

27178-2
Vancouver Registry

In the Supreme Court of British Columbia
(BEFORE THE HONOURABLE MADAM JUSTICE HOLMES AND JURY)

Vancouver, B.C.
June 19, 2017

REGINA

v.

PATRICK HENRY FOX

PROCEEDINGS AT TRIAL

COPY

BAN ON PUBLICATION - INHERENT JURISDICTION
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Crown Counsel:

M. Myhre

Appearing on his own behalf:

P. Fox

INDEX

WITNESSES FOR THE CROWN:

MANVIR MANGAT	3
EXAMINATION IN CHIEF BY MR. MYHRE:	3
CROSS-EXAMINATION BY THE ACCUSED:	9
CROSS-EXAMINATION BY THE ACCUSED, Continuing:	14
FRANK SPIZUOCO	18
EXAMINATION IN CHIEF BY MR. MYHRE:	18
CROSS-EXAMINATION BY THE ACCUSED:	21
CROSS-EXAMINATION BY THE ACCUSED, Continuing:	25
JEAN-PHILIPPE DUPONT.....	30
EXAMINATION IN CHIEF BY MR. MYHRE:	31
CROSS-EXAMINATION BY THE ACCUSED:	41

EXHIBITS

EXHIBIT 10: Affidavit of Allen Leung, Firearms Officer, sworn June 20, 2016	16
EXHIBIT 11: Affidavit of Neena Sharan sworn June 20, 2016	17
EXHIBIT 12: Admissions of Fact re Restricted Firearms dated May 29, 2017	17
EXHIBIT 13: Binder titled "Photos - ATF Seizure" (formerly E for Identification)	21
 MARKED E FOR IDENTIFICATION: Binder titled "Photos - ATF Seizure"	8
MARKED F FOR IDENTIFICATION: Document titled "UPS Tracking Information"	16

RULINGS

Ruling re Amendment to Count 2	28
Ruling re Amendment to Count 1	57

1
(Jury Out)
Proceedings

BAN ON PUBLICATION - INHERENT JURISDICTION

1 Vancouver, B.C.
2 June 19, 2017
3
4 (JURY OUT)
5
6 THE CLERK: In the Supreme Court of British Columbia,
7 at Vancouver, this 19th day of June, 2017.
8 Recalling the matter of Her Majesty the Queen
9 against Patrick Henry Fox, My Lady.
10 MR. MYHRE: Good morning, My Lady. I apologize for the
11 delay this morning. I think you heard that was my
12 fault.
13 THE COURT: All right. Are we all set now?
14 MR. MYHRE: I believe so, My Lady. I just wanted to
15 alert the court to a couple of things. I've just
16 let Mr. Fox know that it appears to me there's a
17 variance between the expected evidence and
18 indictment; namely, the dates on s. 93 count, and
19 the Crown will be applying after we hear the
20 evidence on that point to amend the dates.
21 THE COURT: All right.
22 MR. MYHRE: After the first witness, Manvir Mangat,
23 testifies, the Crown's intention is to then ask
24 that the affidavits marked at the preliminary
25 inquiry become exhibits on the trial. Those are
26 the firearm -- the affidavits relating to Mr.
27 Fox's firearms licence and his firearm's
28 registration. And then we'll hear from two more
29 witnesses. I do expect we'll comfortably finish
30 the Crown case this morning.
31 THE COURT: Back to the first issue of the amendment of
32 the indictment, is that something that should be
33 done -- your application, should that be heard in
34 the presence of the jury or the absence of the
35 jury? I was -- I would think the absence.
36 MR. MYHRE: I don't see why it would need to be in
37 front of the jury, My Lady.
38 THE COURT: All right.
39 THE ACCUSED: I have no opinion on that either way.
40 THE COURT: All right. And you understand what Mr.
41 Myhre means by a variation between --
42 THE ACCUSED: Yes.
43 THE COURT: -- what he expects the evidence to be and
44 what the dates are that are set out in the
45 indictment?
46 THE ACCUSED: Yes.
47 THE COURT: I can tell you, Mr. Fox, that it's not

BAN ON PUBLICATION - INHERENT JURISDICTION

1 unusual that this happens and the Crown applies to
2 have the indictment revised, the dates to conform
3 to the evidence. There are situations where
4 objection may be taken and may even prevail if the
5 variation has caused some prejudice to the
6 defence. Those situations are not very usual, but
7 they do happen, and if that's the situation for
8 you, then I'll certainly hear for it -- from --
9 from you about it if you're taken by surprise, for
10 instance, or it affects the way you would have
11 conducted the case up to this point.

12 THE ACCUSED: Right. Thank you.

13 THE COURT: All right. The jury has selected a
14 foreperson, I understand, so the first thing we'll
15 do when the jury comes in is have the foreperson
16 identified and there's a formal procedure that is
17 gone through and the jury members will change
18 seats so that the foreperson is sitting in that
19 front seat.

20 All right, are we ready?

21 THE ACCUSED: There is --

22 THE COURT: Mr. Fox?

23 THE ACCUSED: There is one issue that I want to make
24 sure that the court is aware of. Last week, while
25 Mr. Lagemaat was conducting the cross-examination,
26 I had been providing you my notes that we're -- I
27 was making along the way. He had said that he
28 would get those and his own notes back to me
29 before I begin preparing the closing argument. I
30 have not heard from him since, though. So I'm not
31 sure if he's intending to provide me those today
32 or tomorrow, but I would hope to get those before
33 I could prepare my closing. I only have his
34 office number, and so by the time I get back to
35 the jail from -- from court, obviously he's no
36 longer at the office or the office is closed, so I
37 haven't been able to reach him.

38 THE COURT: That's something that needs to be looked
39 into quickly, I would think.

40 THE ACCUSED: I would think.

41 MR. MYHRE: My Lady, I can try to contact Mr. Lagemaat
42 at the break and ask him to make his way here to
43 hand those materials to Mr. Fox.

44 THE COURT: All right. Thank you.

45 THE ACCUSED: Thank you. That was all.

46 MR. MYHRE: Mr. Fox, will you remind me of that at the
47 break?

3
(Jury Out)
Proceedings

BAN ON PUBLICATION - INHERENT JURISDICTION

1 THE ACCUSED: Hopefully I'll remember.
2 MR. MYHRE: Okay. Hopefully one of us will remember.
3 THE COURT: Well, I'll try and remember. Between us
4 we'll manage. All right.
5 THE SHERIFF: The jury, My Lady?
6 THE COURT: Yes, please.
7 THE SHERIFF: The jury, My Lady.
8
9 (JURY IN)
10
11 THE COURT: Members of the jury, please have a seat.
12 Members of the jury, I understand you have a
13 foreperson now? All right. Madam Registrar?
14 THE CLERK: Members of the jury, have you selected a
15 foreperson?
16 THE JURY FOREPERSON: Yes.
17 THE CLERK: Mr. Foreperson, please state your number
18 for the record.
19 THE JURY FOREPERSON: 236.
20 THE CLERK: Thank you.
21 THE COURT: Thank you. Thank you for agreeing to serve
22 in that capacity.
23 Mr. Myhre?
24 MR. MYHRE: My Lady, the Crown's first witness this
25 morning is Manvir Mangat. If he could be paged
26 into the courtroom, please.
27 My Lady, perhaps I could poke my head out the
28 door.
29 THE COURT: Please.
30 THE CLERK: Please step inside the witness box or
31 remain standing.
32

MANVIR MANGAT

a witness called for the
Crown, affirmed.

33
34
35
36
37 THE CLERK: Please state your full name and spell it
38 for the record.
39 A Manvir Mangat.
40 THE CLERK: Spell it for the record.
41 A M-a-n-v-i-r M-a-n-g-a-t.
42 THE CLERK: Thank you. You may be seated.
43 A Thank you.
44

EXAMINATION IN CHIEF BY MR. MYHRE:

45
46
47 Q Mr. Mangat, how old are you, sir?

Manvir Mangat (for Crown)
in chief by Mr. Myhre
BAN ON PUBLICATION - INHERENT JURISDICTION

- 1 A 45.
- 2 Q And how long have you lived in the Lower Mainland?
- 3 A 21 years.
- 4 Q You own a business called the Packaging Depot?
- 5 A Correct.
- 6 Q How long have you owned that business?
- 7 A Ten years.
- 8 Q That business is located at 3630 Kingsway --
- 9 A Correct.
- 10 Q -- in Burnaby, British Columbia?
- 11 A Correct.
- 12 Q You're familiar with Patrick Fox?
- 13 A Correct.
- 14 Q Do you see him here in the courtroom?
- 15 A Correct.
- 16 Q What is he wearing, sir?
- 17 A Red suit.
- 18 Q And when did you first meet Mr. Fox?
- 19 A Even like he shipped some box in March 2016.
- 20 Q He shipped some boxes in March 2016?
- 21 A Correct.
- 22 Q And did he also do a little bit of work for you?
- 23 A Yeah, he fixed like in the last shipment, he fixed
- 24 some my computer stuff at my store.
- 25 Q And how many -- on how many different occasions
- 26 did Mr. Fox ship boxes through your business?
- 27 A Three time.
- 28 Q Do you know roughly the dates that he shipped
- 29 boxes?
- 30 A First one in March, two time in May.
- 31 Q And when you shipped boxes for Mr. Fox, how did
- 32 you come into possession of them, did Mr. Fox
- 33 bring them to your business or did you pick them
- 34 up?
- 35 A He brought two time, last time I picked from his
- 36 apartment.
- 37 Q So the first two times he brought them to the
- 38 Packaging Depot?
- 39 A Correct.
- 40 Q And the last time --
- 41 A Yes --
- 42 Q -- was it you yourself that picked them up?
- 43 A Yes.
- 44 Q And could you just describe exactly how that
- 45 worked?
- 46 A Sorry?
- 47 Q Exactly how did that work with you picking up the

Manvir Mangat (for Crown)
in chief by Mr. Myhre
BAN ON PUBLICATION - INHERENT JURISDICTION

1 boxes at the apartment?
2 A He called me up, so I went to his place, then pick
3 -- picked up all the boxes. So he came to my
4 store and then I shipped.
5 Q And when you picked them up at his place, did you
6 go up to his apartment or did --
7 A No, no --
8 Q -- he bring the boxes down?
9 A -- just outside. Outside.
10 Q You were outside?
11 A Yeah.
12 Q And how did you come into possession of the boxes?
13 A So he brought them in.
14 Q He brought them to you on the street?
15 A Yeah, in my truck, and then we brought it to my
16 store.
17 Q Mr. Mangat, there's a -- a book in front of you,
18 and I have copies for the jury if they could be
19 distributed, and I have a copy for Your Ladyship?
20 THE COURT: Madam Registrar, please.
21 MR. MYHRE:
22 Q Mr. Mangat, I'd ask you to open that up and go to
23 page 3.
24 A Yes.
25 Q Do you recognize this document that's shown at
26 page 3?
27 A Yes, sir.
28 Q And do you recognize the sender's signature on
29 that document?
30 A Yes, sir.
31 Q Is that you?
32 A Yeah, that's my signature.
33 Q And what's the date you --
34 A I believe --
35 Q Did you write the date in there?
36 A Yeah.
37 Q What is it?
38 A June the 16th. 17, sorry.
39 Q June the 17th?
40 A No, sorry, May -- May. Sorry, May the 17th.
41 Q May the 17th. Of what year?
42 A 2016.
43 Q Okay. And do you recognize this as one of -- as a
44 document you filled in relation to --
45 A Yeah, because I print it online, right?
46 Q Okay. So --
47 A It's a tracking number.

Manvir Mangat (for Crown)
in chief by Mr. Myhre
BAN ON PUBLICATION - INHERENT JURISDICTION

1 Q Does this document relate to any of the boxes Mr.
2 Fox shipped through your business?
3 A Oh, yes, yes. These are the boxes -- these are
4 our labels. We put it on the boxes.
5 Q Okay. Now, looking at that date, are you able to
6 say what date you came into possession of the box
7 that relates to this consignment note?
8 A 17th of May.
9 Q So was it the --
10 A 16th?
11 Q Did you fill this out the same day you received
12 the boxes from Mr. Fox?
13 A Oh, yes, yes, same day.
14 Q Okay. And I see under "From" it lists the name is
15 the Packaging Depot and then "To" says Liz
16 Munoz --
17 A Yeah, yeah, yeah.
18 Q -- in Carson, California?
19 A Yeah. That would be the consignee he shipped.
20 Q That is what?
21 A That is the ship -- like he send it to there, that
22 address.
23 Q So, just to be clear, where did you get that
24 address Liz Munoz, Carson, California from?
25 A He -- he gave me the address.
26 Q Okay. And there's a -- under "Goods," it says,
27 "General Description: Computer and monitor"?
28 A That's -- he -- yeah, he mention.
29 Q Did you ever look inside the boxes?
30 A No.
31 Q Now, if you could flip to page 2, please. I'm
32 going to suggest to you that's just a close-up of
33 the same document on -- that was on page 3, is
34 that --
35 A Yes, yes. Yes.
36 Q -- is that right?
37 A Yeah, yeah.
38 Q And then flip to page 1, please. Do you recognize
39 this -- this, it looks like a label on a box?
40 A Correct.
41 Q And does it relate to the same box as the --
42 A Oh, yeah, yeah. These are the UPS labels and TNT,
43 they use the UPS to send those boxes to the U.S.,
44 so they printed this UPS label.
45 Q Can you just explain, you receive a box from a
46 customer?
47 A Correct.

Manvir Mangat (for Crown)
in chief by Mr. Myhre
BAN ON PUBLICATION - INHERENT JURISDICTION

- 1 Q And then you fill out the label that we saw, it's
2 called a consignment note?
- 3 A Right, right, right.
- 4 Q And then what happens to the box?
- 5 A Then we stickered those box, send it to TNT and
6 then they -- they -- they are using UPS, sending
7 those boxes from Vancouver to where -- whatever,
8 right?
- 9 Q Okay.
- 10 A So these are the UPS label. They generate it, TNT
11 people.
- 12 Q So do I have this correct that a company called
13 TNT will then come and get the boxes from your
14 business --
- 15 A Correct.
- 16 Q -- and then they will use UPS to ship things?
- 17 A Correct.
- 18 Q Now, why is it that you believe that this UPS
19 label relates to the same consignment note that we
20 were looking at?
- 21 A Because he send it to there, you know? It's the
22 same address, Liz Munoz.
- 23 Q Roughly how long -- when you received the boxes
24 from Mr. Fox on May the 17th --
- 25 A Right.
- 26 Q -- how long were they in your possession --
- 27 A Oh --
- 28 Q -- before TNT came and got them?
- 29 A Maybe four hour, five hours.
- 30 Q If Mr. Fox had called you anytime in those four to
31 five hours, could you have stopped the shipment?
- 32 A Correct.
- 33 Q What about once TNT had the boxes, could you have
34 stopped the shipment?
- 35 A TNT, yeah. Yeah, like maybe -- maybe evening till
36 like four o'clock. After that, they hand it over
37 to UPS.
- 38 Q And then what about once UPS had the box, could
39 you have then stopped --
- 40 A Then --
- 41 Q -- the shipment?
- 42 A Then it's hard to stop.
- 43 Q Now, do you know, Mr. Mangat, you said that the
44 first two times Mr. Fox shipped boxes, he brought
45 the boxes to your business, and the last time you
46 picked them up?
- 47 A Correct.

