have in mind, because of Mr. Fox's history of non-compliance, is to direct that the probation order be reviewed by a justice of the peace and that his signature be taken. I think it is imperative in the circumstances.

[24] MR. JOHNSON: I was going to ask you about that, Your Honour. Thank you.

[25] THE COURT: Thank you. So that will have to happen. I know it is our practice during the pandemic to avoid that when possible. I am not satisfied it is appropriate to waive that requirement. So the probation order will be reviewed with Mr. Fox, specifically the terms and consequences of non-compliance reviewed with him, as well, which I am satisfied given Mr. Fox's comments to the court today and

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his experience with the process he is already fully apprised of, but that will underscore the significance of that.

[26] Thank you.

(REASONS CONCLUDED)

**Warrant of Committal
Upon Conviction - Form 21**

Canada: Province of British Columbia

Police File No.
401:19-49074

Court File No.
2040:244069-6-B

IND

Proceeded: **By Indictment**

D.O.B.: November 24, 1973

Primary Enf. Agency:

Ban - none

To the **Peace Officers** in the Province of British Columbia and to the **Keeper** of a **Provincial Correctional Centre** (the "place of detention").

Whereas **Patrick Henry Fox** (the "offender") was convicted on **August 19, 2020** before **Judge N Phillips** on the following charge(s) and it was adjudged on **August 19, 2020** that the offender for his/her offences be committed to a place of detention in the Province of British Columbia for the term(s) as specified below:

Count 1, between March 7, 2019 and March 21, 2019, at or near Vancouver 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) [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);

See a total of 1 Charge

Accordingly, you are commanded, in Her Majesty's name, to arrest the offender if it is necessary to do so in order to take the offender into custody, and to convey him/her safely to a place of detention and deliver him/her to the keeper thereof. You, the **Keeper**, are commanded to receive the offender into custody in a place of detention and imprison him/her for the term prescribed above, and this is a sufficient warrant for so doing.

Dated / Fait le **August 19, 2020**

at / à **Vancouver**

British Columbia / Colombie-Britannique

D. Toy

2020.08.19 15:42:09
-07'00'

A Clerk of the Court on behalf of / Un greffier du tribunal au nom du
Judge / juge N Phillips of the Provincial Court / de la cour provinciale, in
and for the Province of British Columbia / dans et pour la province de la
Colombie-Britannique

Notes: See attached: ☐ Information(s) ☐ Probation Order ☐ Pre-Sentence Report
☐ Indictment(s) ☐ Conditional Sentence Order ☐ Medical/Psychiatric Documents
☐ Record of Proceedings
☐ Sentence imposed in offender's absence (warrant sent to police)
☐ Other:

Warrant executed by:

Date:

Mandat de dépôt sur déclaration de culpabilité - Formulaire 21

Canada: Province de la Colombie-Britannique

Nu. de dossier de la police 401:19-49074 Nu. de dossier du greffe 2040:244069-6-B

IND

Procédé : par mise en accusation

Org. prim. d'app. de la loi :
Ban - none

D.D.N. : November 24, 1973

Aux **agents de la paix** de la province de la Colombie-Britannique et au **gardien** d'un **Centre correctionnel provincial** (le <<lieu de détention>>).

Attendu que **Patrick Henry Fox** (le(la) <<contrevenant(e)>>) a été déclaré coupable le **August 19, 2020** devant le juge **N Phillips** de l'(des) inculpation(s) suivante(s) et que le **August 19, 2020** il a été décidé que le(la) contrevenant(e) doit être incarcéré(e) pour son(ses) infraction(s) dans un lieu de détention dans la province de la Colombie-Britannique pour la(les) période(s) indiquée(s) ci-après :

Count 1, between March 7, 2019 and March 21, 2019, at or near Vancouver 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) [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);

Voyez 1 inculpation

En conséquence, il vous est ordonné, au nom de Sa Majesté, d'arrêter le(la) contrevenant(e), si cela est nécessaire pour l'amener en détention, et de le(la) conduire sûrement au lieu de détention et de l'y remettre au gardien dudit lieu de détention. Il vous est ordonné, à vous le **gardien**, de recevoir le(la) contrevenant(e) et de l'incarcérer dans le lieu de détention pour la durée de la peine prescrite ci-dessus. Les présentes sont, pour ce faire, un mandat suffisant.

Notes: Voir annexe: ☐ Acte(s) d'accusation ☐ Ordonnance de probation ☐ Rapport présentenciel
☐ Dénonciation(s) ☐ Ordonnance de condamnation avec sursis ☐ Documents médicaux/psychiatriques
☐ Procès-verbal
☐ Peine prononcée en l'absence du (de la) contrevenant(e) (mandat envoyé à la police)
☐ Autres:

Mandat exécuté par:

Fait le:

**Probation Order
(Prison)**

Police File No.
401:19-49074

Court File No.
2040:244069-6-B

IND

Canada: Province of British Columbia

Ban - none

Primary Enf. Agency:

D.O.B.: November 24, 1973

Proceeded: **By Indictment**

☐ Interpreter present

Whereas on **August 19, 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 **August 19, 2020** the Court adjudged that the offender be **imprisoned** in the Province of British Columbia as follows:

Count 1, between March 7, 2019 and March 21, 2019, at or near Vancouver 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) [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);

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

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 4 Conditions on 1 Conditions Attachment Page

Dated / Fait le **August 19, 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.

