

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *R. v. Fox*,
2021 BCSC 2687

Date: 20211223
Docket: 32532-W
Registry: Vancouver

Regina

v.

Patrick Henry Fox

Before: The Honourable Justice Lamb

Oral Reasons for Judgment re Detention Review Hearing

Counsel for the Crown:

C.S. Johnson, Q.C.

The Accused appearing on his own behalf:

P. Fox

Place and Date of Hearing:

Vancouver, B.C.
December 23, 2021

Place and Date of Judgment:

Vancouver, B.C.
December 23, 2021

[1] **THE COURT:** The accused, Patrick Henry Fox, is before the court for a detention review hearing pursuant to s. 525 of the *Criminal Code*, R.S.C., 1985, c. C-46 [Code]. On August 18, 2021, the Honourable Judge Galati ordered Mr. Fox detained on the secondary ground set out in s. 515(10)(b) of the *Code*.

[2] Mr. Fox is charged on Vancouver Provincial Court Information 244069-B-8 with breach of a probation order, which in essence required that he remove a website that contained personal information about his former spouse.

[3] The Crown takes the position that Mr. Fox's continued detention is necessary on the secondary ground under s. 515(10)(b) of the *Code*. The Crown submits that the concerns identified by Judge Galati continue and, in particular, that Mr. Fox will "assuredly" breach the probation order again if he is released.

[4] Mr. Fox says that he should be released on condition that he provide a copy of the email that would demonstrate that he did attempt to remove the website, a website which he says is now owned or operated by a third party in Arizona.

Circumstances of the Offence

[5] By way of background, I will review the history of how Mr. Fox came to be on probation, as it was outlined in the recent reasons for judgment from the B.C. Court of Appeal in respect of an application Mr. Fox recently made in the B.C. Court of Appeal, indexed as *R. v. Fox*, 2021 BCCA 308. Excerpts from these Court of Appeal reasons formed part of the submissions at the judicial interim release hearing before Judge Galati and were quoted to me again today.

[6] According to Justice Fitch of the B.C. Court of Appeal, Mr. Fox has engaged in a relentless campaign of harassment directed at his former spouse since 2014.

[7] On the first indictment that was issued against him, Mr. Fox was charged with a series of seven offences. On November 10, 2017, a jury found Mr. Fox guilty of criminally harassing his former spouse and causing her to reasonably fear for her

safety or the safety of people she knows contrary to s. 264 of the *Code*, and guilty of being in possession of firearms at a place other than where he was authorized to possess them contrary to s. 93(1) of the *Code*.

[8] The criminal harassment included the creation of a website containing personal information about his former spouse and people connected to her. After the jury found Mr. Fox guilty, Justice Holmes, as she then was, sentenced him on both counts to a total of 46 months' imprisonment followed by probation for three years. He was given credit for approximately 17 months in pre-sentencing custody at one-and-a-half times, which left 20 and a half months to be served. As part of the probation order, Mr. Fox was ordered not to disseminate, distribute, publish, or make publicly available in any manner whatsoever information referring to his former spouse and others identified in the order.

[9] Further, Mr. Fox was ordered to "take all necessary steps to ensure that any website, social media page, or other publication which he had authored, created, maintained, or contributed to" containing information about his former spouse and other individuals identified in the probation order be no longer accessible via the Internet or by any other means within 24 hours of his release from custody.

[10] On June 12, 2020, Mr. Fox was found guilty by the Honourable Judge St. Pierre on two counts of breaching a probation condition, which occurred on March 15, 2019. Those particular breaches related to the firearms offence. He was given a six-month sentence with credit for time served, effectively resulting in a one-day sentence based on his pre-hearing time in custody. Mr. Fox was also put on probation for 18 months.

[11] Mr. Fox was subsequently charged with breaching the condition of the probation order imposed by Justice Holmes by making publicly available a website containing information about his former spouse. On August 19, 2020, Mr. Fox was convicted of that offence following a trial in the Provincial Court before the Honourable Judge Phillips. Having served four months in pre-sentence custody, for

which he was given six months' credit, Mr. Fox was sentenced to an additional one day in jail to be followed by a six-month probation order. In addition to the statutory terms, the probation order made by Judge Phillips contained the following optional condition:

"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 [your former spouse] or any of her friends, relatives[,] employers, or co-workers, including the websites published under the domain [the website domain name has been deleted] and [another website domain name deleted] are no longer available via the [I]nternet or by any other means."