Manvir Mangat (for Crown)
in chief by Mr. Myhre
BAN ON PUBLICATION - INHERENT JURISDICTION

1 Q Do you know which of those times this -- the
2 consignment note relates to, was it the time you
3 picked them up or -- or an earlier time?
4 A No, at that time I picked them up.
5 Q Okay. You said something earlier about Mr. Fox
6 fixing your computers. Did he pay for this last
7 shipment?
8 A No, I didn't [sic].
9 Q Why not?
10 A Because he'd done so much computer work at my
11 place, right? So we exchange.
12 Q And whose idea was that, yours or Mr. Fox's?
13 A No, that was my idea because he's a computer
14 engineer and I -- I just asked him if he can do
15 that. He said it's okay. Then I -- we made a
16 deal, right?
17 MR. MYHRE: My Lady, those are all my questions for Mr.
18 Mangat.
19 THE COURT: Okay.
20 MR. MYHRE: My Lady, could this be marked as an exhibit
21 for identification, please?
22 THE COURT: All right. The entire book?
23 MR. MYHRE: Yes.
24 THE COURT: What's the next exhibit for identification,
25 Madam Registrar?
26 THE CLERK: It would be Exhibit E for identification,
27 My Lady.
28 THE COURT: Did you say E?
29 THE CLERK: Yes.
30
31 **MARKED E FOR IDENTIFICATION: Binder titled**
32 **"Photos - ATF Seizure"**
33
34 THE COURT: Thank you. Members of the jury, what that
35 means is it's not at this point going into
36 evidence, but we give it a letter so that if it's
37 referred to later, people know what is referred
38 to, what document. It's the Crown's expectation
39 that it will go into evidence later, but we'll
40 have to wait and see if that's what ends up being
41 the case, and I'll give you further instructions
42 about it later if it does not go in.
43 All right. Mr. Fox, do you have some
44 questions --
45 THE ACCUSED: Yes, I do. Thank you.
46 THE COURT: -- for Mr. Mangat?
47

Manvir Mangat (for Crown)
cross-exam by the Accused
BAN ON PUBLICATION - INHERENT JURISDICTION

1 **CROSS-EXAMINATION BY THE ACCUSED:**
2
3 Q Good morning, Mr. Mangat.
4 A Yeah, yeah.
5 Q Thank you for coming. The first question that I'd
6 like to ask is of all the times that I've been at
7 the Packaging Depot, did you ever see or do you
8 ever have any firsthand knowledge of me possessing
9 any handguns?
10 A No, I didn't see anything.
11 Q Okay. And I wonder if you might clarify for us.
12 Now, I understand the dates on the consignment
13 form that you had referred to was May 17th; is
14 that correct?
15 A Mm-hmm.
16 Q But then on the UPS label it says May 19th?
17 A Because May -- it takes some times because that is
18 a -- that is a -- you know, the TNT, they created
19 this label, right?
20 Q Sure. Sure.
21 A So sometime they taking longer to create it
22 because they can't -- see, TNT --
23 Q Yeah.
24 A -- I created 17th, so some time, you know, TNT
25 take little while to create UPS label, right?
26 Q Okay. Sure. Sure. Now, you were speaking a
27 little while ago about that I had done some
28 work --
29 A Yeah.
30 Q -- for the Packaging Depot to --
31 A Yeah, yeah, yeah.
32 Q -- fix some computer issues that you had?
33 A Right, right, right.
34 Q And then there was a shipment that I wasn't
35 charged for --
36 A Yeah.
37 Q -- in exchange perhaps --
38 A Yeah, yeah, yeah, right.
39 Q -- informally for the work that was done on the
40 computers.
41 A Right, right.
42 Q Do you know was this box that we're discussing,
43 was that part of that shipment, do you know, or --
44 A I think so because that is the last -- last one
45 you shipped from my place.
46 Q Okay. Do you remember when the work was done?
47 A I believe in May, the last -- May -- whenever the

Manvir Mangat (for Crown)
cross-exam by the Accused
BAN ON PUBLICATION - INHERENT JURISDICTION

1 last shipment, right? Remember?
2 Q Could it -- oh, I remember when it was.
3 A I don't know the exactly date, right? Because you
4 brought it --
5 Q Yeah.
6 A -- two time you brought it, third time I picked up
7 from your place, remember?
8 Q Oh, yeah. Yeah. Do you think perhaps it might
9 have been -- well, okay, May 27th was when I had
10 moved out of my apartment and was arrested. Could
11 it have been May 25th?
12 A Because -- see, because you -- this is the label
13 we generated --
14 Q Right.
15 A -- 17th, right?
16 Q Right.
17 A I don't think so 25th.
18 Q Okay. So do you know was there anything shipped,
19 let's say, on my behalf or to this address in
20 California on May 26th through May 31st?
21 A Can't remember now.
22 Q No problem. No problem.
23 A So what date are you arrested?
24 Q I was arrested on May 27.
25 A So that means you shipped it before that, right?
26 Q Yes. Well --
27 THE ACCUSED: My Lady, I'm -- I'm not sure, given that
28 I'm on cross-examination right now, if it's
29 appropriate for me to make a statement
30 regarding --
31 THE COURT: No.
32 THE ACCUSED: Right.
33 THE COURT: No, no statements, but if you want to ask
34 me a further question, we can stand down, ask the
35 jury to go to the jury room, ask the witness to
36 step outside the courtroom, but you are confined
37 in -- and we can certainly do that, Mr. Fox, but
38 you are confined to questions.
39 THE ACCUSED: Right. Right.
40 THE COURT: You can ask if the -- you can make a
41 suggestion and ask if the witness agrees with it,
42 but if the answer is no, then the evidence -- then
43 there's no evidence on that point.
44 THE ACCUSED:
45 Q Do you -- Mr. Mangat, do you recall shipping a
46 home theatre system? It was -- might have been in
47 a large box, an LG home --

Manvir Mangat (for Crown)
cross-exam by the Accused
BAN ON PUBLICATION - INHERENT JURISDICTION

1 A Yeah, yeah, yeah.
2 Q -- theatre system with speakers and --
3 A Yes, I remember then.
4 Q -- a Blu-ray player?
5 A You sent something, yeah.
6 Q Right. Now, do you remember was that package,
7 that box, was that shipped at the same time as
8 this one or would that have been after?
9 A I think that was before. I can't remember months
10 or last year, right?
11 Q Sure, sure.
12 A I have so many packages, right?
13 Q The -- okay, getting back to this box that was
14 received by you on May 17th --
15 A Yeah.
16 Q How certain are you that I personally brought that
17 package in? I mean, is it possible that someone
18 else may have brought that package on my behalf or
19 are we absolutely certain at this point --
20 A Well --
21 Q -- given that there's some uncertainty as to
22 whether I may have shipped other items before or
23 after?
24 A No, no, no, you --
25 THE COURT: Now, can you just -- that was a very long
26 question.
27 THE ACCUSED: I'm sorry.
28 THE COURT: In fact, it was several. Can you put it
29 again in a way so that it's just one question?
30 THE ACCUSED: My apologies.
31 Q Are you certain beyond any doubt that when this
32 particular box was brought into the Packaging
33 Depot --
34 A Mm-hmm.
35 Q -- that it was I that brought it in personally
36 or --
37 A No --
38 Q Well, I guess that would be one question.
39 A No, no, nobody else.
40 Q Okay. So it was definitely me?
41 A Nobody else.
42 Q Okay.
43 A Because it's all your boxes, remember?
44 Q Right, right, but there may have been, I would
45 suggest, somebody else that I might have hired or
46 somebody that might have been helping me. For
47 example, you had said that you yourself did come

Manvir Mangat (for Crown)
cross-exam by the Accused
BAN ON PUBLICATION - INHERENT JURISDICTION

1 the my residence --
2 A Yeah, yeah, yeah.
3 Q -- once or twice --
4 A Correct.
5 Q -- and taken possession of some of the boxes --
6 A Mm-hmm.
7 Q -- in that way, and would you say that this
8 particular box may have been one of the boxes that
9 you had picked up from my residence?
10 A I'm pretty sure.
11 Q Okay.
12 A Because this is a large shipment, remember? You
13 sent like -- because you -- you arrested 27 --
14 Q May 27th.
15 A Yeah. See, this is the 17th, you know?
16 Q Right. This would have been 10 days, correct.
17 A Because before -- before that you shipped in
18 March, couple time March -- or beginning of May.
19 Q Do you recall if there were any shipments in the
20 month of April?
21 A Yeah, there might be April, yes, might be April
22 because --
23 Q Right, right.
24 A -- you -- you shipped like three times, remember?
25 Q Was it only three or --
26 A Three -- I guess three or -- I'm pretty sure like
27 three times.
28 Q Okay.
29 A Why you are thinking more than that?
30 Q Oh, yes. Do you happen to remember roughly off
31 the top of your head maybe how many boxes -- not
32 individual -- or not complete shipments, but
33 individually how many boxes may have been shipped?
34 A Altogether?
35 Q Yeah.
36 A Maybe 14, 15.
37 Q Okay.
38 THE COURT: I didn't hear the answer and the jury may
39 not --
40 A Fifteen, Madam. Fourteen to 15.
41 THE COURT: Thank you.
42 A But it's a long time, you know? It's one year
43 back now.
44 THE ACCUSED:
45 Q Okay. And -- and I apologize if it seems like I'm
46 putting you on the spot, but getting back to the
47 most crucial point, so there was no -- there's no

Manvir Mangat (for Crown)
cross-exam by the Accused
BAN ON PUBLICATION - INHERENT JURISDICTION

1 recollection at all of any handguns?
2 A I didn't see anything.
3 Q Okay.
4 A Of course, I didn't open any. It's none of my
5 business.
6 Q Right, right. Of course. And also maybe on my
7 person or --
8 A Oh, no, no, I didn't see --
9 Q Right.
10 A -- anything, no.
11 THE ACCUSED: Okay. I have no further questions.
12 THE COURT: All right.
13 THE ACCUSED: Thank you.
14 THE COURT: Anything arising, Mr. Myhre?
15 MR. MYHRE: Yes, My Lady, and I wonder, it's something
16 that would have to be addressed outside the
17 presence of the jury, I'm afraid.
18 THE COURT: All right. Members of the jury, if you
19 don't mind, please.
20
21 (JURY OUT)
22
23 THE COURT: And, Mr. Mangat, I'm going to ask you to
24 step outside the courtroom briefly, please.
25 A Oh, okay.
26 THE COURT: And we'll call you back in in a few
27 minutes.
28 A Okay.
29 THE COURT: Thank you.
30
31 (WITNESS STOOD DOWN)
32
33 MR. MYHRE: My Lady, I was going to actually suggest to
34 Mr. Fox that a lot of his line of questioning,
35 there may be some documents that would assist him
36 in establishing that maybe there was a later
37 shipment in May, some of the documents that were
38 tendered at the preliminary inquiry. So I don't
39 know if Mr. Fox would like to do that, but I just
40 wanted to raise that because I could see that he
41 was struggling to try to establish that.
42 THE ACCUSED: Thank you. That's very considerate.
43 Yep.
44 MR. MYHRE: So I would not be opposed to Mr. Fox asking
45 more questions about one of the documents.
46 THE COURT: All right. That's very fair. Thank you,
47 Mr. Myhre.

BAN ON PUBLICATION - INHERENT JURISDICTION

1 Now, Mr. Fox, you don't have to take up that
2 offer, but if you think it would help you make the
3 point that you wish to make, what you could do is
4 re-open your cross-examination and show Mr. Mangat
5 this document and ask him whether that refreshes
6 his memory and helps him remember a shipment later
7 than the one he's been talking about.
8 THE ACCUSED: Yes, I would like that. Thank you.
9 THE COURT: All right. Is there anything else that we
10 should address?
11 MR. MYHRE: I don't have any re-exam, My Lady.
12 THE COURT: All right. Could we have Mr. Mangat back
13 in the courtroom. Perhaps you could get him, Mr.
14 Myhre, and at the same time we'll ask the jury to
15 come back, please.

16
17 **MANVIR MANGAT, recalled.**

18
19 THE SHERIFF: The jury, My Lady.

20
21 (JURY IN)

22
23 THE COURT: Thank you, members of the jury.
24 Mr. Mangat --

25 A Yes?

26 THE COURT: -- Mr. Fox is going to ask a few more
27 questions in cross-examination.
28 Go ahead, Mr. Fox.

29 THE ACCUSED: May I provide this to Mr. Mangat?

30 THE COURT: Yes. Perhaps Mr. Myhre will --

31 THE ACCUSED: Thank you.

32 THE COURT: -- pass it to him. There's just the one
33 copy, is there, Mr. Myhre?

34
35 **CROSS-EXAMINATION BY THE ACCUSED, CONTINUING:**

36
37 Q Now, I understand that it was some time ago, it
38 was over a year ago that -- and so maybe the
39 details are not the clearest in our memories, but
40 in that document there is a ship -- it says a
41 shipped date on there? I believe it says,
42 "Shipped/billed on"?

43 A 27th?

44 Q Yes. Now, can you clarify what exactly that date
45 refers to?

46 THE COURT: Mr. Fox, you might want to first ask if
47 this is the kind of document --

Manvir Mangat (for Crown)
cross-exam by the Accused
BAN ON PUBLICATION - INHERENT JURISDICTION

1 THE ACCUSED: I'm sorry.
2 THE COURT: -- Mr. Mangat recognizes.
3 A Yes, I recognize [indiscernible/voice low], yes,
4 Madam.
5 THE COURT: Can you explain what that document is?
6 A It's a UPS label that we put it on the box.
7 THE ACCUSED:
8 Q Okay. Again, my --
9 A Not a label. I mean, this is a billing thing.
10 Proof of, sorry, delivery. Delivered in the U.S.
11 This is a delivery.
12 Q Right. Okay. So the date that's printed on there
13 for the "shipped/billed on"?
14 A No, that is a billing date. Shipped might be
15 before that. You see [indiscernible].
16 Q Oh, I see. I see.
17 A Delivered on. Yeah, that is a billing date on my
18 account.
19 Q Okay. So that's not necessarily the date that the
20 package was shipped, then?
21 A No, no, no, package supposed to be shipped before
22 that.
23 THE ACCUSED: Okay. Well, that -- that clarifies that,
24 then. I have no further questions. I'm sorry.
25 Thank you, Mr. Mangat.
26 A Okay. Good luck, man.
27 THE COURT: Mr. Myhre, anything arising on that point
28 or anything else?
29 MR. MYHRE: No, My Lady.
30 THE COURT: All right. Thank you very much --
31 A Thank you.
32 THE COURT: -- Mr. Mangat.
33 A All right. Thank you, sir.
34 THE COURT: Thank you, you're free --
35 A Good luck.
36 THE ACCUSED: Thank you.
37 THE COURT: -- to leave, Mr. Mangat.
38
39 (WITNESS EXCUSED)
40
41 THE COURT: Madam Registrar, the document should just
42 be an exhibit for identification, please.
43 THE CLERK: That will be Exhibit F, My Lady.
44 THE COURT: Thank you.
45 THE CLERK: And who would be putting that in, then?
46 THE COURT: I'm sorry?
47 THE CLERK: Who would be tendered that, Mr. Fox?

Proceedings**BAN ON PUBLICATION - INHERENT JURISDICTION**

1 THE COURT: It doesn't matter, just -- yes.

2

3 **MARKED F FOR IDENTIFICATION: Document titled**
4 **"UPS Tracking Information"**

5

6 MR. MYHRE: My Lady, at this juncture the Crown would
7 like to tender two exhibits from the preliminary
8 inquiry. They are affidavits related to Mr. Fox's
9 firearms licence and firearms registration, and so
10 I know Madam Clerk has those. There are two
11 documents there stapled together. I would ask
12 that they come apart and each be marked
13 individually.

14 THE COURT: Do we have copies of these?

15 MR. MYHRE: I do have copies for exhibits and for the
16 jury.

17 THE COURT: And, Mr. Fox, you have seen these?

18 THE ACCUSED: Oh, yes, yes, I have.

19 THE COURT: Any objection to them being admitted into
20 evidence in this proceeding?

21 THE ACCUSED: No, My Lady.

22 THE COURT: All right. Then we'll follow that process
23 and they should be taken apart and marked
24 separately. Do we need the document notice?

25 MR. MYHRE: No.

26 THE COURT: So the first one will be the affidavit of a
27 firearms officer. This one, Madam Registrar, that
28 will be the next exhibit. And then this affidavit
29 will be the one after.

30 MR. MYHRE: My Lady, I had made one copy for every two
31 jurors --

32 THE COURT: All right.

33 MR. MYHRE: -- thinking we could share these.

34 THE CLERK: So that will be Exhibit G and H, My Lady?

35 THE COURT: No, numbered exhibits.

36 THE CLERK: That will be Exhibits 10 and 11.

37 THE COURT: All right. Could I have those copies,
38 please? Thank you. So which one's 10?

39 THE CLERK: 10. I'll show you, My Lady. This will be
40 11 and 10.

41 THE COURT: Thank you.

42 So, members of the jury, the affidavit of a
43 firearms officer is Exhibit 10, and the one simply
44 called "Affidavit" on long paper is Exhibit 11.

45

46 **EXHIBIT 10: Affidavit of Allen Leung,**
47 **Firearms Officer, sworn June 20, 2016**

Proceedings**BAN ON PUBLICATION - INHERENT JURISDICTION****EXHIBIT 11: Affidavit of Neena Sharan sworn
June 20, 2016**

MR. MYHRE: Now, My Lady, could I highlight a couple of things on here for the jury? Or I could simply invite them just to read the documents through.

THE COURT: You could highlight, but being very careful not to approach argument in any way.

MR. MYHRE: So, ladies and gentlemen of the jury, the affidavit, the eight and a half by 11 document, relates to Mr. Fox's firearms licence, and if you flip through, down to paragraph 6 on the second page, it talks about where Mr. Fox was allowed to have his firearms, and then paragraph 7 as well, which continues on to the next page, talks about what Mr. Fox was allowed to do as far as transporting his firearms.

Then if you flip to Exhibit A, which is the next page, and flip to the page after that, you'll see again spelled out a number of conditions. And so at some point in your deliberations I'll be discussing, you know, what the Crown theory is in relation to exactly how Mr. Fox is said to have violated these conditions, but those are the conditions for you to read over at some point, please.

With respect to the eight and a half by 14 document, this document simply states what firearms Mr. Fox had registered to him on the relevant dates, and if you flip to Exhibit A, the second page, you see that there are four listed there.

My Lady, at this time, the Crown would like to tender an admission made by Mr. Fox.

THE COURT: All right.

MR. MYHRE: And I have an exhibit copy and a copy for Your Honour. The top copy is the original.

THE COURT: So this would be Exhibit 12.

THE CLERK: Exhibit 12, My Lady.

