

COURT OF APPEAL

ON APPEAL FROM THE PROVINCIAL COURT OF BRITISH COLUMBIA,
FROM THE JUDGMENT OF THE HONOURABLE JUDGE RIDEOUT,
PRONOUNCED ON THE 26TH DAY OF NOVEMBER 2020, AND FROM THE
SENTENCE PRONOUNCED ON THE 12TH DAY OF APRIL 2021.

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 BY TELECOMMUNICATION THAT PRODUCES
A WRITING/DÉNONCIATION PAR TÉLÉCOMMUNICATION QUI
REND LA COMMUNICATION SOUS FORME ÉCRITE**

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

Court Identifier: 2040 - P - R - A		
Court File Number: 244069		
Type Reference: B		
Info. Seq. Number: 7		
Agency File Number: 401:20-164388		
DNA: ☐	K File: ☐	SOR: ☐

Pursuant to Section 508.1(2) of the *Criminal Code* and/or Section 13.1 of the *Offence Act* (British Columbia)/
Suivant le paragraphe 508.1(2) du *Code criminel* et/ou l'article 13.1 de l'*Offence Act* (Colombie-Britannique)

"BY INDICTMENT"

In the Provincial Court of British Columbia/Dans le tribunal provincial de la Colombie-Britannique.

This is the information of / Les présentes constituent la dénonciation de SGR 2072 MCD Peace Officer
(the "informant" / le "dénoncateur") of / de Vancouver, British Columbia submitted before a justice by telecommunication that
produces a writing / transmise à un juge de paix, par télécommunication qui rend la communication sous forme écrite.

The Informant says that he/she has reasonable and probable grounds to believe and does believe that: / Le(la)
dénoncateur(trice) déclare qu'il(elle) a des motifs raisonnables et probables de croire et croit effectivement que:

Count 1

Patrick Henry FOX, between the 19th day of August, 2020, and the 16th day of September, 2020, at or near Vancouver, in the
Province of British Columbia, while bound by a probation order made by The Honourable Judge N. Phillips on the 19th day of
August, 2020, did without reasonable excuse fail to comply with such order by not complying with one of the conditions which
directed him to remove the web site www.desicapuano.com in breach of that order, contrary to Section 733.1(1) of the Criminal
Code.

Count 2

Patrick Henry FOX, between the 19th day of August, 2020 and the 16th day of September, 2020, at or near Vancouver, in the
Province of British Columbia, while bound by a probation order made by The Honourable Madame Justice Holmes on the 10th day
of November, 2017, did without reasonable excuse fail to comply with such order: 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 [S.], 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., contrary to Section 733.1(1) of the Criminal Code.

Pursuant to Section 508.1(2) of the *Criminal Code* and / or
Section 13.1 of the *Offence Act* (British Columbia) the Informant states
that all matters contained in this information are true to my knowledge
and belief.

Suivant le paragraphe 508.1(2) du *Code criminel* et / ou l'article 13.1
de l'*Offence Act* (Colombie-Britannique), le dénonciateur(trice) déclare
qu'il/elle croit vrais, au meilleur de sa connaissance, les
renseignements contenus dans la dénonciation.

Dated/Fait le SEPT 17, 2020

at/a Vancouver
British Columbia / Colombie-Britannique

[Signature]
Signature of Informant / Signature du(de la) dénonciateur(trice)

I certify this information was received by me by means of telecommunication that produces a writing at / Je certifie que j'ai reçu la présente
dénonciation par un moyen de télécommunication qui rend la communication sous forme écrite à

8:17P m, on/le SEP 17 2020 at/à Burnaby, British Columbia/Colombie-Britannique
time/heure date city/municipality ville/municipalité

Process/Acte
de procédure: [Signature] confirmed

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.

Name/nom: J. Leung
Justice of the Peace

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.
2040:244069-7-B PRA

Court File No.