[12] When he failed to comply with that condition within 48 hours of his release, Mr. Fox was again charged with breaching a probation order.

[13] The trial for that breach of Judge Phillips' probation order came on for hearing before the Honourable Judge Rideout. The evidence of the investigating officer at that trial was summarized at paragraph 16 of the B.C. Court of Appeal reasons of Justice Fitch in *R. v. Fox*, 2021 BCCA 308, and again included in the Crown's submissions before Judge Galati on the judicial interim review hearing on the current indictment, and again as part of the Crown's submissions on this detention review hearing, and I will read those into the record:

[16] Det/Cst. Dent testified that on September 16, 2020, he accessed one of the website domain names referred to in the probation order imposed by Phillips P.C.J. Its home page contained an entry dated August 19, 2020, at 1:53 p.m., which was written as a first-person letter to the Attorney General of British Columbia. As I understand it, [Mr. Fox] contends that this letter was written the day before the probation order came into effect. The entry refers to the proceedings before Phillips P.C.J. and emphasizes "how ineffectual and impotent the Canadian justice system is [because] [t]hey can't even make a little pissant nobody like myself take down a website." The entry further asserts that "[t]hey can lock me up for the rest of my life, but I will never take down the website."

[14] I note that Mr. Fox in the hearing before me submitted that there is no evidence that he actually prepared that letter dated August 19, 2020, and he recounted his activities on that particular day as the reason why he could not have posted it. As part of his submissions, he did not deny that he wrote it and he further did not discount the possibility that he wrote the letter before August 19, 2020, with instructions to post it on that date. In any event, on November 26, 2020, the Honourable Judge Rideout found Mr. Fox guilty of breaching the probation order made by Judge Phillips. On April 21, 2021, Mr. Fox was sentenced to 16 months' imprisonment and received credit for 10 months and 15 days for time served in pre-sentence custody. In addition to a period of incarceration, Mr. Fox was placed on probation for one year. As part of that probation order, Judge Rideout repeated the terms of the probation order made by Judge Phillips that required Mr. Fox to remove the offending websites within 48 hours of his release from custody.

[15] Mr. Fox was released from custody on August 12, 2021. On August 17, 2021, he was arrested and again charged with breach of probation for failing to remove the offending website. When he was arrested on August 17, 2021, Mr. Fox told the police that he had emailed the website operators and asked them to remove the offending website. The police asked Mr. Fox to show them the email that he maintains he sent, and he refused to do so.

[16] At the hearing before Judge Galati, counsel for Mr. Fox submitted that he was prepared to disclose the one email to the website administrator but not all of his emails, which is what he believed the police were asking for. In the hearing before Judge Galati on August 18, 2021, Mr. Fox speaking on his own behalf acknowledged that he originally created the website and made it public, but he "transferred ownership of the site to a third party before his probation began so that he couldn't be compelled to take it down because of the probation conditions." In other words, Mr. Fox deliberately transferred ownership of the website to someone residing in the United States before his probation started in December 2018 in order to evade the jurisdiction of Canadian authorities.

[17] Judge Galati provided fairly brief reasons explaining the reason for ordering the continued detention of Mr. Fox:

- [1] THE COURT: It is relatively clear to me that there is a significant secondary ground concern, in that there is a substantial likelihood that this website is not going to be taken down at the direction of Mr. Fox, as he is required to do by the terms of the probation order. Whether that probation order is enforceable is a matter for trial; it is not a matter for me to determine today.
- [2] Mr. Fox was apparently given the opportunity to show that he has at least tried to have the website taken down, but as he acknowledges, candidly, that the reason he transferred the website in the first place was so that he could not be compelled to take it down by a court order.
- [3] Putting all of this together with the history of this matter, I am going to detain Mr. Fox on the secondary ground, in that I cannot come to any conclusion other than there is a substantial likelihood that he will continue to commit the offence of not taking down the website, contrary to the probation order.

