

ONTARIO COURT OF JUSTICE

HIS MAJESTY THE KING

v.

MATTHEW FIELD

R E A S O N S F O R S E N T E N C E

BEFORE THE HONOURABLE MR. JUSTICE J. FIORUCCI
on January 12, 2023 at HAMILTON, Ontario

APPEARANCES:

G. Huh

Counsel for the Crown

J. Manishen

Counsel for Matthew Field

(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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Transcript Ordered January 12, 2023
Transcript Completed February 16, 2023
Ordering Party Notified February 16, 2023

1.
Reasons for Sentence
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THURSDAY, JANUARY 12, 2023

R E A S O N S F O R S E N T E N C E

5 FIORUCCI J. (Orally):

10 On June 6th, 2021, a devastating tragedy occurred in London, Ontario when four of five members of a Muslim family were struck and killed by a pickup truck while waiting to cross at an intersection. The only family member to survive was a nine year old boy who suffered serious injuries. It is alleged that the family was targeted because of their Islamic faith.

15 The incident received significant media attention. The prospect that it was a targeted hate crime, a terrorist act, sent shockwaves through the community and indeed the entire nation. It led to demonstrations of widespread support for those directly affected and condemnation of anti-Muslim hate crimes.

25 In the wake of this unspeakable tragedy, Mr. Field posted messages on his Instagram account that trivialized and celebrated the attack on the Muslim family and glorified the attacker. Mr. Field was charged and has now entered a guilty plea to the offence of willful promotion of hatred against an identifiable group, contrary to Section 30 319(2) of the *Criminal Code*.

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The gravity of the offence is compounded by the vile content of the messages, "I need to shake this man's hand for killing these dumbass Muslims, maybe even an autograph".

This man did us good killing and getting rid of a couple of Muslims in London. I fuckin' praise this man for jumping the curb and murdering them. Been waiting for a day like this.

The circumstances surrounding the commission of this offence can understandably lead members of the public to have a visceral reaction of disdain toward Mr. Field. The sentiments he expressed in the messages are quite simply horrifying and have no place in our multicultural Canadian society. This can lead to calls for vengeance against Mr. Field by imposition of a lengthy jail sentence. Again, this is an understandable reaction to the emotions evoked by his offending behaviour. But informed members of Canadian society, the same citizens who know that there is no place for hate of the kind expressed by Mr. Field in his messages, also know that our system of justice acts not on raw emotion but on reason.

In *R v. M. (C.A.)*, [1996] SCJ No 28, the Supreme Court of Canada said the following:

Retribution in a criminal context, [in] contrast [to vengeance], represents an objective, reasoned and measured determination of an appropriate punishment which properly reflects the moral culpability of the offender, having regard to the intentional

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risk-taking of the offender, the consequential harm caused by the offender, and the normative character of the offender's conduct.

Furthermore, unlike vengeance, retribution incorporates a principle of restraint; retribution requires the imposition of a just and appropriate punishment, and nothing more.

The principle of restraint is reflected in the positions of the parties on this sentencing hearing, including the position advanced by the Crown. The Crown seeks a conditional sentence of imprisonment of six months, followed by a period of probation of 12 months. The Crown does not seek to have Mr. Field serve his jail sentence in a custodial facility, but rather in the community recognizing that on the information available, Mr. Field serving his sentence in the community would not endanger the safety of the community and would be consistent with the fundamental purpose and principles of sentencing set out in Sections 718 to 718.2 of the *Criminal Code*.

The defence seeks a suspended sentence with a period of probation with conditions which could include community service hours.

Defence and Crown counsel have provided draft conditions of a conditional sentence order, if I were to find that a conditional sentence order is appropriate. The defence says that the draft terms could be included on a probation order, if I were to impose a suspended sentence and probation as requested by the defence.

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5 The *Criminal Code* instructs that the goal of any criminal sentence is to protect society, contribute to respect for the law and help maintain a just, peaceful and safe society. Sentencing judges attempt to achieve this goal by imposing just sanctions that address one or more of the traditional sentencing principles that are also contained in the *Criminal Code*. These include denunciation, general and specific deterrence, rehabilitation, making reparation to victims of crime and promoting a sense of responsibility in offenders and an acknowledgment of the harm they have caused to the community and specific victims in our community.

