

ONTARIO COURT OF JUSTICE

5

HER MAJESTY THE QUEEN

10

v.

AARON KERR

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P R O C E E D I N G S

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BEFORE THE HONOURABLE M. JUSTICE P.H.M AGRO  
on January 18, 2022 at HAMILTON, Ontario

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APPEARANCES:

J. McKenzie

C. Valeri

Counsel for the Crown

Counsel for Aaron Kerr

(i)  
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Legend

[sic] indicates preceding word has been reproduced verbatim and is not a transcription error.

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(ph) indicates preceding word has been spelled phonetically

All spellings of names are transcribed as set out in the reporter's notes unless noted with a (ph)

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R U L I N G

AGRO J. (Orally):

5 Mr. Kerr entered guilty pleas to an assault with a  
weapon, namely brass knuckles with a folding a  
knife, possession of that weapon without a  
licence, and possession of that weapon while  
subject to a weapons prohibition order.

10 The events arose at the CIBC bank on Barton Street  
East, at approximately 9:13 p.m. on the 29th of  
November 2020. The bank was closed at the time,  
but there was access to an ATM through a small  
15 lobby or vestibule area that had both an outside  
door and an inner door through which one would  
then pass to another secure area where they ATMs  
were located.

20 When the victim, Mr. Lawder attended at the bank  
on that date and time, there were three  
individuals, by his testimony, inside that small  
vestibule, or on the testimony of the accused,  
just outside the vestibule, near the outer door.  
25 It is not relevant to these reasons where the  
individuals were located, these reasons being a  
ruling on a *Gardiner* hearing within the parameters  
of Section 718.2(1)(a), namely whether the  
offences were motivated as set out in that  
30 subsection by bias, prejudice or hate, based on  
the relevant factor in this case, sexual  
orientation.

5 Mr. Lawder is a homosexual. He testified that on  
the night in question he was wearing a rainbow  
COVID mask. The rainbow symbol is ubiquitous and  
well-known as a symbol of gay pride and  
acceptance. When Mr. Lawder attended at the bank  
at that hour, he was on heightened awareness,  
given that there were three people loitering in  
10 front of the bank or in the vestibule when he was  
about to use the bank machine. The three  
individuals allowed him to pass to use the bank  
machine, but when he did so, he overheard a female  
voice make a comment about his being a "fairy".  
Mr. Lawder didn't react to that and proceeded  
15 through the group to the ATM.

20 When Mr. Lawder left, having completed his  
business at the ATM, he testified that his exit  
from the bank was impeded by the group of three,  
and, in particular, the largest of the men, that  
necessitated his having to go around them to leave  
the bank.

25 As he passed by the group, he testified that he  
heard a male voice say, "Fucking faggot". Mr.  
Lawder did not react to that but continued on his  
way out, and as he did so, being concerned for his  
safety, he backed away from the bank door to keep  
his eye on the group that were assembled there.  
30 He again heard a male voice use the words, "Oh  
yeah, you fucking faggot".

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Mr. Lawder identified that male voice as being similar to the first male voice who had used that slur and testified that as he pulled out his telephone to feign a phone call, the male walked toward him aggressively and pulled out the weapon. By his plea of guilty, Mr. Kerr clearly acknowledged having brandished the weapon at Mr. Lawder.

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Mr. Kerr testified on a *Gardiner* hearing and acknowledged that at the time he was in the throws of being "dope sick". He described his condition as irritable and agitated. He denies having made the statement, either the first of the statements or the second of the statements regarding faggots, 15  
testifying that his focus was on his telephone, as he was trying to have the bank unlock his debit card, which had been frozen by the bank because of three unsuccessful passcode attempts.

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Mr. Kerr, no doubt, is trying to recollect events that happened while he was in the throws of withdrawal. By his own admission, the withdrawal symptoms affect his behaviour, namely irritability and agitation. I find, not only did the 25  
withdrawal affect him in those ways, but also affected his memory. Firstly, he had, on three occasions, failed to remember his passcode of his debit card. That's clear evidence that his memory of the events that night are somewhat unreliable.

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There are also some inconsistencies in his

5 testimony. Firstly, he testified that Danielle Leblanc was someone that he knew as a frequent user, who was the girlfriend of the other male who was there, Michael Hastings, and that he had known her for two to three years. In cross-examination, however, he said he didn't know Danielle Leblanc very well. I find that a fellow drug user that you have known for two to three years would be well known.

10 Mr. Kerr also testified that he at no time saw Mr. Lawder wearing a rainbow COVID mask. This defies common sense. While he may not have noticed the COVID mask when Mr. Lawder initially entered the bank, as he approached Mr. Lawder and Mr. Lawder was facing him, he had to see what was obviously there to see, the rainbow mask. Mr. Lawder, at no time, said he had removed that mask. I find this to be an inconsistency that is frankly fatal to Mr. Kerr's reliability.

25 The fact that Mr. Lawder may have had varying descriptions of the clothing worn by the two men, I do not find at all fatal to his testimony, the most important aspects being that it was the taller of the two men who made the statement, and it is clear, and even by Mr. Kerr's admission, he is significantly taller than Michael Hastings. Any discrepancy in Mr. Lawder's description of their clothing is also not germane to this finding. What is clear, is that it was the man with the brass knuckles who made the slur, that

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Mr. Lawder was facing the man with the brass knuckles when the slur was made, and Mr. Lawder had his rainbow mask on.

5 I find beyond a reasonable doubt that Mr. Kerr uttered the words, "Oh yeah, you fucking faggot". I do not have the same confidence that Mr. Kerr made the statement when it was first heard, and it is clear that the other statement about a fairy was made by Ms. Leblanc, the only female in the group. However, it was clear that the entire group, including Mr. Kerr had some bias toward homosexuals, and Mr. Kerr made that bias very clear when he faced Mr. Lawder with the brass knuckles while Mr. Lawder was wearing his rainbow mask and backing up away from the group at the bank.

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Certificate

Form 2

CERTIFICATE OF TRANSCRIPT (SUBSECTION 5(2))

I, Janet Smith, certify that this document is a true and accurate transcript to the best of my skill and ability (and the quality of the copy of the recording and annotations therein) of the recording of Regina v. Aaron Kerr in the Ontario Court of Justice at HAMILTON, ON, taken from Recording No: which has been certified in Form 1.

July 8, 2022

Date



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