Procedural History

[18] As noted, on August 18, 2021, Mr. Fox made his first appearance on the current charge of breach of probation for a judicial interim review hearing. Judge Galati ordered that Mr. Fox be retained in custody. The trial of this matter originally came on for hearing on October 12, 2021, and was adjourned to November 23, 2021. On that date, Mr. Fox requested further disclosure, which has been provided to him. The trial in this matter is now scheduled for January 10, 2022, that is, approximately three weeks from now. Mr. Fox has remained in custody since his arrest on August 17, 2021.

Mr. Fox's Circumstances and Proposed Release Plan

[19] As outlined, Mr. Fox has a criminal record for criminal harassment, being in possession of firearms at a place other than where he was authorized to possess them, and four counts of breach of probation. Two of these convictions for breach of probation relate to his failure to take down the offending website, that is, offences similar to the charge that he is currently facing.

[20] Mr. Fox is approximately 47 years old. He was born in Florida and has been in British Columbia since 2013. At the time of his most recent arrest, he was residing at Belkin House in Vancouver. He advised the court at today's hearing that he plans to leave Canada and move back to the United States as soon as he is able to do so.

Analysis

[21] The question before me is whether the continued detention of Mr. Fox is justified under s. 515(10) of the *Code*: *R. v. Myers*, 2019 SCC 18. Determining this involves considering the rationale for the original decision, any additional credible and trustworthy information that was not before the hearing judge, the impact of the passage of time on the appropriateness of the detention, and the effect of any unreasonable delay that has occurred: *R. v. Abdullahi*, 2020 BCSC 2170.

[22] In terms of the rationale for the original decision, Judge Galati accepted that there was a substantial likelihood that the website would not be taken down at the request of Mr. Fox and that there was a "significant secondary ground concern". The secondary ground refers to s. 515(10)(b) of the *Code* which reads as follows:

For the purposes of this section, the detention of an accused in custody is justified only on one or more of the following grounds ...

- (b) where the detention is necessary for the protection or safety of the public, including any victim of or witness to the offence, or any person under the age of 18 years, having regard to all the circumstances including any substantial likelihood that the accused will, if released from custody, commit a criminal offence or interfere with the administration of justice ...

[23] The Crown submits, and I accept, based on Mr. Fox's repeated breaches of probation terms related to the offending website that there is a substantial likelihood that Mr. Fox will not comply with the probation term which would amount to the commission of a criminal offence.

[24] In terms of any additional credible and trustworthy information, there is nothing new as compared to the information that was provided to Judge Galati. There was then and is now a dispute as to the scope of the request by the police for

disclosure of emails. There is no new information to suggest that it is any more likely that Mr. Fox actually sent an email to request the removal of the website.

[25] In terms of the impact of the passage of time on the appropriateness of the detention and the effect of any unreasonable delay, the Crown points to the 16-month sentence that was handed down for a similar breach of probation in November 2020 by Judge Rideout. With a trial date in early January, there is little risk that the amount of time in detention has approximated or exceeded the sentence that the accused would realistically serve if convicted. There is no indication that the Crown has been responsible for any unreasonable delay in this matter.

[26] Mr. Fox seeks his release with a plan that would include that he provide to the Crown or to the police within 48 hours a copy of the email that shows he asked the website operator to remove the offending website. This release plan does not address the concern that was identified by Judge Galati that there is a substantial likelihood that Mr. Fox will again breach the terms of his probation order.

[27] I agree with Crown counsel that the allegations against Mr. Fox are serious, particularly given the fact that he has already been convicted twice of breaching a probation term requiring removal of the offending website. Having considered all of the circumstances, I continue to have the same concerns that Judge Galati had on the secondary ground. I am not satisfied that the release plan can sufficiently address these concerns. Therefore, I find that Mr. Fox's continued detention pending trial is justified on the secondary ground under s. 515(10)(b) of the *Code*. Mr. Fox's application for release pending trial is dismissed.

[28] Those are my reasons.

"Lamb J."