**EXHIBIT 12: Admissions of Fact re Restricted
Firearms dated May 29, 2017**

MR. MYHRE: And, My Lady, I would just ask the members of the jury to read this over. It's quite short and I think it's self-explanatory what it admits.

Proceedings**BAN ON PUBLICATION - INHERENT JURISDICTION**

1 THE COURT: I think if you could summarize, that would
2 be helpful. We don't need serial numbers.
3 MR. MYHRE: Ladies and gentlemen of the jury, this is
4 an admission that the firearms that you see listed
5 in that second affidavit are all restricted
6 firearms as that term is used in s. 93 of the
7 *Criminal Code*.
8 Does that suffice, My Lady?
9 THE COURT: Yes, thank you.
10 MR. MYHRE: If we could then page Agent Frank Spizuoco
11 to the court, please.
12 My Lady, could I stick my head out again?
13 I'm not sure if this --
14 THE CLERK: Sometimes the paging system doesn't work on
15 certain levels, and seven happens to be one of
16 those.
17 If you could step inside the box and remain
18 standing.
19 A Inside?
20 THE CLERK: Thank you.

FRANK SPIZUOCO

a witness called for the
Crown, affirmed.

26 THE CLERK: Please state your full name and spell your
27 last name for the record.
28 A Frank Spizuoco, S-p-i-z-u-o-c-o.
29 THE CLERK: Thank you. You may be seated.

EXAMINATION IN CHIEF BY MR. MYHRE:

33 Q Agent Spizuoco, what does ATF stand for?
34 A Alcohol, Tobacco and Firearms.
35 Q And, generally speaking, that's a law enforcement
36 agency, a national agency in the United States
37 that deals with those three particular topics?
38 A Yes, it does.
39 Q The laws relating to them?
40 A Correct.
41 Q And how long have you been with the ATF?
42 A I've been so employed since August of 2001.
43 Q And I understand that in the summer of 2016, you
44 were working as an ATF agent in California?
45 A I was actually the group supervisor, yes.
46 Q And on June 27th, 2016, you were contacted by the
47 RCMP?

Frank Spizuoco (for Crown)
in chief by Mr. Myhre
BAN ON PUBLICATION - INHERENT JURISDICTION

1 A May 27th, correct.
2 Q May 27th. And they were concerned that there may
3 have been firearms shipped to a person named Liz
4 Munoz on Lincoln Street in Carson, California?
5 A That is correct.
6 Q And I understand that you contacted Ms. Munoz?
7 A Yes, we made contact with her.
8 Q And she agreed to meet with you at her residence?
9 A She did, yes.
10 Q You met with her there?
11 A Myself and a fellow agent, yes, we met with her.
12 Q And she showed you to some boxes that she had
13 received?
14 A Yes, she did.
15 Q And roughly how many boxes were there?
16 A There was approximately 25 boxes.
17 Q What did you do with them?
18 A After talking with her, she allowed ATF to take
19 the boxes and we took them back to our field
20 office and stored them in our vault until Monday,
21 the following Monday.
22 Q Okay. And did you look through those boxes?
23 A Yes.
24 Q All 25 of them?
25 A All 25 boxes, yes.
26 Q And I understand that you found several handguns?
27 A Yes, we did.
28 Q Where were they exactly?
29 A The four handguns were concealed within the CP
30 unit of a computer, and the other one was by
31 itself in a box.
32 Q Okay. There's a --
33 MR. MYHRE: could we show the agent Exhibit E, please?
34 Thank you.
35 Q Could you just look through that quickly, Agent
36 Spizuoco. Do you recognize these photos?
37 A Yes.
38 Q Did you take these photos?
39 A I did, yes.
40 Q And what do they depict?
41 A The first couple of pictures depict the labelling
42 from the boxes; picture number 4 is a picture of
43 the box that contained the CPU unit prior to
44 opening up; 5 depicts a picture of the CPU unit
45 outside of the packaging; 6 is with the cover lid
46 taken off of the CP unit with the four pistol
47 cases inside; 7 is the pistol cases outside of the

Frank Spizuoco (for Crown)
in chief by Mr. Myhre
BAN ON PUBLICATION - INHERENT JURISDICTION

1 CP unit; and then 8 is the picture of one of the
2 firearms; 9, one of the serial numbers; 10, a
3 second firearm; 11, second firearm serial number;
4 12, the third; 13, the serial number of that
5 firearm; and then 14, another -- an additional
6 firearm; and then 15, the serial number of the --
7 of the last one.

8 Q Now, the labels that we see on the first three
9 pages, were those labels on the box in which the
10 firearms were found?

11 A Yes, correct.

12 Q In addition to those four handguns, did you find
13 any ammunition?

14 A Yes, there was ammunition.

15 Q Could you give the jury an idea of roughly how
16 much and where you found it?

17 A There was approximately 25 rounds and they were
18 found in a -- in an additional box I don't believe
19 was sent on that same day.

20 Q Did you find any pistol magazines?

21 A Yes. There was a total of seven pistol magazines.

22 Q Were there actually magazines inside the handguns
23 we just looked at?

24 A Yes. All of the pistol cases had two, except one
25 of the firearms only had one.

26 Q Okay. And you mentioned -- you said there was
27 another one by itself in a box when you were
28 talking about firearms. Did you find something
29 else that's not in these pictures?

30 A Yes, there was another firearm that was a Mauser,
31 an old Mauser 8mm rifle, yes.

32 Q And that was a bolt-action rifle, it had a wooden
33 stalk?

34 A Yes. It was in pieces. It wasn't attached in the
35 boxes.

36 Q There were also some Canadian licensing documents?

37 A Yes.

38 Q Do you remember whose name those were in?

39 A They were in Richard Fox. Or Patrick Fox. Excuse
40 me. Patrick Fox.

41 Q Did you find any documentation related to United
42 States registration or licensing?

43 A I did not.

44 Q And the handguns, they're still in ATF possession
45 no California?

46 A Yes, they are.

47 Q And the rest of the boxes?

Frank Spizuoco (for Crown)
in chief by Mr. Myhre
BAN ON PUBLICATION - INHERENT JURISDICTION

1 A The rest of the boxes were returned back to Ms.
2 Munoz.
3 MR. MYHRE: My Lady, could this exhibit now be marked?
4 THE COURT: All right. No objection?
5 THE ACCUSED: No objection.
6 THE COURT: All right. Members of the jury, the book
7 that we marked for identification, Exhibit E,
8 we're now going to give it an exhibit number,
9 which will be?
10 THE CLERK: Exhibit 13, My Lady.
11 THE COURT: Thank you.

**EXHIBIT 13: Binder titled "Photos - ATF
Seizure" (formerly E for Identification)**

12
13
14
15
16 MR. MYHRE: My Lady, those are all my questions for
17 Agent Spizuoco.
18 THE COURT: Thank you. Mr. Fox?

CROSS-EXAMINATION BY THE ACCUSED:

19
20
21
22 Q Agent Spizuoco, you mentioned that the RCMP had
23 contacted you not in June of 24 -- not on June
24 27th, but actually around May 27th, 2016; is that
25 correct?
26 A Now, you're right, it was June 17th when initially
27 the --
28 Q Oh.
29 A -- the RCMP connected -- contacted our field
30 division, yes.
31 Q Okay. So, now, sorry, I'm a little unclear.
32 Crown had asked if they had contacted you on June
33 27th, and then you said, no, it was May 27th, but
34 it was, in fact, June 17th, you say?
35 A I believe it was. I don't remember --
36 Q No, I'm just trying to clarify.
37 A Yes. I don't believe it was May 27th.
38 Q Okay. And you had testified that there were
39 approximately 25 boxes, correct?
40 A Correct.
41 Q Could you describe for us not in great detail, but
42 just in -- generally what the contents of many or
43 most of box would have been?
44 A There was lots of electronic equipment, there was
45 clothes and personal effects and stuff like that,
46 yes.
47 Q Okay. What -- what would you say the majority of

Frank Spizuoco (for Crown)
cross-exam by the Accused
BAN ON PUBLICATION - INHERENT JURISDICTION

1 it might have -- might have been?
2 A I would say electronic equipment.
3 Q Computers and such?
4 A Some of them appeared to be, yes.
5 Q And how many -- how many clothes would you say
6 there were -- there were?
7 A Approximately five boxes full of clothes.
8 Q Now, do you know on which date the box -- the
9 particular box in question in which you found the
10 guns, which date that box was delivered to Ms.
11 Munoz's residence?
12 A I believe --
13 MR. MYHRE: Objection. I'm not sure Agent Spizuoco can
14 answer that.
15 THE ACCUSED: Oh, well, that's why it was phrased as
16 does he know.
17 THE COURT: All right. What we're trying to stay away
18 from here is hearsay.
19 THE ACCUSED: Right.
20 THE COURT: So the right way to approach it might be
21 does he have any firsthand knowledge or if he does
22 know, what's the basis of his knowledge. And --
23 and before you ask him to give a date, ask if he
24 knows, but without saying the date, and if he does
25 know, how does he know, and then we'll know
26 whether his knowledge is based on hearsay or not.
27 THE ACCUSED: Thank you. Thank you, My Lady.
28 Q Agent Spizuoco, do you have any firsthand
29 knowledge of the dates or even the approximate
30 date that the box containing the firearms was
31 delivered to Ms. Munoz's home?
32 A I do not.
33 Q And do you have any firsthand knowledge of whether
34 or not Ms. Munoz received that package or was home
35 at the time that the package was delivered?
36 A I do not know that either.
37 Q Okay. Do you have any firsthand knowledge about
38 how many people may have come in contact with or
39 handled that box after it was delivered and --
40 between the time it was delivered and when you
41 took custody of it?
42 A I do not.
43 Q Do you have any firsthand knowledge of whether
44 that box had been opened and its contents changed?
45 A I do not.
46 THE ACCUSED: Sorry, I'm just trying to think how I
47 would phrase this next question. Well, no, I -- I

Frank Spizuoco (for Crown)
cross-exam by the Accused
BAN ON PUBLICATION - INHERENT JURISDICTION

1 guess that really would be all the questions I
2 would have, then.
3 THE COURT: If there's another question that you'd like
4 to ask but you're not sure how to ask it, we can
5 ask the jury to step outside for a moment, ask the
6 witness to step outside, and I can help you with
7 that, but if you have finished your questions,
8 that's fine, too.
9 THE ACCUSED: I would like to do that, My Lady. On the
10 other hand, I don't want to inconvenience the jury
11 any more than what would be absolutely necessary.
12 THE COURT: If -- if you have further questions you
13 wish to ask, you should ask them.
14 So, members of the jury, if you wouldn't
15 mind, please.
16
17 (JURY OUT)
18
19 THE COURT: And, Agent Spizuoco, I'll ask you to step
20 outside the courtroom, please.
21 A Yes, My Lady.
22 THE COURT: Thanks.
23
24 (WITNESS STOOD DOWN)
25
26 THE ACCUSED: My Lady, what I'm trying to get at is
27 whether it would be reasonable that the firearms
28 may have been put into the box or into the
29 computer, which may have been put into the box,
30 prior to Agent Spizuoco taking custody of the box.
31 Obviously that's not something I can ask him
32 directly. He would have no knowledge of that. So
33 might it be a suggestion or...
34 THE COURT: Well, lawyers often give the advice that in
35 cross-examination it's best not to ask a question
36 if you don't know the answer, and that it --
37 another piece of advice that's often given is if
38 you've got what you want, don't ask that extra
39 question that then takes it all away.
40 You do have evidence from the agent that he
41 doesn't know whether Ms. Munoz was home when the
42 package was delivered, he doesn't know how many
43 people came into contact with the box after it was
44 delivered and before he opened it, he doesn't know
45 whether the box had been opened before he opened
46 it. That may be all you need if you're trying to
47 suggest that the possibility was there that

BAN ON PUBLICATION - INHERENT JURISDICTION

1 something -- that someone else had access to the
2 box.
3 THE ACCUSED: Right. Right.
4 THE COURT: It's then, if that's what you wish to do,
5 open to you to argue that matter before the jury.
6 THE ACCUSED: Thank you. That was very, very helpful.
7 I would then just have one more question for him.
8 THE COURT: But -- but let me make sure that Mr. Myhre
9 agrees that the evidence is as I described it,
10 roughly.
11 MR. MYHRE: I agree, My Lady.
12 THE COURT: Generally we don't then go on to ask
13 witnesses, well, you'd agree, therefore, that it's
14 possible that something --
15 THE ACCUSED: Right.
16 THE COURT: -- happened. That's something for the jury
17 to draw inferences about, and it's not really
18 helpful to them to have a witness say, yes, it's
19 possible, and the danger for you is that he might
20 say, no, it's not possible and here's the reason.
21 THE ACCUSED: Right. Right. Thank you.
22 THE COURT: Is there anything that should be added, Mr.
23 Myhre?
24 MR. MYHRE: Not that I can think of.
25 THE COURT: All right. Are there other questions that
26 you might want to ask that you'd like to ask
27 about?
28 THE ACCUSED: No. No, thank you.
29 THE COURT: And it's certainly open to you to ask
30 further questions along that line that we were
31 just canvassing if you wish to, but I'm just
32 trying to -- and if you did, you would probably
33 put your question in this way: So you can't say
34 whether somebody could have put firearms into that
35 box at some point along the way before you opened
36 the box?
37 THE ACCUSED: Right. The one question that I do
38 anticipate asking at this point, actually, is
39 completely unrelated to -- to that, but that was
40 very, very helpful, the information that you
41 provided.
42 THE COURT: Now, are we ready to continue on with the
43 jury?
44 THE ACCUSED: Yes.
45 THE COURT: And do you expect to be more than a minute
46 or two or three?
47 THE ACCUSED: I do not. Two quick questions and

Proceedings**BAN ON PUBLICATION - INHERENT JURISDICTION**

1 then --

2 THE COURT: All right.

3 THE ACCUSED: -- then I'm done.

4 THE COURT: So we won't take the morning break yet.

5 Could we have the jury back in, please, and the
6 witness.

7

8

FRANK SPIZUOCO, recalled.

9

10 THE SHERIFF: The jury, My Lady.

11

12 (JURY IN)

13

14 THE COURT: Thank you, members of the jury.

15

16 **CROSS-EXAMINATION BY THE ACCUSED, CONTINUING:**

17

18 Q My apologies, Agent Spizuoco. Just a couple more
19 questions, if I may. The first is you had
20 mentioned that in one of the packages there was
21 some ammunition?

22 A Correct.

23 Q Was it -- was it all the same calibre?

24 A It was not.

25 Q Okay. Was each -- what -- was there one round of
26 each different calibre type?

27 A I don't remember that, but it was all assorted.

28 Q Right. Okay, thank you. And the last question I
29 would like to ask is do you have any knowledge,
30 any firsthand knowledge of my presence in Los
31 Angeles between the time that the package may have
32 been delivered and when you took possession of it?

33 A I do not.

34 THE ACCUSED: Okay. Thank you. That is all.

35 THE COURT: Thank you. Mr. Myhre?

36 MR. MYHRE: Nothing arising, My Lady.

37 THE COURT: Thank you very much for coming, Agent.

38 A Not a problem. Thank you.

39

40 (WITNESS EXCUSED)

41

42 THE COURT: All right. We will take the morning break.
43 Thank you, members of the jury.

44

45 (JURY OUT)

46

47 THE COURT: Mr. Myhre, you were going to call Mr.

26
(Jury Out)
Proceedings

BAN ON PUBLICATION - INHERENT JURISDICTION

1 Lagemaat on the break, please?
2 MR. MYHRE: Thank you.
3 THE COURT: Anything else before we stand down? Thank
4 you.
5 THE CLERK: Order in court. This court stands
6 adjourned for the morning recess.
7
8 (PROCEEDINGS ADJOURNED FOR MORNING RECESS)
9 (PROCEEDINGS RECONVENED)
10
11 (JURY OUT)
12
13 MR. MYHRE: My Lady, before I forget, the Crown would
14 like to apply at this time to amend the indictment
15 to accord with the evidence given by Manvir
16 Mangat, and specifically the Crown would like to
17 amend the dates on Count 2 to be from May 17th,
18 2016 to May 18th, 2016.
19 THE COURT: May 17th?
20 MR. MYHRE: To May 18th.
21 THE COURT: 2016?
22 MR. MYHRE: Yes.
23 THE COURT: All right. Mr. Fox, do you have a
24 position?
25 THE ACCUSED: I honestly wish that he would use a
26 larger range for -- for the reason that I wouldn't
27 want the government to come back down the road and
28 say, oh, we changed our mind, we think you did it
29 on this day and week later, and then once I'm
30 acquitted of a given range, then it would be done
31 with. So my preference would be that they put it
32 from May 17th, say, to May 27.
33 MR. MYHRE: My Lady, the application is to have the
34 indictment conform to the evidence and, in my
35 submission, the evidence is pretty clear from Mr.
36 Mangat that he took control of the boxes from Mr.
37 Fox on May the 17th, and could have gotten them
38 back at Mr. Fox's request up until about four
39 o'clock the next day, until they went into the
40 possession of UPS.
41 THE COURT: I have some questions to ask you. I'm not
42 sure who the next witness is and whether it should
43 take place in the presence of the witness.
44 MR. MYHRE: Constable Dupont's evidence doesn't relate
45 at all to this area of the evidence.
46 THE COURT: All right. You're Constable Dupont
47 obviously.