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20 Ultimately, the fundamental purpose of sentencing is to impose a sanction that is proportionate to the gravity of the offence committed and the degree of responsibility of the person who committed it. This means that for the sentence I impose to be appropriate, it must be tailored to Mr. Field's circumstances and the circumstances of the offence he committed.

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30 The circumstances of the offender were presented to the court through the character, employment and medical reference letters and the submissions of counsel. The underlying theme that runs through the letters filed is that Mr. Field's Instagram posts in June of 2021 do not portray the true person he is today or was at the time he posted the messages. The letters speak of Mr. Field

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5 being a hard worker who was immediately remorseful for his actions, took steps to seek therapy for the root cause of his offending behaviour, and who has been deeply affected by the collateral consequences of his actions. He is ashamed by his conduct and feels that he has caused great pain to the community and to his loved ones.

10 The following are some highlights from the letters filed in support of Mr. Field. His girlfriend, Kate P., states that he exhibited instant regret when he made the post, which he deleted within a couple of minutes of posting it, but screenshots were obtained. She spoke of the tragic loss of his parents in his teens and the fact that he received no counselling for that tragedy in his life. She states that she was beyond shocked at the words that Mr. Field expressed in the posts. She says:

20 I just couldn't believe words like that could even come from him because during our time together, he has never ever made a nasty remark like that.

25 Mr. Field's girlfriend also speaks of a suicide attempt within months of the incident. She explained in great detail the remorse he has shown from the day of the incident and how it has affected his life going forward.

30 Notably, his father-in-law, again who remained unnamed for purposes of privacy and for employment purposes, stated that he loves Mr. Field but is

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embarrassed and ashamed of his words. Mr. Field's father-in-law is a founding member of a diversity board. Being in that position, he had the ability to work with Mr. Field following his offending behaviour. Mr. Field's father-in-law states the following:

I have spent many, many hours with Matt educating him on other faiths and beliefs and know he listened and learned. He was a good student and asked smart questions. He was kept accountable every step of the way. I know the depths of his anger towards himself, and I very much know how sorry he is. I see everyday what he put himself and others through, and I know his remorse is genuine.

Furthermore, and significantly, Mr. Field's father-in-law states:

Our family will not allow any missteps or wrong moves. Matt knows this. We are holding his feet to the fire and know that what he posted that day is no part of him anymore and will never be a part of him again. Whatever Matt's punishment, can never be more than what he did to his reputation as a good person, a well liked guy, previously, and ruined his name and his integrity.

The letter of Christina Walton, the therapist, has a significant inclusion in the October 3rd, 2022 letter. She states:

He understands that he will live with the loss of his parents and that he needs to sooth himself and not let anger take over. He is able to do this. He has a job, works long hours and takes pride in his work ethic.

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In her previous letter, dated January 31st, 2022, Ms. Walton indicated:

5 He has made the connection between his anger which led to his actions and the profound grief, pain and sadness that he pushed down for many years. His employer indicates that, [and this is the manager from his employment states], I would say that this young man is of good character and his moral compass is true.

10 In determining an appropriate sentence, it is helpful to consider the relevant aggravating and mitigating circumstances that are presently at play. This would include features of Mr. Field's background, features of the crime he has committed, the time of his guilty plea and the evidence I have received during this sentencing hearing. I find the following to be aggravating factors in Mr. Field's case:

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20 As stated, the posted messages were particularly vile. The messages were posted on a social media platform on which Mr. Field had hundreds of followers. The messages had the potential to promote further violence against the Muslim community. The timing of the messages, being soon after the events in London, Ontario is
25 aggravating. At a time when the Muslim community was experiencing fear of targeted violence, possibly from the repetition of similar acts, Mr. Field's post sent the message to the Muslim
30 community that indeed, there were others in the community who condoned violence against them.