Refused to sign

Offender / Contrevenant(e)
Address / Adresse :

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.

D. Toy

2020.08.19 15:58:46
-07'00'

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

Probation (Prison)

Phone Number / Numéro de téléphone :

**Ordonnance de probation
(prison)**

Nu. de dossier de la police Nu. de dossier du greffe
401:19-49074 2040:244069-6-B

IND

Canada: Province de la Colombie-Britannique

☐ Interprète présent

Ban - none

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

D.D.N. : November 24, 1973

Procédé : par mise en accusation

Attendu que le **August 19, 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 **August 19, 2020** le tribunal a décidé que le(la) contrevenant(e) soit **incarcéré(e)** dans la province de la Colombie-Britannique comme suit :

Count 1, between March 7, 2019 and March 21, 2019, at or near Vancouver 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) [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);

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 4 conditions sur 1 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
401:19-49074

Court File No./
Nu. de dossier du greffe
2040:244069-6-B

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

Ban - none

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.
=====

Condition 4: Within 48 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 or any of her friends, relatives employers or co-workers, including the websites published under the domain www.desireecapuano.com and www.desicapuano.com are no longer available via the internet or by any other means.

I have read or have had read to me and understand a total of 4 Conditions on 1 Conditions Attachment Page/ J'ai lu ou j'ai m'a lu et je comprends 4 conditions sur 1 page de l'Annexe des conditions

Probation (prison)/ Probation (Prison)



Court of Appeal
for BC

Notice of Appeal or Application for Leave to Appeal

VANCOUVER

(Where appellant not represented by a solicitor)

CA 46979

AUG 24 2020

**COURT OF APPEAL
REGISTRY**

Lower Court Registry Number 244068-6-B

Lower Court Registry Location Vancouver

To the Registrar:

Name of appellant: Patrick Henry Fox

Place of trial: Vancouver

Name of court: Provincial Court

Name of judge: N. Phillips

Was this a jury trial? No

Offence(s) of which convicted: Breach of probation
(CCF A. 733.1)

Plea at trial: Not guilty

Sentence imposed: Six months jail and six months
probation.

Date of conviction: 2020-08-19

Date of imposition of sentence: 2020-08-19

Name and address of place at which appellant is in custody: _____

Or if not in custody, appellant's address: ~~(555 Homer St.)~~ 555 Homer St.,
Vancouver, BC, V6B 1K8
(Selvation Army Belkin House)

If in custody, address other than institution: _____

I, the above named appellant, hereby give you notice that I desire to appeal to the Court of Appeal against my conviction and sentence on the grounds set out on this notice.

I desire to present my case and argument whether it be for leave to appeal or by way of appeal where leave is not necessary,

~~(a) in writing~~

(b) in person

If a new trial is ordered and you have a right to trial by jury, do you wish trial by jury?

Dated this 24 day of August, 20 20.
[1st, etc.] [month] [year]

[Signed]



Appellant

Notes

1. (a) If your appeal against conviction involves a question of law alone, you have a right of appeal.
(b) If your appeal against conviction is upon any other ground than a question of law, then you have no right of appeal unless leave to appeal is first granted. Your Notice of Appeal includes an application for leave to appeal where leave is necessary.
(c) You have no right to appeal against sentence unless leave to appeal is first granted by the Court of Appeal or a justice. Your Notice of Appeal includes an application for leave to appeal.
2. Further take notice that if you appeal from sentence the Court of Appeal may increase your sentence.
3. (a) If your appeal is against conviction or sentence alone, or against both conviction and sentence, this notice must be filed within 30 days of the date of imposition of the sentence.
(b) If this notice is filed beyond this time, then you must apply for an extension of time by completing Form 7 [Notice of Application for Extension of Time to Appeal].

Grounds of Appeal

These must be filled in before notice is sent to the Registrar. The appellant must here set out the grounds or reasons he or she alleges why his or her conviction should be quashed or his or her sentence reduced. If one of the grounds set out is "misdirection" by the judge, particulars of the alleged misdirection must be set out in this notice.

[Use additional separate sheet if necessary]

I believe the conviction is not supported by
the evidence.

The probation condition I was accused of,
and convicted of violating prohibited me from

engaging in specific conduct (namely publishing, disseminating, or making available information about a specific party). While I admit I did engage in that specific conduct, I did so BEFORE the probation order took effect on 2018-12-30. The Crown's only witness clearly and unambiguously testified that she had absolutely no idea whether the information was published before the probation order took effect (on 2018-12-30) or after. The Crown also clearly admitted he had no knowledge or evidence of whether I published the material before or during the period of probation.

The condition I was accused of, and convicted of violating DID NOT state I was required to remove any previously published information or material from public accessibility.

Regardless of the foregoing facts and lack of evidence, the court found me guilty of violating the probation condition.

Such further grounds as I may advise and this Honorable Court may permit.