BAN ON PUBLICATION - INHERENT JURISDICTION

1 Possession can involve -- well, possession in
2 its most basic terms is knowledge of the location
3 and control over the location, and arguably Mr.
4 Myhre could, it appears, continue even after the
5 boxes were shipped into the U.S. There might be
6 an issue about whether a Canadian court could hear
7 a charge that relates to that period of time when
8 the item is in the U.S. but the person is in
9 Canada. I'm not sure. Mr. Fox is clearly
10 concerned that an acquittal over a very short time
11 range might not prevent a further prosecution
12 based on a continuation of the possession that's
13 alleged in this trial. Do you have any response
14 to that concern?

15 MR. MYHRE: My Lady, it doesn't seem to me that Mr. Fox
16 really has any control over that and I can't speak
17 to what may happen in the future. It does seem to
18 me that once he no longer has the ability to call
19 those firearms back and they go into the United
20 States, if there is any offence not being
21 committed in Canada and that's why the Crown's not
22 seeking a range that extends to the time once they
23 are in UPS's possession and then down in
24 California.

25 THE COURT: Well, if they're in the possession of a
26 friend of his, then arguably he would have the
27 ability to control them, and although they are in
28 the U.S., he is in Canada, and that might be
29 sufficient for jurisdiction in a Canadian court,
30 and perhaps his concern is about an American
31 prosecution over the same subject matter.

32 MR. MYHRE: Well, that could well happen, My Lady. I
33 certainly wouldn't want to get in the way of that.
34 But the Crown theory is quite specific that Mr.
35 Fox wasn't entitled to either walk his firearms
36 down to Mr. Mangat's waiting truck or drive them
37 himself over to the Packaging Depot or have them
38 at the Packaging Depot in the possession of Mr.
39 Mangat or have them in the possession of TNT when
40 he still retained knowledge and control.

41 THE COURT: Count 2 reads -- alleges between May 18 and
42 June 3, so there never was an allegation past June
43 3. How about applying to amend to change May 18
44 to May 17 and leave the June 3 as it was, and that
45 would prevent any prejudice to Mr. Fox of the type
46 he was speaking of as a result of the amendment?

47 MR. MYHRE: I'm content with that, My Lady.

BAN ON PUBLICATION - INHERENT JURISDICTION

1 THE COURT: All right. Would that answer your concern,
2 Mr. Fox?

3 THE ACCUSED: Thank you. Yes, My Lady.

4 THE COURT: So Count 2 will be amended to change the
5 first date between -- which now reads between May
6 18, 2016, change that to May 17, and that conforms
7 to the evidence Mr. Mangat gave concerning May 17,
8 and doesn't narrow the time period giving rise to
9 the potential prejudice that Mr. Fox identified.
10 All right.

11 MR. MYHRE: Now, My Lady, could I just canvass with
12 Your Ladyship and Mr. Fox how I lead evidence from
13 Constable Dupont? Generally speaking, Constable
14 Dupont's evidence is that he observed an interview
15 between another officer and Mr. Fox during which
16 that other officer told Mr. Fox several things
17 about how his actions were causing Ms. Capuano to
18 feel, and so they're relevant to whether Mr. Fox
19 knew that she was harassed at the time.

20 It seems to me that the way to most
21 accurately put this information in front of the
22 jury is to ask Constable Dupont to actually read
23 that other officer's words from the transcript,
24 rather than have him from memory summarize what
25 the other officer told Mr. Fox, and so my
26 intention would be to, through questions,
27 establish that Constable Dupont has a transcript,
28 he's reviewed it, it appears to be accurate, and
29 then ask him about several -- four specific
30 statements that were said to Mr. Fox. And I want
31 to canvass that because it's a little unusual in
32 terms of how we bring out evidence, but at some --
33 it seems to me that it would be the most accurate
34 way to do it so that we don't mischaracterize
35 anything Mr. Fox was told by the other officer.

36 THE COURT: Well, the reason it's unusual is because
37 usually there would be an interim step of proving
38 that the transcript was accurate. Is that what
39 you're raising?

40 MR. MYHRE: Just that it would be a little unusual to
41 have a witness read from a statement rather than
42 state things from memory.

43 THE COURT: All right. And then why would that be
44 unusual?

45 MR. MYHRE: Only because we typically ask witnesses not
46 to refer to their notes unless they need to to
47 refresh their memory for some purpose. Here I'm

BAN ON PUBLICATION - INHERENT JURISDICTION

1 proposing to do that a little bit differently for
2 the sake of accuracy.
3 THE COURT: All right. Mr. Fox, do you understand
4 what's being suggested?
5 THE ACCUSED: I do. I don't have any issue with the
6 use of the transcript, but maybe I'm a little
7 unclear, then, it seems like what we're talking
8 about is that Constable Dupont is going to be
9 testifying that he observed Constable Huggins
10 [phonetic] make particular statements to me during
11 my interview, and that that is intended to be --
12 to -- to be evidence that I should have known at
13 that point that Capuano was fearful. Could I see
14 [indiscernible/voices overlapping] --
15 MR. MYHRE: That's fine.
16 THE ACCUSED: -- before I agree to anything?
17 MR. MYHRE: I'd be happy to show Mr. Fox the specific
18 statements I'll be asking Constable Dupont about.
19 THE COURT: All right. Is that going to take long?
20 MR. MYHRE: I think there are four sentences,
21 literally, so it should only take a couple
22 minutes.
23 THE COURT: All right. Shall we stand down briefly?
24 MR. MYHRE: That might be best.
25 THE COURT: Very well.
26 THE CLERK: Order in court. This court stands down.
27
28 (PROCEEDINGS ADJOURNED)
29 (PROCEEDINGS RECONVENED)
30
31 (JURY OUT)
32
33 MR. MYHRE: I did canvass that with -- I did canvass
34 that with Mr. Fox. He's clear on what statements
35 the Crown is leading in evidence.
36 THE COURT: And you're content with that process?
37 THE ACCUSED: Yes. Yes, I -- I did express some
38 concern to Mr. Myhre that I'm a little uneasy with
39 the idea of the layers of separation between the
40 statements that may have actually been made by Ms.
41 Capuano to Mr. Huggins and -- because it seems
42 unusual to me that we have one officer -- or one
43 constable testifying that he observed another
44 constable say things to me, but there's no way to
45 determine how the original constable may have
46 gotten the information.
47 THE COURT: Right. Well, that's something you could

BAN ON PUBLICATION - INHERENT JURISDICTION

1 consider cross-examining about.
2 THE ACCUSED: Right.
3 THE COURT: And formulate some questions that would
4 have the effect of making that point.
5 THE ACCUSED: Thank you.
6 THE COURT: All right. So we will proceed in the way
7 you outlined, Mr. Myhre.
8 MR. MYHRE: Thank you, My Lady.
9 THE COURT: Are we ready with the jury?
10 THE ACCUSED: Yes.
11 THE COURT: For the jury? Yes, please.
12 THE SHERIFF: The jury, My Lady.

13
14 (JURY IN)

15
16 THE COURT: Thank you, members of the jury.
17 Before we start with the next witness, I will
18 tell you that a small change has been made to one
19 of the dates in Count 2 of the indictment. When
20 we get to the end of the trial I will give you the
21 written text of the indictment and you will, in
22 any event, have a copy of it with you in the jury
23 room, but I'll tell you now that one of the dates
24 has been changed.
25 Count 2 did read that between May 18, 2016
26 and June 3, 2016, certain things happened, and it
27 now reads between May 17 instead of May 18, 2016,
28 and June 3, 2016, etc., and that amendment was
29 made to allow the indictment -- to correct the
30 indictment to conform with the evidence that you
31 heard given. It's not unusual for a correction of
32 that nature to be made. All right?
33 MR. MYHRE: My Lady, the Crown's next witness is
34 Constable Jean-Philippe Dupont.

35
36 **JEAN-PHILIPPE DUPONT**
37 a witness called for the
38 Crown, sworn.

39
40 THE CLERK: Please state your full name and spell it
41 for the record.
42 A Full name is Constable Jean-Philippe Dupont,
43 J-e-a-n hyphen P-h-i-l-i-p-p-e, last name Dupont,
44 D-u-p-o-n-t.
45 THE CLERK: Thank you. You may be seated if you like.
46
47

Jean-Philippe Dupont (for Crown)
in chief by Mr. Myhre
BAN ON PUBLICATION - INHERENT JURISDICTION

1 **EXAMINATION IN CHIEF BY MR. MYHRE:**
2
3 Q Constable Dupont, how long have you been a member
4 of the RCMP?
5 A I've been a member of the RCMP since May 2015.
6 Q I understand that in the summer of 2015 you were
7 one of a few officers who were investigating a
8 complaint made by Desiree Capuano regarding her
9 ex-husband Patrick Fox?
10 A That's correct.
11 Q And you were aware at that time that she had
12 already contacted the RCMP earlier that year?
13 A Yes.
14 Q And I understand that on July the 20th, 2015, you
15 and your partner, Constable Huggins, arrested
16 Patrick Fox?
17 A Yes.
18 Q And you spent a few hours with Mr. Fox that
19 evening?
20 A Yes, I did.
21 Q Would you recognize Mr. Fox if you saw him again?
22 A Yes.
23 Q Do you see him here in this courtroom?
24 A Yes, I recognize him.
25 Q What's he wearing, please?
26 A He -- he is sitting at the [indiscernible] table
27 wearing a red outfit.
28 Q The evening of July the 20th, 2015, at the Burnaby
29 detachment, I understand that you monitored from
30 outside the room as Constable Huggins conducted an
31 interview of Mr. Fox; is that right?
32 A Yes, that's right.
33 Q And you were able to see and hear everything that
34 was going on in the room?
35 A Yes, as it was audio and video-recorded.
36 Q And you know that I've asked for you to come and
37 testify today about some of the things that
38 Constable Huggins said to Mr. Fox during that
39 interview?
40 A Yes.
41 Q Okay. And specifically things that Constable
42 Huggins said to Mr. Fox about Ms. Capuano's
43 feelings regarding some of his actions?
44 A Yes.
45 Q Now, you've actually, in preparation for
46 testifying, reviewed a transcript of the interview
47 that Constable Huggins did?

Jean-Philippe Dupont (for Crown)
in chief by Mr. Myhre
BAN ON PUBLICATION - INHERENT JURISDICTION

1 A Yes, I did.
2 Q You have the transcript there in front of you?
3 A I do.
4 Q And could you please just take your time and tell
5 the jury each of the four statements regarding
6 what Constable Huggins said to Mr. Fox about how
7 Ms. Capuano was feeling about some of his actions?
8 A Yes. So there are four statements that were
9 highlighted. This was said by Constable Huggins
10 as I was monitoring. On the transcript, it
11 appears on line 279, where Constable Huggins says
12 [as read in]:
13
14 She doesn't want any of this contact she is
15 getting with the emails, with the website,
16 and private investigator.
17
18 At line 291, Constable Huggins said to Mr. Fox --
19 THE COURT: Can you speak up just a little bit,
20 please --
21 A Sure.
22 THE COURT: -- Constable?
23 A Yes. So 291, Constable Huggins said to Mr. Fox
24 that [as read in]:
25
26 She does fear that if you were able to get
27 across the border without being noticed, that
28 you would go there and shoot her.
29
30 So that carries from 291 to 293. Then line 321,
31 Constable Huggins says that:
32
33 On the website you have written this stuff as
34 if it's her and she was concerned that people
35 would take offence to that, might come to the
36 house and act on that.
37
38 That was the third statement. And the fourth one
39 was at line 351, where Constable Huggins says:
40
41 And your actions are potentially causing
42 someone to be harmed and she has a legitimate
43 fear for her safety.
44
45 MR. MYHRE: My Lady, those are all my questions for
46 Constable Dupont.
47 THE COURT: All right. Thank you. I know you've been

BAN ON PUBLICATION - INHERENT JURISDICTION

1 in and out a lot this morning, members of the
2 jury, but I'm going to ask you, please, one more
3 time if you wouldn't mind returning to the jury
4 room. Thank you.

5
6 (JURY OUT)

7
8 THE COURT: And, Constable Dupont, I'm going to ask you
9 to step out of the courtroom, please --
10 A Yes, My Lady.
11 THE COURT: -- briefly.

12
13 (WITNESS STOOD DOWN)

14
15 THE COURT: My concern, Mr. Myhre, is that while this
16 evidence is admissible -- subject to
17 cross-examination and further evidence on the
18 matter, but it's admissible, as you outlined,
19 concerning Mr. Fox's state of knowledge at the
20 time of the interview, it introduces a great deal
21 of hearsay evidence about Ms. Capuano's state of
22 mind, her fears for her safety, and, indeed, it
23 introduces a comment that her fear for her safety
24 is legitimate. So it seems also to go to whether
25 her stated fears are reasonable. And it appears
26 to me that an instruction needs to be given to the
27 jury before Mr. Fox is called on to cross-examine.
28 Now, the interview was, I believe, July 20,
29 2015, is that correct?

30 MR. MYHRE: Yes, My Lady.

31 THE COURT: And what are the allegation about things
32 that took place after that?

33 MR. MYHRE: Sorry, My Lady, I don't understand the
34 question.

35 THE COURT: Well, is Mr. Fox alleged to have continued
36 the alleged harassment after July 20?

37 MR. MYHRE: Yes, well, the indictment does charge him
38 for a period January 2015 to May 2016.

39 THE COURT: So what specifically is he said to have
40 done after his arrest?

41 MR. MYHRE: We saw in evidence a couple more emails,
42 and then it's primarily the continued existence of
43 a website and the things that were put on it.

44 THE COURT: Can you show me the emails, please, that
45 post-dated this interview?

46 MR. MYHRE: They'd be right at the end of the exhibit,
47 Exhibit 1, My Lady. So Tab 17 is the last email

BAN ON PUBLICATION - INHERENT JURISDICTION

1 dated November 14th, and so of significance here
2 really is the third paragraph.
3 THE COURT: "You will soon be homeless," that type of
4 statement?
5 MR. MYHRE: Yes, and going on to remind her of the
6 website's existence and that he wouldn't be going
7 anywhere.
8 THE COURT: All right. Thank you.
9 MR. MYHRE: And then the email at Tab 16 relates to a
10 complaint that James Pendleton made to a web
11 server that was then forwarded to Mr. Fox.
12 THE ACCUSED: I'm sorry, what was the other email?
13 MR. MYHRE: Tab 17, the very last one.
14 THE COURT: Does Tab 16 include anything said to have
15 been written by Mr. Fox?
16 MR. MYHRE: In the sense that, as we established at the
17 outset, these are all printouts from Mr. Fox's
18 website, and so the Crown contention would be -- I
19 mean, you can see that it appears to have been
20 forwarded to Patrick at desireecapuano.com, and
21 the fact that it's on his -- the website that he
22 published, from that it could be inferred that he
23 knew of this complaint.
24 THE COURT: I see. All right. Thank you. Mr. Fox?
25 THE ACCUSED: With respect to the email at Tab 17
26 regarding Gabriel's visitation for winter break,
27 the first point that I would want to make on that
28 was that the RCMP had told me it was one of the --
29 it was in the recognizance when I was released
30 from that arrest in 2015 that I was permitted to
31 contact Ms. Capuano for the purpose of making
32 travel arrangements for Gabriel's visitation. The
33 other relevant point here, I believe, is that she
34 was the one that initiated this communication. I
35 was responding to her. So I -- I have difficulty
36 seeing how that could be harassment if she
37 contacted me.
38 THE COURT: All right. That may be something you will
39 want to argue.
40 THE ACCUSED: Sure. And with respect to the email in
41 Tab 16, that email was never sent to Ms. Capuano,
42 that was actually an email I had sent to my friend
43 Liz forwarding the email I had received from
44 web.com.
45 THE COURT: All right.
46 All right. We're going to stand down very
47 briefly. I will develop a short instruction to

BAN ON PUBLICATION - INHERENT JURISDICTION

1 the -- to the jury and then we'll come back,
2 resume, I'll give the instruction and we'll
3 continue.

4 MR. MYHRE: Thank you.

5 THE CLERK: Order in court. This court stands down.

6
7 (PROCEEDINGS ADJOURNED)
8 (PROCEEDINGS RECONVENED)

9
10 (JURY OUT)

11
12 MR. MYHRE: Pardon me, My Lady, I think these might be
13 the documents for Mr. Fox.

14 THE ACCUSED: Thank you. My Lady, I apologize. It
15 didn't occur to me until I was brought downstairs,
16 but another very relevant point on what we were
17 discussing was the statement in question took
18 place at the time of the arrest in July 2015.
19 That original criminal harassment charge was
20 stayed by the Crown and I was informed of that
21 sometime in mid-October, 2015. So by the time
22 that -- that email was sent to Ms. Capuano in
23 December, the no contact order and the charge
24 itself had been vacated, and so I wasn't actually
25 under any order to not have contact with her.

