

# Two convicted Whitmer kidnap plotters claim juror misconduct and seek third trial

**Kevin Reed****15 September 2022**

The two men found guilty last month in a Grand Rapids federal courtroom of plotting to kidnap and kill the Governor of Michigan filed a motion on September 6 seeking a new trial.

Attorneys for Adam Fox and Barry Croft Jr., who were convicted on August 23 in their second jury trial on kidnapping charges, filed a request for a hearing to examine allegations of misconduct by a juror as well as judicial bias by US District Court Judge Robert Jonker.

In their motion for a Remmer hearing—a special court proceeding to determine if credible evidence exists that a juror was prejudiced against the defendants—attorneys Christopher Gibbons representing Fox and Joshua Blanchard representing Croft said the juror was eager to be on the jury and had decided to convict before any evidence was presented at trial.

Among the accusations made in the motion, which was unsealed on September 8, are statements from co-workers who had heard that the juror said they “had it out” for the defendants and planned to “hang” them if picked to sit on the jury. The name and gender of the juror has not been disclosed.

The unsealed filing reveals that, on the day Fox and Croft were found guilty, defense lawyers dispatched a private investigator, Gary Gaudard, to the workplace of the juror to question co-workers about what had been said and by whom. Although the individual who originally claimed to have heard the juror express bias toward the defendants has gone silent, other co-workers spoke to the investigator about what they heard second-hand.

After a four-week trial and less than two days of deliberations, the Grand Rapids jury found the two men guilty on conspiracy to kidnap and weapons of mass destruction charges. Fox, 39, from Wyoming, Michigan, and Croft, 46, from Bear, Delaware, are

facing sentences of life in prison.

The trial of Fox and Croft, their second following an earlier one which ended in a hung jury, included testimony from multiple FBI informants and two others, Ty Garbin and Kaleb Franks, who had pleaded guilty to participating in the kidnapping plot in the first trial.

The group of right-wing plotters, which also included Brandon Caserta and Daniel Harris who were acquitted in the first trial, had met numerous times in the summer and fall of 2020 to train and organize the kidnapping of the governor. These preparations included plans for multiple scenarios to take the governor hostage, put her on trial and execute her or take her out into the middle of Lake Michigan in a boat and leave her there to die, or have her transported by helicopter to the Saint Lawrence Seaway.

While the defense maintained that Fox and Croft were hapless, pot-smoking losers who had been manipulated and entrapped by FBI agents, the jury agreed with prosecutors that the two men and the others were motivated by hatred of Governor Whitmer and sought to make an example of her. The defense said the men were big talkers who would never have gone through with their schemes; the evidence showed the kidnappers were motivated by violent opposition to the limited stay-at-home orders imposed by the Michigan government during the first months of the coronavirus pandemic.

Although Judge Jonker explicitly prohibited the presentation of evidence during the trial regarding the open encouragement of fascist violence in Michigan and elsewhere in the US by the Republican Party in 2020, the testimony revealed that the defendants—who were members and supporters of the right-wing militia group Wolverine Watchmen—wanted to spark chaos and

a civil war in the US that would ensure Donald Trump remained in office as president prior to the November 2020 elections.

Issues concerning the jury emerged early in the August trial when the defense lawyers received a tip from a co-worker that the juror in question had been telling people at work that they hoped to be selected for the second Whitmer kidnapping trial and intended to ensure a conviction. That evening, the lawyers informed the judge of the report and requested to interview the juror. Judge Jonker refused and instead met with the juror privately in his chambers, along with two staffers.

During the interview, the juror denied telling co-workers that Fox and Croft were guilty, and Judge Jonker accepted that the juror was not biased and the trial would proceed. In permitting the juror to remain in the trial, the judge explained that the tipster refused to identify the person who had said they heard the alleged statements from the juror first-hand.

The motion filed by attorneys for Fox and Croft included new claims by co-workers that the juror was “far-left leaning,” said the defendants were “guilty no matter what” and had texted a family member during jury deliberations that a verdict had been reached but had not been announced yet.

The private investigator is quoted in the motion stating that the tipster “has a fear of negative employment consequences” if he continued to talk about the kidnapping trial verdict. The tipster also said, “if he is compelled to talk about [the juror], he will now say that he does not know anything,” according to the investigator.

Attorneys Gibbons and Blanchard maintain that if Judge Jonker had granted a Remmer hearing during the trial, the tipster would have been willing to speak or could have been compelled to divulge more information. The legal basis of the juror misconduct allegation is that the defendants’ Sixth Amendment rights were violated, the motion says, which guarantees a trial by an impartial jury.

The Remmer hearing request concludes with the claim that the defendants were denied the ability to prove juror bias, stating, “The Court has placed the defendants in a classic Catch-22. The Court denied the defendants an opportunity to participate in the questioning of the juror and has ordered that the

defendants may not contact the jurors following the verdict.”

The defense lawyers also argue that a new trial for Fox and Croft is warranted, “based on the misconduct of and the appearance of judicial bias which impacted the proceedings.” Time limits were placed on cross-examination of government witnesses, the judge “belittled,” interrupted and criticized the defense in front of the jury and referred to defense arguments as “crap” while the jury was on a break, the motion states.

Fox and Croft are scheduled to be sentenced in December.



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