

VANCOUVER
AUG 11 2022
COURT OF APPEAL
REGISTRY

CA46979
VANCOUVER REGISTRY

COURT OF APPEAL

REGINA

RESPONDENT

v.

PATRICK HENRY FOX

APPELLANT

AFFIDAVIT #1 OF PATRICK FOX

RE: CROWN'S FACTUM

I, Patrick Henry Fox, presently incarcerated at North Fraser Pretrial Centre (NFPC) in the City of Port Coquitlam in the Province of British Columbia, solemnly affirm and say as follows:

1. I am the appellant and personally know about the matters referred to in this Affidavit, except where they are based on information and belief, in which case I believe them to be true.
2. Contrary to Crown's assertion at paragraph 2 of it's factum, the website was created for the purpose of informing anyone who may come in contact with Desiree Capuano about the kind of person she really is and the many offensive acts she has committed against others. The website was not created to humiliate, degrade and intimidate Ms. Capuano as Crown claims.
3. Contrary to Crown's assertion at paragraph 2 of it's factum, the website has had no significant adverse effect on Ms. Capuano. The website has now been online and publicly accessible for more than eight years, since 2014.

3.1. In the entire time the website has been online, Ms. Capuano has taken no

action to get the website shut down. She has not filed any requests or complaints, regarding the website, with the hosting provider. She has not applied for or attempted to obtain an injunction from an Arizona court, against the hosting provider to require the hosting provider to shut down the website, even though both she and the hosting provider are based in Arizona.

3.2. Since 2015 Ms. Capuano has repeatedly pursued criminal charges/prosecutions, and a civil suit against me in BC, related to the website, even though the BC justice system has no authority or power to cause the website to be shut down. The BC justice system does have the authority and power to imprison me and to impose punishments and restrictions on me, as they have done so for past six years. She has participated in countless Canadian news media interviews related to me and to the website, wherein she has made extensive false claims against me, even though such media coverage would have no effect on the existence of the website. Such defamatory Canadian news media coverage would obviously cause me substantial harm.

3.3. None of the courses of action which Ms. Capuano has participated in, related to the website, have been initiated by her. They have all been initiated by third-parties such as the RCMP, VPD, BC Victim Services, and Ms. Capuano's boyfriend.

3.4. Ms. Capuano's participation in those courses of action has consistently been begrudging, requiring repeated coaxing on the part of those third parties. Ms. Capuano's actions have consistently been focused on what will adversely affect me and cause me harm, not on what will result in the website being shut down.

4. When she testified at the criminal harassment trial in 2017, Ms. Capuano lied very extensively in her testimony. She committed at least 81 instances of perjury. Crown Counsel Mark Myhre and the defense lawyer appointed under section 486, against my objection, refused to confront her or to inform Justice Holmes or the jury. The proof of that has been documented, in detail, and is publicly accessible on the website.

5. I believe Ms. Capuano wants the website to remain publicly available, because she desires the attention, sympathy, and pity it generates for her. I further believe her refusal, for the past eight years, to take any action which could reasonably be expected to possibly result in the website being shut down proves that my beliefs in this respect are correct.
6. Since the website has been online, the BC justice system has taken no action to get the website shut down, other than prosecuting and imprisoning me but that has been proven to have no effect on the availability of the website. It has been more than six years and the BCPS, the VPD, and the Burnaby RCMP, have all failed or refused to even apply for a US court order for the hosting provider to shut down the website. At the same time, they have now prosecuted me six times and I have spent the past six years in prison related to the website.
7. Contrary to Crown's assertion at paragraph 3 of it's factum, the website, as of the dates of the indictment, did not merely "allege corruption regarding the...criminal harassment trial". In fact, the website contained a voluminous amount of *proof* of that corruption, including transcripts, audio/video recordings, witness testimony, police reports, psychiatric reports, and more.
8. Contrary to Crown's assertion at paragraph 3 of it's factum, I did not admit to publishing the website in my letter to Det. Fontana.
9. Contrary to Crown's assertion at paragraph 3 of it's factum, my admission to Det. Fontana about running or maintaining the website was phrased in the past tense, not the present.
10. Contrary to Crown's assertion at paragraph 10 of it's factum, I did not hope to drive Ms. Capuano to suicide.
11. Contrary to Crown's assertion at paragraph 10 of it's factum, the website did not contain "a very large amount of private information about Ms. Capuano." Almost all of the information which pertained to Ms. Capuano, on the website, was obtained from public or open sources on the internet or through public records requests. None of