Police Agency and File No.
401:20-164388

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
17-SEP-20	7:30PM	310	JIR		PV	Nelson, Andrew	D	Curt Johnson	T	IBC		IC	W Rodgers		✓
Appearance Notes and Orders Heard at: Justice Centre (Judicial) (2041)															
24-SEP-20	9:30AM	101	JIR		PV		N	Crown Ad Hoc	X	IBC		IC	E Gordon		✓
Appearance Notes and Orders Heard at: Vancouver Provincial Court (2040) TRANSCRIPT ORDERED: A transcript of the JIR of September 17, 2020 proceedings is to be prepared and placed on the file. (Justice Centre); NFPTC VIDEO;															
05-OCT-20	9:30AM	101	JIR		PV		N	Crown Ad Hoc		IBC		IC	H K D Dhillon		✓
Appearance Notes and Orders Heard at: Vancouver Provincial Court (2040)															
20-OCT-20	9:30AM	101	JIR		PV		N	Crown Ad Hoc		IBD		IC	D Senniwi		✓
Appearance Notes and Orders Heard at: Vancouver Provincial Court (2040) @ North Fraser;															
26-NOV-20	9:00AM	304	FT									IC			
Appearance Notes and Orders Heard at: Vancouver Provincial Court (2040)															
26-NOV-20	9:30AM	305	FT		P		N	Crown Ad Hoc		END		IC	G Rideout		✓
Appearance Notes and Orders FXD for sentencing; Heard at: Vancouver Provincial Court (2040) EXCLUDING WITNESSES: All persons who are to testify in these proceedings shall leave the courtroom and remain within call.; Cancel continuation trial date of November 27, 2020; denote done;															
26-NOV-20	9:30AM	305	FT		P		N	Crown Ad Hoc		IBJ		IC	G Rideout		✓
Appearance Notes and Orders FXD for sentencing; Heard at: Vancouver Provincial Court (2040) EXCLUDING WITNESSES: All persons who are to testify in these proceedings shall leave the courtroom and remain within call.; Cancel continuation trial date of November 27, 2020; denote done;															
27-NOV-20	9:30AM	514	CNT									IC			
Appearance Notes and Orders Heard at: Vancouver Provincial Court (2040)															
21-JAN-21	9:30AM	512	FXD		N		N	Curt Johnson	T	IBP		IC	G Rideout		✓
Appearance Notes and Orders Heard at: Vancouver Provincial Court (2040) To be JP Adjourned ;															
02-FEB-21	9:30AM	514	FXD		PV	Self Represented	N	Crown Ad Hoc		IBJ		IC	G Rideout		✓
Appearance Notes and Orders Heard at: Vancouver Provincial Court (2040) Psychiatric report ordered at Trial (November 26 2020) CANCELLED per Judge GM Rideout;															
03-FEB-21	9:30AM	514	CTD		PV	Self Represented	N	Crown Ad Hoc	T	IBJ		IC	G Rideout		✓
Appearance Notes and Orders Heard at: Vancouver Provincial Court (2040)															

Provincial Court Record of Proceedings, 244069-7B

12-APR-21	9:30AM	303	SNT		PM		N	Crown Ad Hoc	M	END		IC	G Rideout		✓
Appearance Notes and Orders															
Heard at: Vancouver Provincial Court (2040)															
Offender does not need to sign documents.;															

ARRAIGNMENT

Date DD-MMM-YY	Event	Detail
20-OCT-20	Arraignment	Waives Reading

APPLICATION SEQUENCE NO. 1

Date Filed / Made
DD - MMM - YY

17-DEC-20

Date of Decision
DD - MMM - YY

By:

For:

☐ Adjourned☐ Denied☐ Granted

Before: K Ker

Remarks /
Order:

22-DEC-2020: The accused is no longer eligible for a s.525 detention review hearing. kh-VLC

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	Election				Re-Election			
		Prov Court Judge	Judge	Judge & Jury	Before Judge	Prov Court Judge	Judge	Judge & Jury	Before Judge
20-OCT-20	1	✓			D Senniwi				
20-OCT-20	2	✓			D Senniwi				