26 And I believe that it would have been a
27 reasonable inference on my part given that the
28 charges had been stayed that the Crown -- and this
29 is purely an inference -- that the Crown did not
30 consider her allegations to be credible at that
31 time.

32 THE COURT: Well, Mr. Fox, the difficulty is we don't
33 have evidence about that.

34 THE ACCUSED: Right.

35 THE COURT: The Crown is -- and the instruction I'll be
36 giving the jury is to make clear to the jury that
37 the only potential relevance of this evidence is
38 concerning your state of mind as of the time of
39 the interview and after. In other words, you had
40 been told that Ms. Capuano was fearful. It's
41 another question as to whether that was an
42 accurate statement, whether her state of mind
43 changed, if that was an accurate characterization,
44 but there's no evidence that -- in fact, I'm not
45 even sure we've got evidence that the charges were
46 stayed, and we certainly don't have evidence about
47 why if they were, and we also don't have any

BAN ON PUBLICATION - INHERENT JURISDICTION

1 evidence about what you would have concluded from
2 the staying of the charges. So if you're going to
3 be asking the jury to draw inferences about those
4 kinds of things, you will either need to establish
5 an evidentiary basis by cross-examining Constable
6 Dupont perhaps -- I don't know what he knows --
7 THE ACCUSED: Mm-hmm.
8 THE COURT: -- but he may be able to give you the
9 evidentiary basis that you're looking for, or you
10 will need to -- as I understand, he's probably the
11 Crown's last witness, is that right? Or you will
12 need to call some defence evidence yourself to do
13 that, either your own testimony or some other
14 defence evidence. But it's not something that I
15 can address at this stage with the jury.
16 THE ACCUSED: Right.
17 THE COURT: All right. Now, if I have the jury back
18 in, give them that instruction, do you then feel
19 ready to go ahead and cross-examine?
20 THE ACCUSED: Yes.
21 THE COURT: All right. Can -- I'm not trying to hurry
22 you up, but I'm just trying to look at the overall
23 schedule. Do you have any rough idea how long
24 you'll be?
25 THE ACCUSED: I don't, but I would prefer that we break
26 for lunch and then I do -- oh, but would that
27 cause any complications on your end or -- because
28 I know you were hoping to finish before lunch.
29 THE COURT: We need to take the time that gives you the
30 time you need.
31 THE ACCUSED: Could we do it after lunch?
32 THE COURT: We can.
33 THE ACCUSED: Thank you.
34 THE COURT: So I'll ask the jury to come in, I'll give
35 them that instruction, then we'll take the lunch
36 break.
37 THE ACCUSED: Thank you.
38 THE COURT: Although I -- I do want to talk to both you
39 and Mr. Myhre before we break for lunch.
40 THE ACCUSED: Okay.
41 THE COURT: All right. Could we have the jury, please?
42
43 (JURY IN)
44
45 THE COURT: Members of the jury, before we go on, I
46 need to give you an instruction, and this is
47 another one about hearsay evidence. Earlier in

Proceedings**BAN ON PUBLICATION - INHERENT JURISDICTION**

1 the trial I gave you an instruction about hearsay
2 evidence and that was after Ms. Capuano testified
3 about a job offer from Pima Community College
4 being withdrawn, and I told you that the evidence
5 she gave on that point was hearsay evidence, the
6 point being why it was withdrawn, because nobody
7 was here from Pima to testify and be
8 cross-examined. I told you at that time about the
9 way in which the hearsay evidence could not be
10 used and the way in which the hearsay evidence
11 could be used.

12 Now, you've just heard some more hearsay
13 evidence. Constable Dupont was asked to testify
14 about things he heard Constable -- it was Huggins
15 say to Mr. Fox in an interview about how Ms.
16 Capuano was feeling, her state of mind. Now,
17 unlike Pima representatives, Ms. Capuano did
18 testify in this trial and she gave evidence about
19 how she felt at various times. That evidence, the
20 evidence that she herself gave under oath, is her
21 evidence on that subject, the subject being her
22 state of mind, not the hearsay evidence that came
23 through Constable Huggins and Constable Dupont.

24 You can use the hearsay evidence that
25 Constable Dupont gave about Ms. Capuano's state of
26 mind only as evidence of what Mr. Fox was told,
27 that he was told those things, so you can use it
28 as evidence relating to Mr. Fox's state of mind at
29 the time of the interview, which was July 20, 2015
30 -- do I have that correctly? Yes. Thank you --
31 and following, but that hearsay evidence has no
32 bearing on Mr. Fox's state of mind before the date
33 of the interview, naturally, and, as I've already
34 said, it is not evidence of what Ms. Capuano's
35 state of mind actually was. She's the one who
36 gave that evidence.

37 Also, you must disregard completely any
38 comment or opinion that may have been expressed by
39 Constable Huggins in the interview. Constable
40 Huggins' opinions are not relevant to the issues
41 you need to decide.

42 Now, that instruction and consideration
43 before giving it has occupied some of the time
44 that we thought would be available for the
45 conclusion of Constable Dupont's evidence, so
46 we're going to break for lunch now and Constable
47 Dupont's evidence will conclude after lunch.

Proceedings

BAN ON PUBLICATION - INHERENT JURISDICTION

1 So thank you very much for your attention
2 this morning and for the comings and goings, your
3 patience with the comings and goings. We'll break
4 now, resume at 2:00, and I expect I'll be able to
5 give you this afternoon a projection of our -- our
6 timing in -- in the coming week. All right.
7 Thank you.

8
9 (JURY OUT)

10
11 THE COURT: Now, Mr. Myhre, I don't think I need to
12 bring Constable Dupont in to excuse him until
13 2:00, I assume. Is there anything else we should
14 discuss? Mr. Fox, are you further along on the
15 question -- or do you wish to wait until the Crown
16 has closed its case on the question of whether
17 you're likely to call evidence?

18 THE ACCUSED: I'm not likely -- no, I could be more
19 definitive than that.

20 THE COURT: And let me, first of all, say that if you
21 need time to consider the matter further, if you
22 need an opportunity to get some legal advice, I'll
23 certainly make that possible for you.

24 THE ACCUSED: Thank you. I do not plan to call
25 evidence.

26 THE COURT: All right. So most likely, then, after
27 lunchtime we'll conclude the cross-examination,
28 we'll excuse the jury, I would think, until
29 tomorrow, and what I propose is that during the
30 remainder of the afternoon, we have some
31 discussions about the content of the charge. I
32 think some greater precision would be helpful
33 about the theory of the Crown so that that can be
34 -- portions of the charge can either -- that I've
35 got thus far can either be deleted or not and I
36 can best determine what needs to be in the charge
37 and what does not.

38 Any concerns before we stand down? Mr. --
39 was -- did you receive your notes from Mr.
40 Lagemaat?

41 THE ACCUSED: Yes, I believe they're here. His notes
42 appear to not be here, but that's not too
43 critical, I guess.

44 One -- one thing that I did want to discuss
45 possibly, though, is before -- before we provide
46 our closing arguments, I would like to request
47 that I have a little bit of time to prepare those.

BAN ON PUBLICATION - INHERENT JURISDICTION

1 What I mean by a little bit of time, it would
2 probably end up being an entire day,
3 unfortunately, because even though we might get
4 out of court early on a given day, I don't
5 actually get back to the jail until maybe seven
6 o'clock in the evening, and then the following day
7 I would be woken up at 5:00 a.m. to come in,
8 unless, of course, that's unreasonable.

9 THE COURT: No. I'm just wondering do you need to be
10 in the jail in order to prepare or can it be done
11 here?

12 THE ACCUSED: Well, I'm not allowed -- I'm not allowed
13 to have a pen in my possession in the holding
14 cells downstairs.

15 THE COURT: Do you have anything to add on this, Mr.
16 Myhre?

17 MR. MYHRE: No, My Lady.

18 THE COURT: So that day could well be tomorrow, I would
19 think.

20 THE ACCUSED: That's what I was thinking.

21 THE COURT: Then the closing arguments could be
22 Wednesday. Mr. Myhre, do you have -- I know it's
23 early, but do you have any rough idea of how long
24 yours would likely be?

25 MR. MYHRE: My Lady, I can say my goal would be to get
26 it down to an hour. At this point, the draft I've
27 written probably runs two hours, so I'm working on
28 making that shorter, a lot shorter.

29 THE COURT: Well, let's assume you're an hour and a
30 quarter, an hour and a half. Mr. Fox, probably
31 somewhere around the same length?

32 THE ACCUSED: I would think significantly less. I'm
33 guessing maybe a half hour, but I tend to speak
34 fast.

35 THE COURT: It's very rare that I would want to ask a
36 jury to listen to both closings and a charge in
37 the same day and then start deliberations, but, on
38 the other hand, I don't want to be having the jury
39 come in for short amounts of time and then go away
40 again and -- it may be that the charge will be
41 fairly short and this might be one of those cases
42 where all of those things could take place in the
43 same day. Mr. Fox?

44 THE ACCUSED: One possibility might be if the sheriffs
45 would be okay with me having a pen or a pencil in
46 the holding cells, I'm not sure, and -- I know
47 typically they don't permit that, though. And

BAN ON PUBLICATION - INHERENT JURISDICTION

1 then I would be able to work on it while I'm here.
2 THE SHERIFF: We can permit the pen in the -- in the
3 cell, My Lady.
4 THE COURT: All right. Is -- is it a suitable place
5 for you to work on -- on it, Mr. Fox?
6 THE ACCUSED: Yeah. It's quiet, there's no
7 distractions.
8 THE COURT: Mr. Myhre, if we have a discussion this
9 afternoon about the content of the charge, and I
10 ask this because of an earlier statement you made,
11 I would foresee giving you and Mr. Fox a draft of
12 the charge -- well, it would be available by
13 tomorrow, but Mr. Fox might not be here to receive
14 it if we stood down for that day, and it might
15 well be that I would expect you each to do your
16 closing addresses before we have a discussion
17 about the details of the charge and the actual
18 text of it. Would that work from your
19 perspective?
20 MR. MYHRE: I'm okay with proceeding that way, My Lady.
21 THE COURT: So that could be -- if we stood down
22 tomorrow, the closings Wednesday morning, we could
23 then go over a copy of the charge on Wednesday
24 afternoon and I could make further changes
25 according to your comments. Would that work?
26 MR. MYHRE: Yes.
27 THE COURT: All right. And then the jury would be
28 charged on Thursday morning. All right, that
29 might be a good plan to think about. Mull it over
30 over the lunch hour and if there seems to be a
31 problem with that for any reason, let me know, and
32 that would give you, Mr. Fox, tomorrow at the jail
33 to prepare your closing address.
34 THE ACCUSED: Okay. Thank you.
35 THE COURT: All right.
36 THE CLERK: Order in court. This court stands
37 adjourned till two o'clock p.m.
38
39 (PROCEEDINGS ADJOURNED FOR NOON RECESS)
40 (PROCEEDINGS RECONVENED)
41
42 THE COURT: Are you ready, Mr. Fox?
43 THE ACCUSED: I am, yes, thank you.
44 THE COURT: The jury, please.
45 THE SHERIFF: The jury, My Lady.
46
47 (JURY IN)

Jean-Philippe Dupont (for Crown)
cross-exam by the Accused
BAN ON PUBLICATION - INHERENT JURISDICTION

1
2 **JEAN-PHILIPPE DUPONT,**
3 **recalled.**
4

5 **CROSS-EXAMINATION BY THE ACCUSED:**
6

7 Q Good afternoon, Constable Dupont.
8 A Good afternoon.
9 Q On July 20th, 2015, that's the date that I was
10 arrested, you participated in that arrest; is that
11 correct?
12 A Yes.
13 Q And were you also involved in any investigation
14 into that matter?
15 A Yes.
16 Q Can you tell me just very briefly what your
17 involvement was?
18 A We'd received the complaint from Mrs. Capuano and
19 it was a complaint of the criminal harassment, so
20 my investigation consisted of gathering the
21 elements of the offence and in that case we -- we
22 were trying to -- to gather the information from
23 her as to whether she feared or not for safety,
24 and my part of the -- my first part of the
25 investigation was to get a statement from her over
26 the -- the phone.
27 Q Okay. So -- so it was actually you that had
28 spoken with Ms. Capuano, correct?
29 A I did speak with her over the phone.
30 Q Okay. And then after I gave the statement, was I
31 released from custody at that point?
32 A I cannot recall.
33 Q Do you recall if I was released on my own
34 recognizance, maybe with some conditions?
35 A I would have to refer to my notes, My Lady.
36 THE COURT: Would you like him to refer to his notes?
37 THE ACCUSED: Sure. Yes, please.
38 THE COURT: Please.
39 A Yes, I -- I do have notes here that you were
40 released at -- it would have been at midnight and
41 52 minutes, so 052 hours on July 20th, and you
42 would have been released at your home in that
43 case.
44 THE ACCUSED:
45 Q Okay. But I don't suppose your notes indicate
46 whether there were any conditions? For example,
47 I'm wondering in particular about a restriction on

Jean-Philippe Dupont (for Crown)
cross-exam by the Accused
BAN ON PUBLICATION - INHERENT JURISDICTION

1 contacting or communicating with Ms. Capuano.
2 A I do not have notes in that.
3 Q Okay. So, let's see, do you recall when it was
4 that I was scheduled to appear in court on that
5 original charge?
6 A I don't recall.
7 Q Okay. Do you recall whatever happened with that
8 original charge from 2015?
9 A From what I remember, the original charge that was
10 forwarded to Crown did not go through and --
11 Q Okay.
12 A -- there was a stay of proceedings, from what I
13 recall.
14 Q Okay. So the charges were -- or the charge was
15 stayed; is that correct?
16 A That's -- that's correct.
17 Q And do you have any firsthand knowledge perhaps of
18 why it was stayed?
19 MR. MYHRE: My Lady, at this point, I object.
20 THE ACCUSED: Okay.
21 Q Do you recall contacting me by telephone on
22 October 30th, 2015?
23 A I -- I do recall contacting you by phone at some
24 point following the investigation. I do not
25 recall the exact date, though.
26 Q Okay. And was that contact for the purpose of
27 informing me that you had some documents that you
28 wished or needed to provide me?
29 A Yes.
30 Q And did you then meet with me on October 31st,
31 2015 in the afternoon in front of my apartment?
32 A I did meet with -- with you in front of your
33 apartment. I didn't -- like I say, I do not
34 recall the exact date.
35 Q Sure. Sure. Now, do you recall at that meeting
36 me asking you why the charge had been dropped?
37 A I do not recall.
38 Q Okay. So then I -- well, if you don't recall
39 that, I'm going to assume you don't recall what
40 your response was, obviously. Let me phrase it
41 this way: Do you recall telling me at that time
42 that sometimes you have a case, it's just very
43 weak?
44 A I don't recall saying that.
45 THE ACCUSED: Okay. I don't believe I have any further
46 questions, then.
47 THE COURT: Anything arising?

Proceedings**BAN ON PUBLICATION - INHERENT JURISDICTION**

1 MR. MYHRE: No, My Lady.

2 THE COURT: Okay. Thank you very much, Constable.

3 A Thank you.

4

5 (WITNESS EXCUSED)

6

7 MR. MYHRE: My Lady, I think there's something that

8 needs to be discussed, unfortunately, in the

9 absence of the jury.

10 THE COURT: All right. Members of the jury, please.

11

12 (JURY OUT)

13

14 MR. MYHRE: My Lady, it seemed to me that Mr. Fox was

15 trying to just draw out the conditions of his

16 recognizance and the length for which he was on

17 those conditions. I would have no problem

18 admitting that as a matter of fact if I -- I would

19 just have to go and get the actual document to

20 confirm what the conditions were and how long it

21 was in place, and I wanted to address that before

22 I close the Crown case because if it's that kind

23 of admission, then it -- it would be part of the

24 Crown's case. I -- I should say I -- it doesn't

25 particularly relevant to me, but I don't think

26 it's completely irrelevant, so I'm not opposed to

27 making that admission if Mr. Fox wishes it.

28 THE ACCUSED: I don't believe it's going to be

29 necessary really. That was leading up to

30 something else, and given that his memory was so

31 unclear of the details, I don't think that it

32 would have helped.

33 THE COURT: All right. So you're content that there be

34 no evidence that you were under conditions?

35 Because I don't think I recall any other evidence

36 that you were placed on a recognizance and subject

37 to conditions.