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The community impact statement filed by the Hamilton Muslim Association sets out the harm done to the Muslim community by Mr. Field's offending behaviour. The statement reads in part:

At such a sensitive time for the accused to intentionally target and promote hatred against members of the Muslim community through social media, was devastating. Online hate strokes animosity and fear and promotes misinformation. This misinformation and hate pose an existential threat to the Muslim community, especially our women who wear the hijab or niqab. We feel that your willful promotion of hatred against the Muslim community has added to the normalization of discrimination, intolerance and hateful attitudes and behaviours. We're terrified to express ourselves and our beliefs because we are afraid we will pay with our lives.

The following are the mitigating factors in Mr. Field's case:

Mr. Field has no criminal record. He is 28 years old and is of prior good character. Mr. Field immediately expressed remorse for his actions to his girlfriend, the police and others. He removed the messages soon after he posted them, immediately regretting his behaviour. His guilty plea and waiver of his right to a trial is further evidence of his remorse and acceptance of responsibility. He genuinely expressed his regret for the harm he has caused to the community, his girlfriend, her family and his family in court at the conclusion of the sentencing hearing.

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5 Mr. Field's guilty plea has spared the judicial resources that would have been expended on a trial in the matter, at a time when judicial resources are overburdened in this jurisdiction. The guilty plea has provided certainty to the Crown and absolved it of the need to prove the charge beyond a reasonable doubt.

10 Mr. Field took immediate steps toward his rehabilitation by pursuing completion of his high school diploma and obtaining full-time employment. He remains gainfully employed eight months after obtaining the employment. His self initiated efforts at bettering himself bodes well for his positive prospects of rehabilitation. Mr. Field has the support of his girlfriend, her family, his aunt and his employer. This factor too tends to confirm his long-term prospects of rehabilitation.

20 He has been in a long-term relationship with his girlfriend. His father-in-law, who has experience in diversity issues has worked with Mr. Field and confirmed his commitment to learning and bettering himself. Mr. Field has demonstrated insight into the root cause of his offending behaviour, being the anger at the early death of both his parents and has addressed it through counselling sessions with Christina Walton.

30 Mr. Field has experienced significant collateral consequences as a result of his offending behaviour. The very public nature of this

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prosecution, like the Instagram posts themselves, has tarnished his previous good character in the community at large. With social media's wide reach and the internet's permanence, Mr. Field will continue to deal with this consequence.

Mr. Field himself experienced fear of reprisal because of his actions. It changed who he was, led him to be fearful when he left home, caused depression, ultimately leading to a suicide attempt. Furthermore, it is evident that Mr. Field feels deep regret for having disappointed his loved ones. The stigma of participation in the criminal justice system and his criminal conviction is significant for a young man of previous good character with no criminal record.

Although sentencing is an individualized process when arriving at a proportionate sentence, legal precedents offer guidance, even if they are not binding on the sentencing court. I have reviewed the authorities provided by both counsel. The respective positions of counsel make it helpful to cite how the Supreme Court of Canada distinguished a suspended sentence and probation to a conditional sentence order. In *R v. Proulx*, [2000] SCJ No 6 at para. 23:

There has been some confusion among members of the judiciary and the public alike about the difference between a conditional sentence and a suspended sentence with probation. This confusion is understandable, as the statutory provisions regarding conditions to be

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5 attached to conditional sentences (s. 742.3) and probation orders (s. 732.1) are very similar. Notwithstanding these similarities, there is an important distinction between the two. While a suspended sentence with probation is primarily a rehabilitative sentencing tool, the evidence suggests that Parliament intended a conditional sentence to address both punitive and rehabilitative objectives.

10 Taking into account the aggravating and mitigating circumstances, I find that a conditional sentence of imprisonment is required in the circumstances of this case to properly address the principles of denunciation and deterrence, notwithstanding the insight shown by Mr. Field and his positive steps towards rehabilitation. A suspended sentence with probation would not adequately express society's condemnation of the particular offending conduct of Mr. Field as detailed earlier in my reasons.

15 I find that a period of probation following the conditional sentence order is not necessary, given the support system in place for Mr. Field and the fact that he has been on release for over 18 months, during which he has demonstrated insight and independently achieved his rehabilitative goals. The conditional sentence order will be for a period of six months with the following conditions:

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30 Keep the peace and be of good behaviour. Appear before the court when required to do so.