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
20-OCT-20	1		✓					
20-OCT-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
26-NOV-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								
26-NOV-20	2										✓					

Provincial Court Record of Proceedings, 244069-7B

SENTENCE

Date DD-MMM-YY	Count	Description	Sentence Term	Amount	Due / TTP Date
12-APR-21	1	Jail	6 Month(s)		
Date DD-MMM-YY	Count	Description	Sentence Term	Amount	Due / TTP Date
12-APR-21	1	Credited Pre-Sentence Time in Custody	10 Month(s) 15 Day(s)		
Date DD-MMM-YY	Count	Description	Sentence Term	Amount	Due / TTP Date
12-APR-21	1	Jail Term that would have been imposed before Credit Granted	16 Month(s) 15 Day(s)		
Date DD-MMM-YY	Count	Description	Sentence Term	Amount	Due / TTP Date
12-APR-21	1	Probation Order	1 Year(s)		
Details: Conditions - See below					
Date DD-MMM-YY	Count	Description	Sentence Term	Amount	Due / TTP Date
12-APR-21	1	Victim Surcharge Exempt			

CONDITIONS

APPEARANCE: 12-APR-2021 09:30 AM SENTENCE: Probation Order COUNT: 1

Keep the peace and be of good behaviour.

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

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

You shall have no contact or communication directly or indirectly with Desiree Capuano or James Pendleton or any of their friends, relatives, employers or co-workers.

You shall 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 or any of their friends, relatives, employers or co-workers.

Within 48 hours of your release from custody you shall take all necessary steps to ensure that any website, social media page or any 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 any other means.

9/16/2020

Dear David Eby – Desiree Capuano

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R. v. Fox

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Yes! This Website is Still Here, Bitches!	11,319 views	38 comments
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You Know You're White Trash When...	5,869 views	11 comments
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2016-02-20		
Living the Dream (Getting a Man to Pay My Way While I Sit Around and Get High All Day)	4,528 views	6 comments
2015-12-25		
The Police Executed a Search Warrant on My Home, Found Stolen Assault Rifle, Meth and Marijuana	4,479 views	3 comments
2015-12-19		
The Time I Tried to Induce a Miscarriage at 5 Months	4,080 views	6 comments
2016-03-22		
And Yet More Proof I'm Lying to You About My Ex-Husband Hiding Our Child - My Letters	3,274 views	8 comments
2016-02-22		

Dear David Eby

Perspective: Patrick

437 views | 6 comments

Aug 19, 2020 | 1:53 pm PDT

Dear Mr. Eby:

You may recall a few months back I sent you a letter, while I was still in custody at North Fraser Pretrial Centre, about the BC Prosecution Service (BCPS) refusing to prosecute me for criminal harassment based on this "Desiree Capuano" website I put back online, even though in 2017 they prosecuted, convicted, and sentenced me to three years in prison for it. And even though, for the past year and a half, while I've been fighting their petty allegations of probation violations, I've been demanding they prosecute me for criminal harassment.

Anyway, on August 19, 2020 I had a trial for a probation violation for putting this website back online (publishing, disseminating information about Capuano). And even though the Crown's (Chris Johnson) only witness (VPD Detective Jennifer Fontana) and Crown himself both admitted they had no knowledge or evidence of WHEN I published the material; and even though the material was published BEFORE the probation order took effect (2018-12-30) and therefore it could not, possibly, violate the probation order because the period of probation had not yet begun; nevertheless, I was convicted. I was sentenced to six months in jail (although I had already been in for 17 months anyway) and a new probation order with the one condition that I take down the website within 48 hours of my release. I told the judge "that's just not going to happen".

I told Mr. Johnson all this is doing is showing the world how ineffectual and impotent the Canadian justice system is. They can't even make a little pissant nobody like myself take down a website. They can lock me up for the rest of my life, but I will never take down the website.