38 THE ACCUSED: Right. It wasn't so much the condition

39 that I was interested in, but the allowance for

40 the context for the purpose of -- for arranging

41 Gabriel's travel accommodations, but, as I said,

42 that was really leaning toward another admission,

43 but he has no real recollection of our meeting on

44 October 31st.

45 THE COURT: If it's important to you that it be in

46 evidence that you were specifically permitted to

47 communicate about Gabriel's travel, then this may

BAN ON PUBLICATION - INHERENT JURISDICTION

1 be the way that that could be done. Would that --
2 does that appear as an exception to a condition on
3 the recognizance, Mr. Myhre?
4 MR. MYHRE: My Lady, I've actually never looked at that
5 2015 recognizance myself.
6 THE COURT: Oh.
7 THE ACCUSED: The only condition on it was that I'm not
8 permitted to contact Ms. Capuano other than to
9 make the travel arrangements.
10 THE COURT: And that's not important for you that it be
11 in evidence?
12 THE ACCUSED: Not for what Constable Dupont was
13 testifying to. I mean, maybe that might have some
14 relevance with the issue of Ms. Capuano's fear for
15 her safety in that she's afraid for her safety,
16 but not if it's to make travel arrangements. So,
17 no, I don't -- I don't think it's really going to
18 be necessary or overly relevant.
19 THE COURT: Just set aside Constable Dupont's evidence
20 for the purpose of discussion and think about the
21 trial as a whole.
22 THE ACCUSED: Mm-hmm.
23 THE COURT: Do you wish it to be part of the evidence
24 that you were subject to a condition that you were
25 to not have contact with her except for arranging
26 Gabriel's travel?
27 THE ACCUSED: I think that that might have some
28 relevance, yes.
29 THE COURT: That seems to be what Mr. Myhre is offering
30 to admit and to tender as part of the Crown's case
31 so that it's not going to require you to call
32 evidence. He is not familiar with what the
33 condition actually was --
34 THE ACCUSED: Mm-hmm.
35 THE COURT: -- in that first recognizance, but he's
36 willing to find out and make that admission if
37 that's what it says.
38 THE ACCUSED: Okay. Yes, thank you.
39 MR. MYHRE: So, My Lady, I'm just looking at Exhibit 1,
40 and as part of the Exhibit 1 the Crown tendered a
41 section called "Background" and actually -- so Mr.
42 Fox's own words are here [as read in]:
43
44 The police told Patrick they would release
45 him on his own recognizance and then he would
46 have to appear for court in October. The
47 condition of Patrick's release was that he

BAN ON PUBLICATION - INHERENT JURISDICTION

1 was not to -- he was to not contact Desiree
2 other than to make travel arrangements for
3 G.R.'s visitation.
4
5 So I -- it looks like that evidence is already
6 before the jury if Mr. Fox wishes to point it out
7 to them, and I -- I won't be suggesting otherwise.
8 THE COURT: Well, it's there -- thank you, Mr. Myhre --
9 but will there potentially be some issue as to
10 whether the jury accept that as truth?
11 THE ACCUSED: That would be my concern because that's
12 not actually an official or something coming from
13 the Crown, that's just me ranting on a blog post
14 maybe or on a website.
15 MR. MYHRE: My Lady, I'm happy to go back to the
16 office, look at that recognizance, and -- and make
17 the appropriate admission.
18 THE ACCUSED: Sorry, I'm just -- is there not a copy of
19 it in the disclosure or in the -- one of the RTCCs
20 maybe?
21 MR. MYHRE: Not that I can recall, I'm afraid.
22 THE COURT: How do we do this in a way that doesn't
23 keep the jury unnecessarily, because is it still
24 your intention to not call evidence, Mr. Fox?
25 THE ACCUSED: That is my intention, yes. I wonder,
26 though, if it were -- if an admission were to come
27 from the Crown that that was -- oh, but you want
28 to verify that what I'm saying is true, right,
29 before you --
30 THE COURT: He would have an obligation to vary it
31 before -- to verify it before --
32 THE ACCUSED: Sure, sure.
33 THE COURT: -- making any sort of admission on any
34 matter.
35 THE ACCUSED: Mm-hmm. To be honest, I don't know that
36 that one point is really going to make an
37 overwhelming difference in the jury's opinion or
38 decision given all the other evidence that they've
39 seen, so maybe it's not really worth putting the
40 time to have Mr. Myhre go look it up and --
41 THE COURT: Well --
42 MR. MYHRE: I think it would take me less than half an
43 hour to -- to verify that information. I could
44 come back perhaps with just an oral admission or I
45 could -- it wouldn't be that hard to put it into a
46 document either between these dates and these
47 dates after Fox was bound by a recognizance.

BAN ON PUBLICATION - INHERENT JURISDICTION

1 THE COURT: I would think an oral admission -- is it
2 something you can verify by telephoning so that
3 it --
4 MR. MYHRE: Yes.
5 THE COURT: So shall we just stand down and see what
6 success you have? Shall I tell the jury or ask
7 Mr. Sheriff to tell the jury we're likely to be
8 about 15 minutes? And then, Mr. Fox, do you feel
9 ready after that? After that, the Crown will
10 close its case, and do you feel ready at that
11 point to what's called make your election as to
12 whether you're calling a defence or not calling
13 evidence?
14 THE ACCUSED: Yes, My Lady.
15 THE COURT: All right. So let's stand down now and
16 we'll come back in about 15 minutes.
17 THE CLERK: Order in court. This court stands down.
18
19 (PROCEEDINGS ADJOURNED)
20 (PROCEEDINGS RECONVENED)
21
22 (JURY OUT)
23
24 MR. MYHRE: So, My Lady, the Crown can admit that from
25 July 21st, 2015 -- sorry, I'll give you a chance
26 to --
27 THE COURT: All right.
28 MR. MYHRE: From July 21st, 2015 until October 27th,
29 2015, Mr. Fox was bound by an undertaking
30 forbidding him having direct or indirect contact
31 with Desiree Capuano, with the exception of
32 communication regarding travel plans for Gabriel
33 Reiss.
34 THE COURT: All right. That's something that both
35 parties would agree, then, to have go in as an
36 admission, is that correct?
37 THE ACCUSED: Yes.
38 MR. MYHRE: Yes.
39 THE COURT: Do you wish me to tell the jury the
40 admission or will you, Mr. Myhre?
41 MR. MYHRE: I'm happy to do it, My Lady.
42 THE COURT: All right. So we'll call the jury back in
43 in just a moment, we'll deal with that admission,
44 then Mr. Myhre will say that that completes the
45 Crown's case, and then it's customary, Mr. Fox,
46 for me to turn to you, you stand up and you say
47 the defence will not be calling evidence or the

BAN ON PUBLICATION - INHERENT JURISDICTION

1 defence will be calling evidence, as -- as the
2 case may be.
3 And assuming it's still your intention that
4 the defence will not be calling evidence, then I
5 will explain to the jury that before we get to the
6 next steps, which will be closing addresses, it's
7 going to be necessary for us to have a little time
8 for people to prepare and I will ask them to come
9 back on -- we still want Wednesday, do we?
10 THE ACCUSED: Yes, please.
11 THE COURT: All right.
12 MR. MYHRE: Yes, My Lady.
13 THE COURT: And I'm thinking still that the closing
14 addresses will be enough for the jury to take in
15 on Wednesday, even though they won't occupy the
16 full day. It would be difficult for them to take
17 in two closing addresses plus complete
18 instructions from me and then start their
19 deliberations. So if we're all still agreed, I
20 will tell them that Wednesday will likely be a
21 shorter day for them, Thursday will, if we're
22 still on plan, be the day when I'll give them
23 their instructions in the morning and then they'll
24 start their deliberations. All agreed?
25 THE ACCUSED: Agreed.
26 MR. MYHRE: Yes.
27 THE COURT: All right. Please.
28 THE SHERIFF: The jury, My Lady.
29
30 (JURY IN)
31
32 MR. MYHRE: Members of the jury, the Crown is making
33 the following admission in this matter: Between
34 July 21st, 2015 and October 27th, 2015 --
35 THE COURT: That was July 21?
36 MR. MYHRE: July 21 to October 27, 2015, Patrick Fox
37 was bound by an undertaking forbidding him from
38 having direct or indirect contact with Desiree
39 Capuano, except for communication regarding travel
40 plans for Gabriel Reiss.
41 And, My Lady, that is the case for the Crown.
42 THE COURT: Mr. Fox, does the defence intend to call
43 evidence?
44 THE ACCUSED: The defence does not intend to call
45 evidence, My Lady.
46 THE COURT: Thank you.
47 Now, members of the jury, we've had a little

Proceedings

BAN ON PUBLICATION - INHERENT JURISDICTION

1 discussion about timing. This case from the
2 outset has moved a little more quickly than we
3 anticipated. The next step will be that each of
4 the Crown and Mr. Fox will make their closing
5 addresses to you in the trial, and then following
6 that I will give you the charge to the jury or
7 closing instructions, following which you will
8 begin your deliberations.

9 A little bit of time is necessary for
10 preparation of these next steps and I'm going to
11 in a few moments excuse you for the day and for
12 tomorrow and will not need you tomorrow. I will
13 ask you to come back on Wednesday morning at the
14 usual time, and on Wednesday morning you will hear
15 the closing addresses. I don't expect that they
16 will occupy the full day, probably nowhere near
17 it, but, nonetheless, I'm then going to ask you to
18 come back on Thursday morning for the final
19 instructions.

20 Experience tells that for a jury to take in
21 two closing addresses, plus the detailed
22 instructions from the judge in the final charge,
23 is asking quite a lot of a jury in a single day,
24 so we'll break those apart. Wednesday will be the
25 closing addresses, Thursday will be my final
26 instructions to you, and it will be immediately
27 after that that you will start your deliberations
28 and remain together during your deliberations.

29 Have I overlooked anything, Mr. Myhre or Mr.
30 Fox?

31 MR. MYHRE: Not that I can think of.

32 THE ACCUSED: No, I don't believe so.

33 THE COURT: So I will thank you for your attention
34 today and ask you to come back on Wednesday
35 morning at the usual time. Thank you.

36
37 (JURY OUT)

38
39 THE COURT: I have been preparing a copy of the charge
40 -- or I have been preparing a draft of the charge,
41 which is as up to date as I've been able to make
42 it. Obviously I haven't yet included reference to
43 today's evidence and that's been most of the
44 evidence relating to Count 2. I have a number of
45 questions to ask both of you.

46 Mr. Fox, in this process I need to keep in
47 mind that you have chosen not to present a

BAN ON PUBLICATION - INHERENT JURISDICTION

1 defence, and that entitles you to make the last
2 address to the jury. In other words, the Crown
3 goes first in their closing address and you go
4 last. And in the process of discussing the
5 charge, I do not wish to draw out from you
6 anything about how you plan to make your closing
7 address and what points you plan to emphasize.
8 That would remove the advantage to you of going
9 last. Do you understand what I'm trying to say?
10 THE ACCUSED: I do.
11 THE COURT: Nonetheless, we need to have a discussion
12 so that I know if there are particular things you
13 want included or particular things that you feel
14 should not be included, and so that I can make
15 sure I accurately represent the positions of the
16 two parties as best I can. On that last point, I
17 may need to leave that portion of the charge until
18 Wednesday afternoon after the closing addresses
19 have been made.
20 So have a seat. We -- I'm simply going to go
21 through the questions I have in no particular
22 order. We may need to come back to some of them.
23 Mr. Myhre, you may have points you wish to raise;
24 likewise, Mr. Fox. Is there anything fundamental
25 that should be addressed first? My questions are
26 all a bit more specific.
27 THE ACCUSED: I don't believe so.
28 THE COURT: I'll start with Count 2. Mr. Myhre, do I
29 have it correctly that the Crown's position -- and
30 this came out of the application to amend -- but
31 the Crown's position is that that charge relates
32 to the time at which the Crown says Mr. Fox was
33 either involved in transporting the firearms to
34 the Packaging Depot or they were at the Packaging
35 Depot and still within his control, but not the
36 period before that? So I suppose on the evidence
37 we're looking at from the time they were outside
38 the apartment building ready to be given to Mr.
39 Mangat -- was it Mangat? -- until they were beyond
40 the control of Mr. Fox to pull back from the UPS.
41 Is that the Crown's theory?
42 MR. MYHRE: Yes, exactly, My Lady.
43 THE COURT: So if that's the case, I need to charge the
44 jury on both physical possession, actual physical
45 possession, and constructive possession, I take
46 it?
47 MR. MYHRE: Yes, that would be my position.

BAN ON PUBLICATION - INHERENT JURISDICTION

1 THE COURT: Okay. And my intention is to deal with
2 that fairly succinctly, constructive possession
3 being the most part knowing where the item is
4 located and having control of its location. Does
5 that sound sufficient, Mr. Myhre?
6 MR. MYHRE: Yes, from my perspective.
7 THE COURT: And I take it the Crown's theory relates to
8 four firearms, not the fifth?
9 MR. MYHRE: Yes, there's not -- there's no charge in
10 relation to the -- the rifle barrel.
11 THE COURT: Mr. Fox, any submissions on any of those
12 points so far?
13 THE ACCUSED: No. No, My Lady.
14 THE COURT: Mr. Myhre, at the outset of trial, or at
15 some point early on, you asked me to make it clear
16 to Mr. Fox that there might be an issue on which
17 he would have an evidentiary burden; namely,
18 lawful authority to have possessed the firearms at
19 a place other than where authorized. As I -- as I
20 look at s. 93(1), I don't see immediately where
21 any such lawful authority would come into play.
22 MR. MYHRE: So, My Lady, the reference that I was
23 making was to -- and maybe this wasn't clear -- to
24 s. 117.11.
25 THE COURT: All right.
26 MR. MYHRE: Which reads:
27
28 in any proceedings for an offence under
29 [including s. 93, where] any question arises
30 as to whether a person is the holder of an
31 authorization, a licence or a registration
32 certificate, the onus is on the accused to
33 prove that the person is the holder of the
34 authorization, licence or registration
35 certificate.
36
37 THE COURT: But it's the Crown's position that Mr. Fox
38 is the holder.
39 MR. MYHRE: Yes, and so that would just be --
40 THE COURT: I can't see how that would come into play.
41 MR. MYHRE: Yeah, I don't -- I actually don't see how
42 that arises here either. Mr. Fox clearly isn't
43 tendering some other copy of a licence that he
44 says he had, so it just doesn't come into play. I
45 don't think there's a need for any instruction
46 along that line.
47 THE COURT: All right. Mr. Fox, anything on that?

BAN ON PUBLICATION - INHERENT JURISDICTION

1 THE ACCUSED: No, My Lady.
2 THE COURT: Still on s. 93(1), what was -- portion does
3 the Crown -- now, I have not had an opportunity to
4 look closely at the documents that were filed this
5 morning, but what portion of 93(1) is the Crown
6 relying on, (a), (b) or (c)?
7 MR. MYHRE: It's (b), My Lady.
8 THE COURT: Sorry, which one?
9 MR. MYHRE: (B), "Other than a place indicated on the
10 authorization or licence as being a place where
11 the person may possess it."
12 THE COURT: So perhaps, since we're all here, you
13 should take me directly to it.
14 MR. MYHRE: So, My Lady, if we could go to the
15 affidavit of a firearm's officer. It's Exhibit
16 10. So you may recall I directed the jury to
17 paragraph 6?
18 THE COURT: Yes. Yes, I'm looking at border crossings.
19 MR. MYHRE: Yes. So two things, including border
20 crossings. So the Crown's submission would be
21 that his licence would have allowed him to take
22 his firearms to a border crossing, and other
23 language in here, if you look over to the next
24 page, the second last bullet point, "Transport to
25 a port of exit in order to take them outside
26 Canada and from a port of entry." So the Crown
27 submission is that what's contemplated here is
28 personal transportation, not giving them to
29 somebody else to transport out of the country.
30 THE COURT: It doesn't say that. I can't leave an
31 interpretive issue with the jury. If it's Crown's
32 position that he was in possession by having
33 knowledge and control at least up to the time that
34 it went with UPS, doesn't that weigh in favour of
35 an interpretation that he's also doing the
36 transporting?
37 MR. MYHRE: Well, My Lady, these are personal licenses,
38 so it was issued to Mr. Fox to do the transport.
39 Mr. Fox couldn't just give his firearms to
40 somebody else to carry to the gun range.
41 THE COURT: Well, perhaps I need to read the thing as a
42 whole, the affidavit as a whole, but it's not
43 leaping out at me that this is a restriction on --
44 that requires Mr. Fox to be the person who does
45 any transportation. Perhaps it's there. I
46 haven't seen it yet.
47 Mr. Fox?

BAN ON PUBLICATION - INHERENT JURISDICTION

1 THE ACCUSED: I do just wish to make one correction on
2 Mr. Myhre's statement. Actually, any PAL holder
3 may transfer or give their restricted firearms to
4 any other PAL holder as long as that -- like for
5 the purpose of transport as long as that other PAL
6 holder also has a comparable ATT, and so there is
7 no law that would require that I be the only
8 person that physically transport them. For
9 example, a friend of mine who has a PAL and an ATT
10 can carry them to the shooting range whether I'm
11 with him or not, as long as he has the
12 registrations with him.

13 THE COURT: Mr. Myhre, can you assist me any further
14 with this?

15 MR. MYHRE: Yeah, a couple submissions, My Lady. On
16 the first page, the very last bullet point, the
17 ATT authorizes an adult individual to transport,
18 da, da, da, da, da, so it's an authorization to
19 Mr. Fox personally. And, second, when you look at
20 the actual conditions, in my submission, what's
21 clearly contemplated is personal possession, and I
22 say that can be inferred from, for example, the
23 fact that transport -- if you look at the last
24 page of the affidavit, before the Exhibit A, the
25 second last bullet point, so "a transport to a
26 port of exit in order to take them outside
27 Canada." A person who ships their firearms out of
28 the country has no control over whether they're
29 going to a port of exit. Of course, that
30 requirement is there so that they actually do use
31 a port of exit, and documentation can be verified
32 and you can see that other conditions require the
33 person to...