that information is private as it was all publicly available. There was very little, if any, information on the website which could be considered private.

12. Contrary to Crown's assertion at paragraph 10 of it's factum, there was no content on the website which was "designed to humiliate, degrade and intimidate" Ms. Capuano. Every statement about Ms. Capuano, on the website, is true. In the more than eight years the website has been online, no one has every been able to point out a single false statement.
13. Contrary to Crown's assertion at paragraph 10 of it's factum, there was no content on the website which was "designed...to undermine [Ms. Capuano's] relationships with family, friends, employers and work colleagues." All the website did was to inform people, including Ms. Capuano's associates, of the kind of person Ms. Capuano is and the offensive things she has done.
14. Since 2016, various Canadian news media have publish and/or ran countless articles, commentaries, and reports about me and about the website. Almost all of the information reported by the news media had been obtained from Ms. Capuano, the BCPS, and court records, and the reporting has consistently been very skewed in favor of Ms. Capuano and the BC justice system, and against me. Much of the information reported by the news media has been false, grossly misrepresented, or deliberately one sided. As a result of that news coverage, I've lost my employment and subsequent opportunities; I've been alienated from friends, family, and associates; I am flagged by law enforcement in both Canada and the US; my professional and personal reputations are destroyed; I am in financial ruin; and I am homeless and destitute.
15. Contrary to Crown's assertion at paragraph 11 of it's factum, I did not "delight publicly in the harm [I] was causing [Ms. Capuano]." There is no evidence to even suggest that. And, I do not believe Ms. Capuano actually considers herself to be harmed by the website.
16. Contrary to Crown's assertion at paragraph 12 of it's factum, Ms. Capuano has never

made any attempt to take the website down. She did file one complaint with the hosting provider in 2014, but that was regarding an unsolicited email she claimed I sent to her associates, not regarding the website.

17. Contrary to Crown's assertion at paragraph 12 of it's factum, I never moved the website to a different server to prevent it from being taken down. At one point I did move it from the hosting provider to my own server, for research and development purposes. Then in January 2016 I moved it back to a hosting provider. In 2018 I relinquished ownership and control of the website when the hosting plan expired, and the new owner put it back online with another hosting provider, where it has remained since that time.
18. Contrary to Crown's assertion at paragraph 13 of it's factum, the website did not have a "life-altering effect on Ms. Capuano". There has never been any evidence to support such an claim, other than Ms. Capuano's own, self-serving, unfounded statements. At this time the website is still online and Ms. Capuano continues to go about her business, just as she did before the website was even created.
19. Contrary to Crown's assertion at paragraph 13 of it's factum, Ms. Capuano has not lost any friends, nor employment opportunities, as a result of the website.
20. Contrary to Crown's assertion at paragraph 13 of it's factum, Ms. Capuano was not concerned for her own or her family's safety. She has stated, including under oath and in open court, both before and after the criminal harassment trial, that she does not believe I would ever physically harm her. And, she has repeatedly stated, including to the RCMP, in her recorded interviews, that she believes I am too much of a coward to ever do anything like that. She also stated, in her victim impact statement, after the criminal harassment trial, that she did not believe I would actually go to Arizona, where she lives.
21. Contrary to Crown's assertion at paragraph 13 of it's factum, Ms. Capuano's relationship with her spouse did not suffer after he and his mother were "brought within the circle of abuse". In fact, it was Ms. Capuano's *boyfriend*, not spouse, who

inserted himself into the dispute between Ms. Capuano and myself. And, there was no "circle of abuse", as Crown claims.