Well, 48 hours has passed and the website is still online. The R. v. Fox section, with all the proof of the corruption and collusion that Crown Counsel Mark Myhre, defense counsel Tony Lagemaat, and Justice Heather Holmes engaged in is still here. By the time you read this I will probably be back in custody, but in case you haven't figured it out, I just don't give a fuck.

And since January 2020 I've been fighting with the BCPS to disclose WHY they are refusing to prosecute me for criminal harassment – they are, after all, required under section 15(4) of the Freedom of Information and Protection of Privacy Act to disclose the reasons for their decision not to prosecute.

So, come on Mr. Eby, tell the world why you're refusing to prosecute me for criminal harassment while at the same time prosecuting me for violating the probation order by engaging in exactly the same conduct Justice Holmes and Mr. Myhre insisted formed the basis of the criminal harassment allegation when I was sentenced to three years in prison in 2017.

Is it because a new criminal harassment charge would mean a new jury trial, which would mean the jury would be shown the proof of all the corruption, and all of Capuano's perjurious testimony from that first trial? Is it because you know I would be acquitted and that would bring the entire local justice system into disrepute because how could I possibly be convicted the first time and acquitted the second time if, both times, the allegations and the trials were based on exactly the same conduct and evidence?

So go ahead, Mr. Eby, have your automatons at the BCPS get a warrant for me violating probation because this website is still online. Send me back to jail. Lock me up for the rest of my life. Show the world that the BC Ministry of Justice and the BCPS just will not stand for obnoxious little pissants like me exposing the corruption going on every day in the Vancouver justice system. I mean, how dare I! Just who the hell do I think I am? Right?

And finally, I would like to point out that, to date, neither the BCPS nor any of the parties discussed on the R. v. Fox page have denied any of my claims of corruption, collusion, or perjury!

Sincerely,
Patrick Fox

Previous Post:

« Ah, Dang! Not This Website Again!

6 Responses to Dear David Eby

www.desicapuano.com/blogs/dear-david-eby/

1/3

EXHIBIT TAG <i>R v Fox, Patrick Myhre</i>	
PROVINCIAL COURT	SUPREME COURT
EXHIBIT CARD No. _____	EXHIBIT CARD No. _____
CASE NO. <i>2447062-7-B</i>	CASE NO. _____
LOCATION <i>222 Main Street</i>	LOCATION _____
MARKED <i>A10</i>	MARKED _____
ENTERED <i>1</i>	ENTERED _____
SUBMITTED BY:	SUBMITTED BY:
☒ PROSECUTION/PLAINTIFF/APPLICANT	☐ PROSECUTION/PLAINTIFF/APPLICANT
☐ DEFENCE/RESPONDENT/DEFENDANT	☐ DEFENCE/RESPONDENT/DEFENDANT
☐ OTHER	☐ OTHER
<i>Nov 26 2020</i>	
CLERK ACKNOWLEDGEMENT	CLERK ACKNOWLEDGEMENT
DATE	DATE

ADM 051 REV 11/00
OPC 7530955420 (100/PAK)

9/16/2020

Dear David Eby – Desiree Capuano

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All information published on this website is true and accurate to the best of the knowledge and ability of the site maintainers.

Any narratives published on this website, which are written in the first person, from the perspectives of Desiree Capuano and/or James Pendleton are not, in fact, written by Desiree Capuano and/or James Pendleton. If you actually believe Desiree wrote the stuff on this website then you're a fucking idiot and shouldn't be using the Internet.

If you notice any inaccuracies on this website, or just want to share your thoughts, feel free to inform me at editor@desicapuano.com and I will either: address them as soon as possible; or completely ignore them and convince myself you don't even exist.

File No: 244069-7-B
Registry: Vancouver

In the Provincial Court of British Columbia

REGINA

v.

PATRICK HENRY FOX

**REASONS FOR JUDGMENT
OF
THE HONOURABLE JUDGE RIDEOUT**

COPY

Crown Counsel:

C.S. Johnson, Q.C.

Appearing on his own behalf:

The Accused

Place of Hearing:

Vancouver, B.C.