34 THE COURT: Is there something in the legislative or
35 regulatory scheme that puts the scope of the --
36 and terms of the authorization a bit more
37 directly? This affidavit paraphrases in a way
38 that certainly gives rise to some ambiguity, but I
39 wonder whether the regulatory scheme itself, the
40 language of it, makes clear what the intent of
41 these provisions is.

42 MR. MYHRE: I would have to go back and look at it, My
43 Lady.

44 THE COURT: I think I'm going to need to hear from you
45 on this in more detail. I certainly don't want to
46 be leaving an issue with the jury that's a matter
47 of interpretation. It -- it need -- their role is

BAN ON PUBLICATION - INHERENT JURISDICTION

1 obviously to make findings of fact, not
2 conclusions of law.

3 MR. MYHRE: The other terms I was going to refer Your
4 Ladyship to, if you flip to the very last page of
5 this document, it continues to set out the terms,
6 they're apparently printed on the actual ATT. If
7 you look at the last conditions, "The holder must
8 be in possession of the registration certificates
9 for the firearms being transported" and then,
10 lastly, "This authorization allows the holder to
11 transport firearms to and from border crossings on
12 condition the holder is in possession of the
13 necessary U.S. documentation." So, again, in my
14 submission, this ATT is contemplating somebody --

15 THE COURT: Well, it depends on what "transport" means,
16 whether it means personally take or whether it can
17 mean arrange to be shipped. Maybe it -- maybe
18 arranged to be shipped goes beyond the meaning of
19 "transport," particularly when one looks at the
20 earlier conditions that use that word again and
21 again.

22 MR. MYHRE: I'll do some reading and try to come back
23 with something helpful tomorrow, My Lady.

24 THE COURT: Well, we won't be here tomorrow. Mr. Fox
25 wants the day to work on his closing address.

26 THE ACCUSED: Might I -- might I propose, if there's a
27 need to appear tomorrow, I could possibly appear
28 by video court from the jail.

29 THE COURT: That's a good point. Mr. Sheriff, is it
30 too late to arrange a video appearance?

31 THE SHERIFF: I'm not sure, My Lady. I could phone and
32 check. I don't know how that's arranged. Maybe
33 Madam Clerk would be able to --

34 THE CLERK: It's arranged through In-court Technology,
35 so I would have to speak with them. I don't know
36 if it's too late to --

37 THE ACCUSED: Mr. Myhre, when you're doing your
38 research, you might check for that page on the
39 RCMP website, and, for the record, I did look into
40 all this beforehand, and all of this of the --
41 you're debating right now.

42 UNIDENTIFIED VOICE: [Indiscernible], My Lady?

43 THE COURT: Madam Registrar is telling me that this
44 gets arranged through In-court Technology.

45 THE CLERK: I could quickly call them [indiscernible/
46 away from microphone]. What time?

47 THE COURT: No idea.

BAN ON PUBLICATION - INHERENT JURISDICTION

1 THE CLERK: (Into phone) Is it too late to have a video
2 remand for tomorrow?
3 THE COURT: Not a remand, it's an appearance.
4 THE CLERK: (Into phone) For tomorrow sometime, and how
5 much notice do you need to set it up?
6 How long would the video be and at what time?
7 THE COURT: It could be at eleven o'clock, and it could
8 be half an hour.
9 THE CLERK: (Into phone) 11:00 and half an hour. Yeah,
10 it's Mr. Fox in courtroom [indiscernible], because
11 we're not -- we weren't going to sit tomorrow].
12 THE ACCUSED: Yeah. [Indiscernible/away from
13 microphone] down here because we're talking about
14 [indiscernible] --
15 THE CLERK: Where is Mr. Fox housed?
16 THE SHERIFF: Mr. Fox, where are you housed?
17 THE ACCUSED: North Fraser.
18 THE SHERIFF: I'm sorry?
19 MR. MYHRE: Where are you housed?
20 THE ACCUSED: Oh, Alpha North currently.
21 THE SHERIFF: No, North Fraser or Surrey?
22 THE ACCUSED: Oh, North Fraser, yes, yes.
23 THE SHERIFF: North Fraser.
24 THE CLERK: North Fraser.
25 THE ACCUSED: A long time ago, in the very beginning, I
26 told you that in the case what the RCMP --
27 THE CLERK: We haven't --
28 THE ACCUSED: -- told me was that when shipping
29 firearms, once they're packaged up for shipment,
30 it's considered shipping at that point, not
31 transport. And I'm sure that while you're doing
32 your research, you'll come across that. So once
33 they're packed up to be shipped --
34 THE CLERK: She says we could just do and she can
35 submit it [indiscernible/voice low].
36 THE ACCUSED -- the RCMP doesn't consider that
37 transporting them anymore, it considers them
38 shipping them, because I asked them if I want to
39 mail it or FedEx it to somewhere, how do I get
40 from my home to the post office or in the UPS
41 place? And he said, "Well, don't worry, as long
42 as it's packaged up and sealed and everything,
43 then we don't care at that point."
44 MR. MYHRE: So, My Lady, what I take Mr. Fox to be
45 saying is he believes that he was allowed to ship
46 and that ship is different than transport, and it
47 seems to me that he's saying that he did have

BAN ON PUBLICATION - INHERENT JURISDICTION

1 authorization or his possession of them would have
2 been in a place where it may be possessed under
3 the *Firearms Act*, which is the subsection (c) of
4 s. 93. So it seems to me that, in that case, with
5 the Crown saying that he wasn't authorized to do
6 it under (b), I guess I'm not sure whose onus it
7 would be, but it would have to be legislation from
8 the *Firearms Act* relevant to that. Anyway --
9 THE COURT: Well, that surely wouldn't help Mr. Fox if
10 the Crown's relying on (b) and saying Mr. Fox was
11 subject to specific conditions about where he
12 could possess firearms and he breached the
13 condition, that that's the Crown's theory, and
14 that engages paragraph (b). So it doesn't really
15 help Mr. Fox if something else would have allowed
16 him to possess the firearms somewhere else because
17 the Crown's essentially alleging a breach of a
18 specific condition.
19 THE ACCUSED: I'm sorry, I didn't bring a copy of my
20 *Criminal Code* today. May I borrow yours for one
21 moment, just so I can see what you're -- (b) and
22 (c). Yes, 92, 93. Okay.
23 THE COURT: So, Mr. Fox, as I understand it, the Crown
24 is essentially saying these are restricted
25 firearms, you wouldn't be entitled to possess them
26 at all unless you had a -- an authorization to
27 possession them. You do have an authorization,
28 but the authorization only goes so far, and in
29 particular it doesn't allow you to transport them
30 except to and from ranges and to boarder points of
31 entry, and according to the Crown, when you put
32 them into the possession of Mr. Mangat and UPS,
33 you were not transporting them, you were allowing
34 someone else to do that on your behalf, so you
35 were in possession of them, but not complying with
36 your authorization, which required you to
37 personally transport them. That's the Crown's
38 position as I understand it. Have I got that
39 correctly?
40 THE ACCUSED: Yes. I agree that is the Crown's
41 position. My position, though, based on what the
42 RCMP had told me, which, unfortunately, I can't
43 prove at this moment, but what they had told me
44 long before I did any of this was that once I
45 packaged the firearms up for shipment, they're
46 considered not to be in transport at that point,
47 but that's part of the shipping process. And

BAN ON PUBLICATION - INHERENT JURISDICTION

1 there is some information along that lines on the
2 RCMP's website, but it is somewhat of a fuzzy
3 area. I've not been able to find any clear
4 regulation or legislation on that issue.
5 THE COURT: All right. How do you want to deal with
6 this, Mr. Myhre?
7 MR. MYHRE: My Lady, I would like the opportunity to go
8 away and come back with --
9 THE COURT: All right.
10 MR. MYHRE: -- thought-out submissions.
11 THE COURT: Then what we'll do is right now we'll take
12 the afternoon break. I'm going to ask Madam
13 Registrar to see if we can set up a video
14 conference for tomorrow. I've suggested eleven
15 o'clock just to keep out of the busiest times when
16 the videos are used the most. Mr. Sheriff, am I
17 right in thinking that's sort of between 9:00 and
18 10:00?
19 THE SHERIFF: Yes, My Lady.
20 THE COURT: So 11 would be likely less busy?
21 THE SHERIFF: Some days are busier than others. It all
22 depends on what's on the list for videos.
23 THE COURT: What might be the best time of day, then?
24 THE SHERIFF: I --
25 THE CLERK: I know two o'clock is fixed date -- or, no,
26 is tomorrow Tuesday?
27 THE SHERIFF: No, tomorrow's Tuesday, yes.
28 THE CLERK: Yeah.
29 THE SHERIFF: Two o'clock.
30 THE COURT: Two o'clock would be better, you think?
31 THE SHERIFF: Probably, yes.
32 THE COURT: That would give us enough time? All right.
33 So I'll ask Madam Registrar if she's able to set
34 up a video for two o'clock tomorrow. We'll come
35 back, we'll find out whether we've got that, and I
36 do have some other questions on Count 1, Mr.
37 Myhre. All right. Thank you.
38 THE CLERK: Order in court. This court stands
39 adjourned for the afternoon recess.
40
41 (PROCEEDINGS ADJOURNED FOR AFTERNOON RECESS)
42 (PROCEEDINGS RECONVENED)
43
44 (JURY OUT)
45
46 THE COURT: Madam Registrar, were you able to secure a
47 video hearing for tomorrow?

BAN ON PUBLICATION - INHERENT JURISDICTION

1 THE CLERK: I let her know about it, but I can't call
2 for video remand until the end of the day.
3 THE COURT: Oh, I see.
4 THE CLERK: But she's aware of it.
5 THE ACCUSED: I can -- throughout the day tomorrow,
6 I'll just remain ready at any moment.
7 THE COURT: Thank you, Mr. Fox.
8 All right. Other questions. Count 1,
9 there's a range of dates, inclusive, and two
10 places alleged, Burnaby and Surrey, and my
11 question is, Mr. Myhre, what's the basis for
12 alleging Burnaby and Surrey?
13 MR. MYHRE: Sorry, My Lady, I must have -- I'm not sure
14 how Surrey got in there. There's no allegation
15 that Mr. Fox was ever in Surrey. The evidence is
16 that he was living in Burnaby and -- while the
17 site was being hosted at his home in Burnaby.
18 THE COURT: Should the indictment be amended perhaps
19 just to make that -- remove an extraneous
20 consideration for the jury?
21 MR. MYHRE: I'd be happy to, My Lady.
22 THE COURT: Mr. Fox, would you have any objection to
23 that?
24 THE ACCUSED: I don't.
25 THE CLERK: Sorry, My Lady, what were we amending?
26 THE COURT: Count 1, remove "and Surrey." All right.
27 So that's done. And I will simply mention it to
28 the jury in passing in the course of my final
29 instructions when I'm giving them the wording of
30 the indictment.
31 Sometimes in relation to criminal harassment
32 charges a portion of the charge deals with
33 "without lawful authority," which is part of the
34 wording of the charge. I am not proposing to
35 include that here. It seems to me, and you may
36 have a different submission, either Mr. Fox or Mr.
37 Myhre, but it seems to me the only conceivable
38 lawful authority would be freedom of speech,
39 putting that very generally, and that appears to
40 be a freedom which is superseded by the *Criminal*
41 *Code* provision that restricts the right to
42 communicate if the communication amounts to what
43 the *Criminal Code* defines as criminal harassment.
44 So it seems to me not to be helpful to the
45 jury to go into lawful authority. If the jury
46 finds that what took place meets the definition of
47 criminal harassment, then it would appear to me to

BAN ON PUBLICATION - INHERENT JURISDICTION

1 follow that there's no freedom to engage in it.
2 If, on the other hand, the jury finds that the
3 communications did not amount to criminal
4 harassment, then there's also no need to go into
5 lawful authority. But am I missing something in
6 that analysis?

7 THE ACCUSED: I think that the issue is slightly
8 complicated by there is direct communication which
9 is the emails, and then the Crown is also alleging
10 that the website is itself somehow some form of
11 harassment, I believe, or they did allege that at
12 some point. My position has been that the content
13 of the website is purely a matter of free speech
14 because Ms. Capuano is under no obligation to go
15 to the website and subject herself to it, so if
16 we're only talking about the emails, then that's
17 certainly not something that would be protected by
18 free speech because that's direct communication.
19 However, I'm still of the opinion that the content
20 of the website, which was not sent to, either
21 directly or indirectly, Ms. Capuano, should be
22 protected by free speech -- or, I'm sorry, should
23 be protected as free speech.

24 THE COURT: I'm not sure that that's an argument that's
25 available to you to bring at this stage. What's
26 your view on that, Mr. Myhre?

27 MR. MYHRE: I agree with your original comments, My
28 Lady, and it seems to me that the "without lawful
29 authority" portion there was meant to exempt
30 people who are specifically required by law to do
31 certain things. So, for example, a police officer
32 trying to serve somebody with a subpoena can't be
33 charged with criminal harassment for besetting and
34 watching a dwelling house. You may have seen in
35 the *Kelly* case that I handed up with my book of
36 authorities that there is some discussion of
37 lawful authority and they give very short shrift
38 to -- to that idea that maybe freedom of speech
39 protects what that person said on the website.

40 Now, I appreciate what Mr. Fox is saying
41 about communication, but, in my submission, that
42 is something that has to be addressed under the
43 definition of direct or indirect communication.

44 THE COURT: Nothing further, Mr. Fox, on that?

45 THE ACCUSED: No, My Lady.

46 THE COURT: So it's my view that the "without lawful
47 authority" language doesn't apply in the

BAN ON PUBLICATION - INHERENT JURISDICTION

1 circumstances of our case. It may be, Mr. Fox,
2 that there are arguments to be made on different
3 issues about the fact that the website, while
4 public, was not specifically directed at Ms.
5 Capuano and she was free not to look at it.
6 Perhaps that might go to whether she was harassed,
7 whether she was actually afraid for her safety,
8 whether she even knew about what was on the
9 website, whether it was reasonable for her to fear
10 for her safety because it was open to her to stay
11 away entirely from it. I -- I'm not saying that's
12 a conclusion or even that it necessarily does go
13 to that issue, but that may be the type of
14 argument you're thinking about.

15 THE ACCUSED: Yes, My Lady.

16 THE COURT: But I don't think you can work with the
17 concept of "without lawful authority" in a freedom
18 of speech kind of way to legitimize conduct that
19 the jury may find, if it does find, fits the
20 definition of criminal harassment, and, of course,
21 it's always -- I'm not saying the jury will make
22 that finding, but it's obviously one of the
23 available findings that's open to them. Thank
24 you.

25 That takes us nicely to my next question,
26 which is what's the indirect communication that
27 the Crown is alleging, particularly since the
28 dates of Count 1 are in the first part of 2015,
29 January 11 to May 27 -- oh, no, to 2016, so that's
30 a long period of time. What -- what is the
31 indirect communication so that I can properly
32 describe that that's being alleged? The direct
33 communication is presumably the emails?

34 MR. MYHRE: Yes, and it would be the Crown position
35 that the website itself also amounts to direct
36 communication because Mr. Fox is repeatedly
37 reminding Ms. Capuano about it. So if he says,
38 "Look, I'm posting this up there, I'm going to
39 update your website," he's essentially telling her
40 to go and look at this thing, so in that way it
41 could be considered direct communication.

