

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)