Date of Judgment:

November 26, 2020

[1] **THE COURT:** I have reviewed the evidence over the morning break today, including Exhibit 1. I am prepared to give a judgment with respect to this matter. These are oral reasons. In the event a transcript is ordered I reserve the opportunity to review that transcript for purposes of punctuation and grammar, but not with respect to any substantive aspect.

Introduction

[2] The accused, Patrick Henry Fox, has been charged in an Information that between the 19th of August 2020, and the 16th of September 2020, at or near Vancouver, in the Province of British Columbia, while bound by a probation order made by The Honourable Judge N. Phillips on the 19th day of August 2020, did without reasonable excuse fail to comply with such order by not complying with one of the conditions which directed him to remove the website known as www.d-e-s-i-c-a-p-u-a-n-o for desicapuano.com in breach of an order, contrary to section 733.1(1) of the *Criminal Code*.

[3] Mr. Fox has admitted the probation order. Condition four pronounced by The Honourable Phillips reads as follows: Within forty-eight 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 the 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.

Issue

[4] The sole issue to be determined is whether or not the Crown has established all of the essential elements beyond a reasonable doubt that would justify the entry of a guilty finding. The threshold is certainly high as I have indicated. *R. v. Starr* and *R. v. Lifchus*.

Background

[5] Mr. Fox is self-represented. The court inquired of Mr. Fox in some detail whether he wished to have legal counsel to represent his interests. I am satisfied that he was fully informed in that regard and he declined to have legal counsel. He certainly impressed me through proceedings that he is an intelligent man and aware of the nature of legal proceedings. I do not find he was overborne by the Crown in relation to this matter.

[6] The only witness to be called was Detective-Constable Dent, a member of the VPD, Vancouver Police Department for eleven years. He was tasked by a team leader to conduct an interview of the defendant on September 15 of 2016. That interview took place on September 16, 2020, when Mr. Fox was subject to an arrest.

[7] Detective-Constable Dent testified that he downloaded a screenshot of a face page with respect to a website associated to Mr. Fox. Within that screenshot there is references to the government, as well and importantly, in quotations, Desiree Capuano, is inputted. It is signed Sincerely Patrick Fox.

[8] The interview took place over approximately 1.5 hours. In his Task Action Report the gist of what took place was referenced and occasionally direct quotes

were referenced by Detective-Constable Dent. Prior to giving that evidence, the court inquired of Mr. Fox if the statement was free and voluntary and he admitted it was free and voluntary, and that his rights, pursuant to the *Charter of Rights*, were properly communicated to him and he waived any right to access counsel.

[9] I will not detail each and every aspect of the evidence of Detective-Constable Dent, but where appropriate I will make quotations. After introductions portions of his Task Action Report were reviewed with Detective-Constable Dent by Mr. Johnson. Early into the interview Detective-Constable Dent asked the accused about the website and he quoted as follows, "Important to have good quality audio-video for my website." He did not admit, being Mr. Fox, that he had updated the website. He was asked, as well, whether or not it had been taken down, and he provided an answer with the words to the effect, if he had taken it down -- he agreed it was not -- had not been taken down as it exposed corruption of the justice system, including his "cunt wife", in quotation marks. He indicated to Detective-Constable Dent that he was surprised it took so long for the police authorities to arrest him.

[10] Reference was made as well in the Task Action Report to IP logs and other addresses within the website. At one point in the interview process he indicated to Detective-Constable Dent that he wanted all convictions to be set aside and that he wanted his wife to get throat cancer and to die. He also indicated, words to the effect, that no one was going to take down anything from the website unless the government admits that he did not commit harassment and set aside his convictions. Within a few lines of that statement, in quotations, he stated that he will "never in his lifetime take down the website", closed quote.

[11] It was the opinion of Detective-Constable Dent that Mr. Fox provided great details of his ability to deconstruct any website as he is experienced in relation to the worldwide web. As well, at one point Mr. Fox told Detective-Constable Dent, in quotes, that “a lot more content needed to be uploaded but I have not been the most productive”, closed quote. Mr. Fox was described as cooperative during the interview process.

