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Conviction in Death of Gay Man in Traffic

By **MICHAEL BRICK**

Correction Appended

For his role in selecting a gay man as a robbery target and chasing him to his death in traffic, a Brooklyn man was convicted yesterday of manslaughter and attempted robbery as hate crimes, but acquitted of murder.

The convicted man, John Fox, 20, bowed his head for a moment after the verdict was read in State Supreme Court in Brooklyn, then gave his father a solemn wink as he was led away. Sentencing was scheduled for Oct. 24.

“He didn’t murder anybody,” said his father, also named John Fox, outside the courtroom. Offering regrets to the victim’s parents, the elder Mr. Fox added, “If I could arrange for their son to be alive and me to be dead, I’d do so.”

A separate jury deliberating the same charges against Mr. Fox’s co-defendant, Anthony Fortunato, 21, retired for the weekend yesterday without reaching a verdict.

With its verdict, the Fox jury embraced a novel application of the state’s hate crime law in a case that has stirred passions from the beginning. The victim, Michael J. Sandy, 29, of Williamsburg, was lured to a secluded lot in Sheepshead Bay on Oct. 8, 2006, through online messages at a Web site for gay men.

From there, he was led to a narrow beach by the Dead Horse Inlet, then attacked and chased into traffic on the Belt Parkway. He was struck by a sport utility vehicle and later died of his injuries. The driver has never been identified.

Prosecutors charged Mr. Fox, Mr. Fortunato and a third man, Ilya Shurov, 21, with murder as a hate crime, a distinction that can extend sentences. By the prosecution’s theory, the men had selected Mr. Sandy for robbery because they believed that a gay man would put up little resistance and would hesitate to report the crime.

Before the trial began, defense lawyers asked to dismiss the charges, arguing that the men had shown no hatred for homosexuals. The judge overseeing the case, Jill Konviser-Levine, rejected that argument.

A fourth young man, Gary Timmins, 17, pleaded guilty to attempted robbery as a hate crime and testified for the prosecution. Mr. Shurov, the only one accused of striking Mr. Sandy, will be tried separately.

A lawyer for Mr. Fortunato, who is being tried alongside Mr. Fox, has argued that Mr. Fortunato himself is

gay and was unlikely to select gay men as targets. In a note to the judge, the jurors in the Fortunato case said tensions were rising.

By the account of prosecutors, Mr. Fox played a role in every aspect of the crime. He supplied the computer screen name used to exchange messages with Mr. Sandy.

He met Mr. Sandy alone, prosecutors said, guiding him to the place where the others lay in hiding. And he was one of the two men identified by witnesses as chasing Mr. Sandy onto the highway.

During the trial, which began on Sept. 17, a lawyer for Mr. Fox, John D. Patten, attacked the credibility of the police and Mr. Timmins. But he built much of his defense on the legal definition of robbery.

By Mr. Patten's account, the defendants had intended to swindle Mr. Sandy for marijuana, not to rob him by force. The most serious charge in the indictment, felony murder as a hate crime, required the element of attempted robbery.

Squinting through low-hung glasses, speaking with a light brogue and quoting from the Book of Daniel, Mr. Patten argued that the case lacked integrity. Mr. Fox, a sophomore at SUNY Maritime College at the time of his arrest, was taken from his dormitory room in the middle of the night, Mr. Patten said, and interrogated by detectives who did not read him his rights until he began making incriminating statements.

He told jurors that Mr. Timmins had described a plan merely to steal from Mr. Sandy, drawing a contrast to the use of force.

"Ripping someone off doesn't mean much," Mr. Patten argued. "I get ripped off when I go to Yankee Stadium and pay \$10 for a beer."

Mr. Sandy's death, he argued, was caused by Mr. Shurov and by the driver, "this coward who's out there probably reading all the newspaper articles on this case, who hit Mr. Sandy and killed him and then took off."

An assistant Brooklyn district attorney, Anna-Sigga Nicolazzi, argued that the plan fit the definition of robbery, citing transcripts of the online messages.

"You can almost hear the grand old time they're having as they type away," Ms. Nicolazzi said. She added, "They were going to surround Mr. Sandy, scare him and take his money."

The Brooklyn district attorney, Charles J. Hynes, made no comment on the jury's application of the hate crime law, but Christine C. Quinn, the first openly lesbian City Council speaker, said, "Today a Brooklyn jury sent a powerful message that hate crimes of any stripe have no place here in New York City."

As for the victim's parents, they said they were neither satisfied nor dissatisfied.

"Things like this shouldn't happen," said Mr. Sandy's father, Ezekial Sandy. "Hopefully something greater will come out of it."

Outside the courthouse yesterday, the jury foreman, Jason Linetsky, 29, said the hate crime charges were

the source of some debate.

“We needed clarification of: how much do we bring of our own personal feelings?” Mr. Linetsky said.

On a more basic level, the jury’s verdict included apparent contradictions, endorsing the elements of causing a death in the course of a robbery but rejecting the felony murder charges. Asked about that, Mr. Linetsky posed his own question: “Were we about to send somebody to life when he wasn’t the direct cause of it?”

Without the element of a hate crime, manslaughter is a Class C nonviolent felony carrying a minimum penalty of 1 to 3 years and a maximum of 5 to 15. As a hate crime, the charge is a Class B violent felony carrying a sentence of 5 to 15 years, according to the district attorney’s office.

The defense lawyer, Mr. Patten, said he was puzzled but generally pleased by the verdict. Mr. Fox, he said, is “a decent young boy who got involved in something he ought not to have gotten involved in.”

Correction: October 19, 2007

An article on Oct. 6 about the conviction of a Brooklyn man for manslaughter and attempted robbery as hate crimes, stemming from his role in selecting a gay man as a robbery target and chasing him to his death in traffic, included an incorrect range of sentences from prosecutors for manslaughter as a hate crime. (The error also appeared in an article on Oct. 10 about a call for forgiveness from the victim’s mother.) The crime carries a minimum penalty of 1 to 3 years and a maximum of 8 1/3 to 25; the range is not 5 to 15.

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