42 It could also be considered indirect
43 communication in this way: Mr. Fox states in a
44 number of different places that his intention is
45 that this website will have repercussions in the
46 community for Ms. Capuano, so he is intending that
47 other people will see this website and that will

BAN ON PUBLICATION - INHERENT JURISDICTION

1 affect their interactions with Ms. Capuano,
2 whether it's by denying her a job, laughing at her
3 behind her back, denying her fiancé a job. Those
4 are the ones that come to mind immediately.
5 THE COURT: But is that an indirect communication with
6 her if they don't -- those other people don't
7 bring it to her attention?
8 MR. MYHRE: In my submission, it --
9 THE COURT: I would have thought the communication
10 there is the direct one telling her "I'm doing all
11 these troubling things on the website that are
12 going to affect you," but the only indirect
13 communication is one that comes to her attention
14 somehow.
15 MR. MYHRE: So it does come to her attention on at
16 least a couple of times that spring to mind; first
17 of all, in that -- for example, when she applies
18 to Pima Community College and then they tell her
19 "We're not offering you a job," that's coming back
20 and having an impact on Ms. Capuano, and it's
21 being communicated back to her in exactly the way
22 that Mr. Fox intended for it to be.
23 THE COURT: But that's an effect on her -- I see what
24 you're saying. If the Pima people said, "We've
25 seen things on this website that trouble us,"
26 that's an indirect communication to her. I'm not
27 sure it is, as I say that. It's certainly an
28 indirect effect on her, but what is it that's
29 being communicated? Because what comes back to
30 her is "We're troubled by what we see on the
31 website and we don't want to hire you," not "Your
32 ex says you are this, that and the other."
33 MR. MYHRE: So with respect to indirect communication,
34 in my submission, it doesn't actually -- when
35 we're talking about that element of the offence it
36 doesn't matter, actually, if they do come back and
37 complete the circle by saying something to Ms.
38 Capuano. What's clear is that Mr. Fox's intention
39 is that his website will spread her reputation in
40 the community, people will not respect her, and so
41 he is indirectly trying to influence anybody who
42 would come into contact with Ms. Capuano. That's
43 his stated intention with the website. So with
44 respect to that element of the offence, what he is
45 trying to do is accomplish indirect communication.
46 THE COURT: With whom?
47 MR. MYHRE: Anybody who would come into contact with

BAN ON PUBLICATION - INHERENT JURISDICTION

1 Ms. Capuano, whether it's a potential employer,
2 whether it's someone in her community.
3 THE COURT: But here's -- here's my problem: The
4 communication is with those other people, it's not
5 with Ms. Capuano when you describe the facts in
6 that way.
7 MR. MYHRE: Yes, I agree.
8 THE COURT: And I'm not sure that falls within the
9 *Criminal Code* definition. Well, perhaps it does.
10 MR. MYHRE: It does include indirect communication, My
11 Lady.
12 THE COURT: Well, I think, more significantly, it
13 includes repeated communication, either directly
14 or indirectly, with the person, Ms. Capuano, or
15 anyone known to them. I think that's what you're
16 really relying on.
17 MR. MYHRE: That works as well, and, yes, that -- I
18 just forgot about that wording.
19 THE COURT: All right. Mr. Fox?
20 THE ACCUSED: With all due respect to Mr. Myhre, I must
21 respectfully disagree. On the point of the
22 website being direct communication because I keep
23 telling Ms. Capuano about it, my position on that
24 would be me telling Ms. Capuano about it would be
25 direct communication, but by telling her about it
26 I'm not causing it to be direct communication
27 itself. Perhaps at most it might possibly be
28 indirect communication.
29 And then on the point of -- on the point of
30 it being indirect communication because it causes
31 others to behave differently toward her, I would
32 agree with your opinion that that's not
33 communication, that's an indirect effect, but I
34 believe that the -- what Parliament had in mind
35 when they said indirect communication was, for
36 example, me going to somebody and saying to them,
37 "Would you please contact Desiree for me or would
38 you pass this message along to her?" I mean, if
39 -- if we're to take the Crown's position and say
40 that it's indirect communication if I publish
41 something about Desiree, then that means that, for
42 example, that Natalie Clancy is causing thousands
43 of people across Canada to have indirect
44 communication with me after she did the story
45 about us on CBC, and I think that that would be an
46 incredible stretch.
47 Now, it should be mentioned that one of my

BAN ON PUBLICATION - INHERENT JURISDICTION

1 goals with the website is actually to have the
2 exact opposite effect of indirect communication by
3 informing the people that might potentially come
4 in contact with Ms. Capuano of my past experiences
5 with her and my opinion and what I believe about
6 her. I'm hoping that people will not want to have
7 anything to do with her. So really my goal is not
8 to generate any indirect communication, it is to
9 alienate her from all of the people around her,
10 which would seem to be the exact opposite.

11 And finally I want to say on the idea that
12 the website is indirect communication because I
13 write something and then that causes people -- or
14 motivates people to contact Ms. Capuano to ask her
15 about it or tell her about it, etc., I have no
16 control whatsoever over what a third party does
17 when they read the website. If I was to contact
18 these people and say, "Hey, can you tell Ms.
19 Capuano about this" or do something to motivate
20 them to contact her about it, that would be
21 different, but in this case certainly I -- I can't
22 control what all these third parties might do when
23 they read the stuff on the website.

24 THE COURT: All right.

25 THE ACCUSED: And so, based on that, I find it very
26 difficult to say that the website could possibly
27 be indirect communication based on those
28 arguments, and certainly not direct communication.
29 I mean, Ms. Capuano was always free to simply not
30 go to the website. Thank you.

31 THE COURT: Thank you. Next question. I should have
32 asked this earlier, Mr. Myhre, but I take it -- if
33 you look at s. 264 and the types of conduct that
34 the Crown is relying on, I take it you're relying
35 on (b) and (d)?

36 MR. MYHRE: Yes, My Lady.

37 THE COURT: And I am now going to ask you about (d),
38 which is engaging in threatening conduct directed
39 at the other person, which would be Ms. Capuano,
40 or any member of their family. What is -- I know
41 part of the answer to this, but I'd like to hear
42 it from you. What is the particular conduct that
43 the Crown relies on in relation to (d)?

44 MR. MYHRE: So the list that I have so far, My Lady,
45 include the many statements Mr. Fox made in email
46 to Ms. Capuano about his intention to make her
47 life miserable. Those are threats directly to her

BAN ON PUBLICATION - INHERENT JURISDICTION

1 psychological safety.
2 THE COURT: All right.
3 MR. MYHRE: There were other threats, threats to have
4 someone -- hire someone to sleep with her, to take
5 photos, threats of a billboard campaign, threats
6 to ruin her reputation through a website. And
7 then the threat to her physical well-being is in
8 the January 11th, 2015 email. You'll remember
9 words to the effect of that Mr. Fox told Gabriel
10 he would shoot Desiree if not for the risk of
11 going to jail, with the attendant caveats that Mr.
12 Fox attached to that, and so it would be open to
13 the jury to find that that was a threat to her
14 physical well-being.
15 THE COURT: Thank you. And what about potential
16 effects on -- I'm using the *Criminal Code* language
17 for (b), which is repeated communication -- no,
18 I'll just confine it to (d), threatening conduct
19 directed at any member of their family. Is there
20 an allegation that any member of the family was
21 threatened?
22 MR. MYHRE: Yes, there is a -- a thinly-veiled threat
23 on the Crown's theory to James Pendleton to
24 interfere with his security clearance.
25 THE COURT: And for that to be threatening conduct that
26 engages the section it would have to be
27 threatening conduct that caused Ms. Capuano
28 reasonably in all the circumstances to fear for
29 her safety or the safety of anyone known to her.
30 How would the thinly-veiled threat to Mr.
31 Pendleton engage that consequence?
32 MR. MYHRE: Well, a threat, in my submission, to
33 interfere with somebody's career is a threat to
34 cause them psychological harm, with the obvious
35 attendant distress to losing one's career. There
36 was -- and there were similar threats made to Ms.
37 Capuano in terms of trying to interfere with her
38 career. That was his stated goal.
39 THE COURT: And is there any other family member that
40 is said to be engaged and affected by potential
41 threatening conduct? I know -- and I'm asking
42 this because Ms. Capuano herself did mention
43 consequences for the children that she was
44 concerned about. Do those come into the Crown's
45 theory of the case in any way that I need to be
46 addressing?
47 MR. MYHRE: I just have to think about that for one

BAN ON PUBLICATION - INHERENT JURISDICTION

1 second.

2 There is -- yes, there is -- I'm sorry, My
3 Lady, I just haven't quite phrased in terms of
4 threatening conduct versus direct or indirect
5 communication. I had structured my submissions
6 more in a holistic manner, individual actions or
7 ways that Mr. Fox tried to harass Ms. Capuano.
8 But one of the ways is by interfering with her
9 relationship with Gabriel, and you may recall
10 statements Mr. Fox made to the effect of that he
11 was using Gabriel as a pawn in his plan, tying
12 that into hurting her emotionally, what could be
13 more effective than for your child to utterly
14 despise you? And so in those statements that he
15 makes to Ms. Capuano related to Gabriel, he
16 clearly is also threatening her psychological
17 well-being. He's threatening to scar her
18 emotionally by manipulating the situation so that
19 Gabriel would end up hating his mother.

20 THE COURT: But that's still a consequence to Ms.
21 Capuano and I'm wondering whether I need to be
22 charging the jury about the fact that s. 264
23 encompasses conduct that causes Ms. Capuano to
24 reasonably fear for the safety of others, and I'm
25 wondering if the others -- the Crown's alleging
26 that she had reasonable fears for the safety of
27 the children.

28 MR. MYHRE: She did, and you will remember her evidence
29 about being concerned about Sage's well-being due
30 to the pictures that were posted, you'll remember
31 the email where she tells Mr. Fox that she
32 believes that his actions are hurting Gabriel.

33 THE COURT: All right. Thank you.

34 I think I've asked all the questions I wanted
35 to ask. Yes. Is there anything you'd like to
36 raise, Mr. Fox?

37 THE ACCUSED: I would just like to make one quick
38 response to some of what Mr. Myhre had just said.
39 It seems to me that what Mr. Myhre is classifying
40 as threats, I have difficulty accepting that
41 telling someone that you intend to publish the
42 truth about them, and that, as a consequence of
43 that truth becoming known, they're going to have
44 adverse consequences, I don't see how that can be
45 considered a threat. Again, it's something that
46 the news media does every single day. So when I
47 tell Ms. Capuano that I intend to notify the

BAN ON PUBLICATION - INHERENT JURISDICTION

1 Department of Defence that Mr. Pendleton is
2 cohabiting with her, that's not really a threat,
3 that's simply telling the truth.
4 Also, I think it's a bit of a stretch on the
5 issue of the statement that -- about me shooting
6 her if it was legal, etc., and we've all seen that
7 email and -- well, so that's all.
8 THE COURT: All right. Thank you.
9 Mr. Myhre, anything else you wish to raise?
10 Anything -- appreciate you haven't got a draft of
11 the charge, but is there anything that you --
12 anything specific that you would like to see
13 included that you think I might not otherwise
14 think of?
15 MR. MYHRE: I think it does arise on the evidence, it
16 seems to me that when I look through Mr. Fox's
17 website posts and his emails, that he actually is
18 mistaken about what the law is on three points:
19 First of all, whether that website could
20 constitute communication, direct or indirect;
21 second, that truth is a defence to a charge of
22 criminal harassment; and, third, that harassment
23 only encompasses fear for physical safety.
24 And I think, My Lady, your instructions on
25 whatever the law is, I mean, you will determine
26 what the law is and give instructions on whether
27 the website can constitute communication as it's
28 defined in s. 264 and whether harassment
29 encompasses psychological harm. The issue of
30 whether truth is a defence may need addressing.
31 It seems to me -- and maybe that's a matter to be
32 addressed depending on Mr. Fox's closing
33 submissions, but if it does come up in his closing
34 submissions, it doesn't seem to me that whether
35 certain statements are true or not has any bearing
36 on the crime of criminal harassment.
37 THE COURT: All right. Thank you, Mr. Myhre.
38 I would rather that these points be made
39 clear before Mr. Fox makes his closing address so
40 that he doesn't find himself in a position of
41 having made a closing address and then have me
42 tell the jury that what he argued is not capable
43 of being a defence.
44 On those points, one by one, Mr. Fox, as I
45 see it, and if we need to have some argument on
46 this -- don't -- don't worry, have -- sit down --
47 if we need for this to be argued further, we can

BAN ON PUBLICATION - INHERENT JURISDICTION

1 make arrangements, but as I see it, the website
2 can amount to communication with Ms. Capuano,
3 whether it's direct or indirect, if it comes to
4 her attention, but, in addition, s. 264
5 encompasses repeated communication with people
6 known to Ms. Capuano, so if there is repeated
7 communication with, for example, employers or
8 friends or Mr. Pendleton, that too can amount to
9 communication that falls within s. 264, and the
10 website would be in some circumstances capable of
11 being that form of communication. Now, it may be
12 open to you to argue, Mr. Fox, that there's no
13 evidence or no sufficient evidence that other
14 people known to Ms. Capuano actually read the
15 website, and so in that sense there wasn't any
16 communication, but that's a matter for argument.

17 I'm going to go to the third point. It's
18 clear from the law that criminal harassment under
19 s. 264 does encompass more than physical safety.
20 It includes psychological and emotional security,
21 and the term well-being, emotional well-being is
22 often used in the case authorities. I'll instruct
23 the jury that to engage s. 264 the conduct would
24 have to have an effect that's -- on psychological
25 or emotional security that's -- I won't use this
26 word, but a meaningful effect. It can't be a
27 trifling effect. But it doesn't have to lead to
28 mental illness, for example.

29 And then the second point Mr. Myhre raised,
30 Mr. Myhre is concerned that Mr. Fox sees truth as
31 being a defence to s. 264. Put in stark terms
32 like that, the proposition is not correct. Truth
33 is not a defence. This is not a defamation trial.
34 The matter may be a bit more nuanced, it may be
35 open to argue that if something is true, it's less
36 likely to be disturbing to people, but clearly the
37 law contemplates that in some situations repeated
38 communication about something that may even be
39 true can amount to harassment if it causes the
40 person reasonably to fear for their safety or if
41 it amounts to threatening conduct that causes the
42 person reasonably to fear for their safety or
43 someone else's safety.

44 Now, does any of that surprise you, Mr. Fox,
45 or trouble you?

46 THE ACCUSED: It doesn't -- it doesn't surprise me so
47 much. I'm -- I have again another bit of a

BAN ON PUBLICATION - INHERENT JURISDICTION

1 disagreement, I guess, with Mr. Myhre because I
2 think he's incorrect on some of the points about
3 my beliefs. I don't believe that the truth is any
4 kind of defence for harassment; however, I --
5 well, for example, if I'm emailing Ms. Capuano,
6 telling her something that's the truth, then that
7 would be direct communication, and so the fact
8 that it's the truth would be irrelevant.

9 My concern about the truth is when I'm
10 speaking the truth publicly to other people that
11 has -- that have nothing at all to do with her;
12 for example, in a public forum like on the
13 website, that is where I think that the question
14 of it being the truth becomes relevant because in
15 the *Kelly* case, for example, that the Crown has
16 provided, in that case, the defendant was
17 committing defamation on -- in a public forum on a
18 website, so in that case, the government -- or the
19 -- the court, sorry, found that that did
20 contribute to the harassment.

21 On the issue of the psychological safety, I
22 accept that here in Canada there is the concept of
23 psychological harm and psychological safety. I'm
24 admittedly a little bit concerned, though, that in
25 the jurisdiction that Ms. Capuano lives in in
26 Arizona they have no such concept, which creates
27 the situation where Ms. Capuano can then continue
28 to do the things to me that she has been doing
29 because it's perfectly legal where she happens to
30 live; however, I'm residing in a jurisdiction
31 where that might potentially not be legal. So she
32 can say what she wants about me on the Internet
33 and I have no way to respond, no way to defend
34 against her -- her claims. Or I shouldn't say in
35 her case not on the Internet, she went to news
36 media about it. So had I not responded, then
37 everybody would just assume that I concede to
38 those points; if I do respond, then I'm accused of
39 harassment. But that's potentially another issue
40 that would have to be taken up separately.

41 And on the issue of the website possibly
42 constituting communication, there are some cases
43 that equate something like a website or a blog to
44 being equivalent to either a public forum or
45 somebody standing on a street corner with a
46 megaphone shouting out to the general public, and,
47 for example, in *R. v. Kelly*, the court analogized

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1 it as if somebody were to do that in a location
2 where they know that the person has to go past in
3 order to get to work, then that could be
4 considered, I think it was indirect communication
5 because the communication was not intended for the
6 person, but if they were to do that in a place
7 where the person reasonably would not be going to
8 or would have no reason to go to, then that would
9 be just communication with the general public.

10 So maybe I'm not a hundred percent clear on
11 how we would come to the idea that the website
12 could be considered communication if it comes to
13 her attention. I mean, it can come to her
14 attention by her explicitly going to the website.
15 I can't stop her from going to the website. Well,
16 I guess I could block her IP address, but -- so if
17 that's the case, then if I speak publicly to
18 everybody in the world except her, but then she
19 goes explicitly to the website, then that's
20 causing me to commit harassments unintentionally.

21 THE COURT: Thank you. Anything further, Mr. Myhre?

22 MR. MYHRE: No, My Lady.

23 THE COURT: All right. I will revise my draft of the
24 charge with a view to giving you each a draft
25 after the closings are finished on Wednesday, and
26 then we can go over it and any further submissions
27 can be made. I might give it to you first thing
28 Wednesday so that you've got it to look at in the
29 breaks and so forth. We will hope to resume
30 tomorrow to address the issue of Count 2 and how
31 that -- and the interpretive issue relating to the
32 prohibition on transporting, and the tentative
33 plan, then, is for that to be at two o'clock with
34 Mr. Fox by video, and if for some reason that's
35 not going to work out, I'm sure scheduling will be
36 in touch and we'll try to convene by -- in that
37 way earlier in the day.

38 Anything else before we stand down for the
39 day?

40 THE ACCUSED: No.

41 MR. MYHRE: No, My Lady.

42 THE COURT: Thank you.

43

44 (PROCEEDINGS ADJOURNED TO JUNE 20, 2017, AT
45 2:00 P.M.)

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47 Transcriber: S. Lotz

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I hereby certify the foregoing to
be a true and accurate transcript
of the evidence recorded on a sound
recording apparatus, transcribed to
the best of my skill and ability.

A handwritten signature in blue ink, appearing to read 'S. Lotz', with a stylized, flowing script.

S. Lotz
Court Transcriber