

Case against ringleaders of kidnap-murder plot targeting Michigan governor goes to the jury

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After closing arguments Monday morning in the retrial of two men charged with planning to kidnap and kill the governor of Michigan, jury deliberations began Monday afternoon.

Adam Fox, 39, and Barry Croft, Jr., 46, face possible life sentences if convicted of federal kidnapping, conspiracy to use a weapon of mass destruction and other firearms charges for their role in the plot to take Governor Gretchen Whitmer hostage in the months leading up to the 2020 presidential elections.

Both prosecution and defense presented arguments familiar from the first trial of the two men, which ended in a hung jury.

Prosecutors pointed to the massive evidence, including testimony from two participants in the conspiracy against Whitmer, and the actions of the defendants, including obtaining weapons, night vision equipment, building a bomb, and conducting surveillance of Whitmer's vacation home in northern Michigan.

Defense counsel appealed to anti-FBI sentiment, claiming that the defendants were merely “big talkers” and “dopeheads” who had been egged on by federal agents and informants who had infiltrated the Wolverine Watchmen militia group.

After both the prosecution and defense rested on Thursday, US District Judge Robert Jonker gave jury instructions on Friday in a Grand Rapids courtroom.

The prosecution has pointed out that Fox and Croft were discussing their hatred for Governor Whitmer, a Democrat who imposed economic lock-down measures in Michigan during the first months of the pandemic that the militia members and their supporters considered treasonous, before numerous FBI

informants became involved with the Wolverine Watchmen.

The two were arrested on October 8, 2020, along with a total of twelve others. Six of them were federally indicted—including Ty Garbin and Kaleb Franks who pleaded guilty to kidnap conspiracy in the first trial—and arrested after they attempted to purchase explosives for a bomb. Eight others were charged with state offenses and their cases have yet to go to trial.

Although the political circumstances that prevailed at the time of the kidnap plotting were not discussed in the trial, the paramilitary Wolverine Watchmen group was one of the far-right organizations and individuals who had been activated by then-President Donald Trump. These groups were encouraged by the fascistic occupant of the White House to engage in vigilante violence against protesters demanding an end to police violence in the late spring and summer of 2020 following the gruesome murder of George Floyd by Minneapolis police officer Derek Chauvin.

They were also mobilized when Trump tweeted “Liberate Michigan” and other states where restrictions had been placed by governors on economic activity during the pandemic. There were two demonstrations in Lansing in April and May, one of which included armed right-wing and fascist individuals storming their way into the Michigan State Capitol looking for Governor Whitmer, who was not there that day.

The bomb materials that the plotters were attempting to purchase were to be used by one group of conspirators to blow up a bridge and create a diversion for police. Another group was to engage the governor's security detail in a gun fight and seize Whitmer by force from her summer vacation cottage in Elk Rapids,

Michigan, then try and execute her.

Another plan was to use two boats to take the governor out into the middle of Lake Michigan, leave her there in one boat with the engine dropped and then the kidnappers would return to shore in the second boat.

At the request of the lawyers for Fox and Croft, Judge Jonker explained in his jury instructions what is meant by entrapment. The judge focused on whether the defendants showed any reluctance to the plot or were they already willing participants.

Judge Jonker said, “The crucial question in entrapment cases is whether the government persuaded a defendant who was not already willing to commit the crime to go ahead and commit it.” The judge said it is not entrapment, even if an FBI agent persuades someone to carry out a criminal act, if that person is already willing to commit the crime.

He went on, “It is sometimes necessary for a government agent to pretend to be a criminal.” He said there are some key questions to consider when deciding an entrapment claim, “Did they show reluctance? And if they did, were they overcome by persuasion? If yes, how much persuasion did the government use?”

In short, the judge said that to be entrapped, the defendants had to show the kidnapping idea and momentum for the crime was introduced by the government informants and that the men were not already willing to commit it. Judge Jonker said there had to be evidence that the defendants were at least initially unwilling to commit the crime.

The judge also made the point that the jury had to focus on the facts of the case and not on anything that was said during the proceedings, including his own interventions. “Nothing I have done was meant to influence your decision about the facts in any way,” Judge Jonker said. He added only witness testimony and exhibits approved by the court are to be considered, “Nothing else is evidence. Not the lawyers’ statements or arguments, nor ... my legal rulings.”

Judge Jonker’s posture toward the defense throughout the trial was one of marked frustration. He interrupted Fox and Croft’s attorneys numerous times during cross-examination of witnesses and cut short their questioning. He imposed a time limit on the defense that they could only take as much time with the witnesses as the prosecution did.

At one point, the judge told a lawyer, “Start focusing on what the important issues are, before this trial stretches into Thanksgiving.” On August 12, the third day of the trial, Judge Jonker scolded the defense after the jury left for the weekend and told them to stick to things that really matter and stop “mucking up” their arguments with “all this other crap.”

The judge went on to say that the length of the cross-examinations was getting ridiculous and, “You can look at the jury and see when they are checking out—and they’re checking out.”

On August 17, the defense accused the judge of favoring the prosecution and attorney Joshua Blanchard, who is representing Croft, said that limiting the cross-examination “is unfair and unconstitutional,” adding that it was “creating a perception of how this case ends.” Blanchard complained that this is one of the biggest domestic terrorism cases in US history and he was not permitted to complete his cross examination of Kaleb Franks, who pleaded guilty before the first trial and was one of the prosecution’s star witnesses.

In explaining the conspiracy charges, Judge Jonker said the government must show that two or more people agreed to commit a crime, even if they never achieved their goal. He added that they also must have knowingly and voluntarily joined the plot and that a conspirator did one or more things to advance it.

The judge said there must be evidence that “there was a mutual understanding to cooperate with each other to commit the crime of kidnapping. This is essential.” He also said, “Simply meeting from time to time” to talk things over is not enough to establish a criminal agreement, but it does not have to be a formal agreement like a written contract.

Countering one of the central claims of the defense that Fox and Croft were incapable of executing any plans that they talked about, the judge said it did not matter if the plan was a good one or a bad one, adding, “You may find them guilty, even if it was impossible for them to successfully complete the crime.”



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