22. Contrary to Crown's assertion at paragraph 13 of it's factum, Ms. Capuano did not feel isolated, beaten down, frustrated, or powerless; she did not struggle every day, become depressed, or question whether she had the strength to keep going; and she was not also scared, always looking over her shoulder; because of my conduct or the website.

22.1. Ms. Capuano repeatedly stated in court, to the police, and in emails, both before and after the criminal harassment trial, that she did not care about the website, she was not affected by me or by the website, she did not believe I would ever physically harm her, and she did not believe I would go to Arizona where she lived.

22.2. There has never been a single threat, suggestion, or even a hint of violence or aggression on my part, toward Ms. Capuano or anyone she knows. In fact, Ms. Capuano herself has a documented history of domestic violence, including police being dispatched to her home in response to domestic disturbance complaints where she was the aggressor. However, none of those instances ever occurred between her and I.

22.3. In every single dispute between myself and Ms. Capuano, some of which were quite lengthy, and all of which occurred in writing, by email, the discussion began with me submitting a legitimate and reasonable inquiry pertaining to custody, visitation, and/or the needs of our son, followed by Ms. Capuano responding belligerently, then me responding to or defending against her attacks. Eventually, in almost all instances, I would prevail on the argument. But it was an argument which, in almost every instance, Ms. Capuano was the one that initiated. The process was, often, very frustrating and tiring. All of those emails are publicly accessible on the website. Anybody can review them and see that it was Ms. Capuano that always started the conflicts.

22.4. All of the dramatic language the Crown uses in paragraph 13 of it's factum, is based on arguments between myself and Ms. Capuano, which occurred via email, which never included any threats of violence or harm on my part, arguments which Ms. Capuano was always the initiator of; and on the website which is completely passive, which contains no false or misleading information about Ms. Capuano or any of her associates, no threats, no aggression.

22.5. Contrary to the Crown's claims of the harm I and the website have caused Ms. Capuano, it was Ms. Capuano's direct, deliberate, and calculated actions, including filing false allegations against me with the Canadian Consulate and DHS, claiming that I was attempting to kidnap her child and flee to Canada with him, which resulted in me being arrested by DHS in 2013 and deported to Canada. Immediately following me deportation, Ms. Capuano applied for and received sole custody of our son, as a direct result of me being deported from the US, even though I had had custody of him for the nine years up to that point. And following my deportation, it was Ms. Capuano who refused to let our son visit me. And, it was Ms. Capuano who went on international news media making many false claims about me.

22.6. Any actions I have ever taken against Ms. Capuano have always only been in response to actions she had already taken against me. I have never initiated hostility, aggression, or animosity toward her. And that is very well proven by the almost 2,000 emails that are on the website.

23. Contrary to Crown's assertions at paragraph 14 of it's factum, the numerous probation orders which have been imposed upon me since 2017, have had no effect on the website or on the public accessibility of the website. The probation orders have resulted in five additional prosecutions against me for allegations of breach of probation, which have resulted in me spending an additional three years in custody. But none of that has resulted in the website being taken down or altered in any way.

23.1. During the entire time I have been on probation relating to the website, the BC justice system has done nothing to try to have the website shut down, other

than prosecuting me for breach of probation.

24. Since 2019, I have repeatedly and consistently demanded the BCPS prosecute me for criminal harassment based on the fact that the website has remained online and publicly accessible even though I had previously been convicted of criminal harassment based on it. However the BCPS has adamantly refused to do so. In 2019, in this very case, Det. Fontana recommended a charge of criminal harassment in addition to the breach, but the BCPS refused to approve the charge.

Affirmed before me at the City of
Port Coquitlam in the Province
of British Columbia, this 29
day of July, 2022.



Commissioner for Taking Affidavits



Patrick Fox