Report as the court directs, in person, to a

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supervisor and thereafter report when required by the supervisor, and in a manner directed by the supervisor.

5 Remain in Ontario, unless you have the prior written permission from the court or the supervisor to leave the province.

10 Notify the court or supervisor in advance of any change of name or address and promptly notify the court or supervisor of any change in employment or occupation.

15 Report, in person, or by telephone, to a supervisor within two working days of your release from custody and after that at all times and places as directed by the supervisor or a person authorized by the supervisor to assist in your supervision.

20 Cooperate with your supervisor. You must sign any release as necessary to permit the supervisor to monitor your compliance, and you must provide proof of compliance with any condition of this order to your supervisor on request.

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30 You are to live at number 303-52 Hayden Street, Hamilton, Ontario, or a place approved of by the supervisor for purposes of employment and not change that address without obtaining the consent of the supervisor, in advance.

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5 The home confinement condition will be in effect for the first four months of the sentence. During that first four months, you are to remain in your residence or on the property of your residence at all times except....

10 THE COURT: Now, in terms of the necessities of life, there is no indication on the draft order, Mr. Manishen, so I chose 12:00 p.m. to 4:00 p.m. on Saturdays. I'm not sure if that's agreeable or not.

MR. MANISHEN: That's fine.

THE COURT: Okay.

15 The exception is between 12:00 p.m. and 4:00 p.m. on Saturdays in order to acquire the necessities of life, for any medical emergency involving you or any member of your immediate family, for going directly to, from or being at employment, court attendances and legal or medical or dental
20 appointments, including mental health, for going directly to or from or being at assessment, treatment or counselling sessions.

25 Another exception to the home confinement will be with the prior written approval of the supervisor and that written approval is to be carried with you during these times. That gives the supervisor authority, for whatever reason, although there is
30 another term that was in the draft order that I will refer to soon. That gives the supervisor, Mr. Field, authority to provide some exception if

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5 there is a valid reason for it, okay? The other exception is for carrying out any legal obligations regarding compliance with the conditional sentence order, including reporting to your supervisor.

10 During your period of home confinement, you must present yourself at your doorway upon the request of your supervisor or a peace officer for the purpose of verifying your compliance with your home confinement condition.

15 Following your home confinement, for the balance of your order, the last two months of the order, you are to remain in your residence or on the property of your residence at all times daily between the hours of 11:00 p.m. and 6:00 a.m., with the exception for any medical emergency involving you or any member of your immediate family, and for travelling directly to, from or while at work, if approved of by your supervisor.

20 You are not to possess any weapons as defined in the *Criminal Code*.

25 You are also to attend and actively participate in all assessments, counselling or rehabilitative programs as directed by the supervisor and complete them to the satisfaction of the supervisor.

30 You will sign any release of information forms

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5 that will enable your supervisor to monitor your attendance and completion of any assessments, counselling or rehabilitative programs, as directed. You will provide proof of your attendance and completion of any assessments, counselling or rehabilitative programs, as directed.

10 In addition, counsel included the following terms on the draft order, that I am going to add:

15 When you are absent from your residence, you are to carry with you, at all times, a copy of this order, including any amendments thereto and any approvals from your supervisor, as required by this order. You are required to show a copy of this order to any peace officer or person responsible for the enforcement and supervision of this order upon request of that person.

20 Lastly, where appropriate, your supervisor may grant a temporary written exemption from any of the terms of this order provided that the exemption is for the purposes of addressing any immediate need with respect to your rehabilitation or for a humanitarian purpose.

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FORM 3
ELECTRONIC CERTIFICATE OF TRANSCRIPT (SUBSECTION 5(2))
Evidence Act

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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. Matthew Field in the Ontario Court of Justice at Hamilton, ON, taken from Recording No: 4711 208 20230112 084058 6 FIORUCJ which has been certified in Form 1.

15

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February 16, 2023

Date



Signature of Authorized Person
Janet Smith
ACT # 2474492821
Signed in Ontario, Canada
asapcourttranscripts@gmail.com

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A certificate in Form 3 is admissible in evidence and is proof, in the absence of evidence to the contrary, that the transcript is a transcript of the certified recording of evidence and proceedings in the proceeding that is identified in the certificate.

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