[12] In cross-examination, Detective-Constable Dent did not know who the owner of the website was. He did not know who the host was with respect to the website. He was unable to answer whether or not he transferred, being Mr. Fox, ownership of the website to another owner. There were some issues with respect to the cross-examination that I did not make reference to, do not form part of this judgment because they tend to either conjecture, or in essence, giving evidence.

Analysis

[13] I listened with care to the evidence of Detective-Constable Dent. His evidence was not undermined during cross-examination. He certainly did not present as a person who had special skill and knowledge with respect to website construction or deconstruction, but had certainly general knowledge in relation to the website which most Canadians probably enjoy.

[14] Detective-Constable Dent gave his evidence in a forthright manner. I found him ultimately to be both a credible and ultimately reliable witness. With respect to reliability, he was able to recall, recount, and observe. With respect to the evidence, what was taking place. With respect to his notes, he was not challenged in relation to the notetaking. But that does not end the matter, of course, it is whether or not

the Crown has established all essential elements, and that is the position taken by Mr. Fox in his submissions.

[15] He has indicated to the court, as I understand it, that the Crown has failed to prove the essential elements in relation to the charge of breach of probation; that there was no evidence of control or ownership of the websites contained in the information; that he never admitted to Detective-Constable Dent that he owned or had control of any of the websites that are referenced in the Information. That he submitted that it was something the court should take into account that someone else could have inputted into that website, and that there is no evidence within the timeframe as set out, being forty-eight hours, that he did not deconstruct the website and that it was possible someone else could then input that website and reconstruct it.

[16] It was also significant in his submission to note that if he went to another country, being his country of origin, that he could legally restore the website. I have taken those submissions into account.

[17] It is the Crown's position that with respect to the evidence of Detective-Constable Dent all essential elements have been made out and that the court could certainly draw inferences from the statements made by Mr. Fox that he clearly had control or access to or maintain the websites. I note in particular, though, that it has within forty-eight hours. It is important to note that Judge Phillips said you will take all necessary steps to ensure that any website, social media or other publication, and then lists the various parties involved, are no longer available via the internet or by any other means. Those are critical words with respect to this case, particularly

are no longer available via the internet or by any other means.

[18] The website in question was accessed by Detective-Constable Dent on or about the 15th of September of 2020. Mr. Fox was required to take all necessary steps to make sure that the information contained therein was no longer available, in particular, on the worldwide web.

[19] There were statements made by Mr. Fox that clearly implicated him beyond a reasonable doubt in relation to access to the website, social media, or other publication which was prohibited by Judge Phillips. What happened within forty-eight hours remains uncertain and perhaps only speculation as to what took place, and I am not going to speculate what happened. The point is that the information contained in the website was available via the internet between the dates as set out by the Crown, being the 19th of August 2020, and the 16th day of September 2020. It is more than clear that it was the accused who was involved in that website. Ownership aside, he was inputting the information and from his own mouth himself, essentially convicted himself.

Disposition

[20] I find that the Crown has established beyond a reasonable doubt that between the 19th of August of 2020, and the 16th day of September of 2020, that the accused was in breach of his probation order pronounced by Judge Phillips, thus justifying the registration of a conviction pursuant to s. 733.1 for breach of probation. Ruling concluded.

(REASONS CONCLUDED)

**File No: 244069-7-B
Registry: Vancouver**

In the Provincial Court of British Columbia

REGINA

v.

PATRICK HENRY FOX

**REASONS FOR SENTENCE
OF
THE HONOURABLE JUDGE RIDEOUT**

COPY

**Crown Counsel appearing by
videoconference:**

C. Johnson

**Appearing on his own behalf
appearing by videoconference:**

P. Fox

Place of Hearing:

Vancouver, B.C.

Date of Judgment:

April 12, 2021

[1] **THE COURT:** There is going to be a sentence here, Mr. Fox, of six months to address general deterrence, denunciation, record reflect time credited of 10 months and 15 days. Surcharge is waived.

[2] I am placing you on probation for a period of one year.

[3] The statutory conditions apply, including you shall keep the peace and be of good behaviour.

[4] You shall have no contact or communication directly or indirectly with Desiree Capuano or James Pendleton or any of their friends, relatives, employers or co-workers.

[5] You shall 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 or any of their friends, relatives, employers or co-workers.

[6] Within 48 hours of your release from custody you shall take all necessary steps to ensure that any website, social media page or any 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.

R. v. Fox

2

[7] You are also subject to the ongoing probation order pronounced by Judge Phillips as well.

(REASONS CONCLUDED)

**Warrant of Committal
Upon Conviction - Form 21**
Canada: Province of British Columbia

Police File No.
401:20-164388

Court File No.
2040:244069-7-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 **November 26, 2020** before **Provincial Court Judge G Rideout** on the following charge(s) and it was adjudged on **April 12, 2021** 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 August 19, 2020 and September 16, 2020, 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: 6 Month(s) [Jail Term that would have been imposed before Credit Granted: 16 Month(s) 15 Day(s) ; Credited Pre-Sentence Time in Custody: 10 Month(s) 15 Day(s) ;]; Victim Surcharge Exempt; Probation Order: 1 Year(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 **April 12, 2021**
at / à **Vancouver**

British Columbia / Colombie-Britannique

V. Lee-Young 2021.04.12 12:40:37
-07'00'

A Clerk of the Court on behalf of / Un greffier du tribunal au nom du
Judge / juge G Rideout 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

Warrant of Committal (Jail)

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 Nu. de dossier du greffe
401:20-164388 2040:244069-7-B

IND

Procédé : **par mise en accusation**

D.D.N. : November 24, 1973

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

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 **November 26, 2020** devant le juge **G Rideout** de l'(des) inculpation(s) suivante(s) et que le **April 12, 2021** 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 August 19, 2020 and September 16, 2020, 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: 6 Month(s) [Jail Term that would have been imposed before Credit Granted: 16 Month(s) 15 Day(s) ; Credited Pre-Sentence Time in Custody: 10 Month(s) 15 Day(s) ;]; Victim Surcharge Exempt; Probation Order: 1 Year(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 présentiel
☐ 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:

Mandat de dépôt (prison)

**Probation Order
(Prison)**

Canada: Province of British Columbia

Ban - none

Police File No.
401:20-164388

Court File No.
2040:244069-7-B

IND

Primary Enf. Agency:

D.O.B.: November 24, 1973

Proceeded: **By Indictment**

☐ Interpreter present

Whereas on **November 26, 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 **April 12, 2021** the Court adjudged that the offender be **imprisoned** in the Province of British Columbia as follows:

Count 1, between August 19, 2020 and September 16, 2020, 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: 6 Month(s) [Jail Term that would have been imposed before Credit Granted: 16 Month(s) 15 Day(s) ; Credited Pre-Sentence Time in Custody: 10 Month(s) 15 Day(s) ;]; Victim Surcharge Exempt; Probation Order: 1 Year(s);

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

Order explained to offender and acknowledged in court

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

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

I have read or have had read to me and understand a total of 6 Conditions on 1 Conditions Attachment Page

Dated / Fait le **April 12, 2021** at / à **Vancouver**, British Columbia / Colombie-Britannique

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

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

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

Signature not required

x

Offender / Contrevenant(e)
Address / Adresse :

**NFA
Vancouver, BC**

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.

V. Lee-Young 2021.04.12 12:46:11
-07'00'

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

Probation (Prison)

**Ordonnance de probation
(prison)**

Nu. de dossier de la police Nu. de dossier du greffe
401:20-164388 2040:244069-7-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 **November 26, 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 **April 12, 2021** le tribunal a décidé que le/la contrevenant(e) soit **incarcéré(e)** dans la province de la Colombie-Britannique comme suit :

Count 1, between August 19, 2020 and September 16, 2020, 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: 6 Month(s) [Jail Term that would have been imposed before Credit Granted: 16 Month(s) 15 Day(s) ; Credited Pre-Sentence Time in Custody: 10 Month(s) 15 Day(s) ;]; Victim Surcharge Exempt; Probation Order: 1 Year(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 6 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
401:20-164388

Court File No./
Nu. de dossier du greffe
2040:244069-7-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.
=====

POR Condition 4: You shall have no contact or communication directly or indirectly with Desiree Capuano or James Pendleton or any of their friends, relatives, employers or co-workers.

POR Condition 5: You shall 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 or any of their friends, relatives, employers or co-workers.

POR Condition 6: Within 48 hours of your release from custody you shall take all necessary steps to ensure that any website, social media page or any 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 any other means.

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

Probation (prison)/ Probation (Prison)

Important Information for a Person Placed on Probation

1. Changes to a Probation Order

Criminal Code Section 732.2(3)

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

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

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

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

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

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

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

The Court may then:

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

2. Failure to Comply with a Probation Order

Criminal Code Section 733.1

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

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

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

3. Changes to Personal Information

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

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

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

1. Modification d'une ordonnance de probation

Article 732.2(3) du Code criminel

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

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

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

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

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

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

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

Le tribunal peut alors :

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

2. Défaut de se conformer à une ordonnance de probation

Article 733.1 du Code criminel

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

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

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

3. Changements de renseignements personnels

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

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

Probation (prison)/ Probation (Prison)



Court of Appeal
for BC

Notice of Appeal or Application for Leave to Appeal

CA 47391

(Where appellant not represented by a solicitor)
VANCOUVER

APR 15 2021

COURT OF APPEAL

REGISTERED

Lower Court Registry Number 244069-7-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: G. Rideout

Was this a jury trial? No

Offence(s) of which convicted: Breach of probation (cc section 733.1)

Plea at trial: Not guilty

Sentence imposed: 16.5 months jail and one year probation

Date of conviction: 2020-11-26

Date of imposition of sentence: 2021-04-12

Name and address of place at which appellant is in custody: NFPC,
1451 Kinsmen Ave, Port Coquitlam, BC,
V3C 1S2

Or if not in custody, appellant's address: —

If in custody, address other than institution: NA

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?

Yes

Dated this 12th day of April, 20 21.
[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]

1. Crown refused to disclose it's witness list prior to trial. I was not provided notice of which witnesses Crown intended to call.
2. Crown refused to provide me notice of it's

intention to call VPD Detective Kyle Dent who was the Crown's sole witness. I had no notice of this witness until he was actually called to testify, after the trial had begun.

3. Crown refused to provide the disclosure material until three days prior to the trial.

4. The verdict was not supported by the evidence. By the Crown and the court's own admission, at trial, the Crown failed to establish that I had any ownership or control over the website upon and following my release from custody on 2020-08-~~28~~³⁰.

Nevertheless, the judge found me guilty.

5. Crown refused to provide me access to the disclosure material so I could prepare sentencing submissions.

6. The court refused to order the Crown to provide me access to the disclosure material so I could prepare sentencing submissions.

7. The court refused to grant my request for an adjournment so I could prepare sentencing submissions, thereby forcing me to proceed with sentencing completely unprepared, even though the cause of the delays were completely, 100% due to the Crown's refusal to provide me the disclosure material.

8. Prior to the sentencing hearing, the Crocena stated he was only seeking a sentence of imprisonment - NOT a probation order. Then, at the sentencing hearing, with absolutely no prior notice, Crocena argued for a sentence of imprisonment AND a one year probation order. I was completely unprepared for the Crocena's change in sentencing position, yet the judge refused an adjournment to give me an opportunity to prepare responsive submissions.

9. The sentence of 16.5 months and one year of probation is excessive, considering the ~~and~~ circumstances.

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