

**244069-5-BC
Vancouver Registry**

**In the Provincial Court of British Columbia
(BEFORE THE HONOURABLE JUDGE ST. PIERRE)**

**Vancouver, B.C.
March 6, 2020**

REGINA

v.

PATRICK HENRY FOX

PROCEEDINGS AT TRIAL

BAN ON PUBLICATION 517 CCC

Crown Counsel:

B. Wolfe

Appearing on his own behalf:

Patrick Fox

Proceedings

BAN ON PUBLICATION 517(1) CCC

Vancouver, B.C.
March 6, 2020

(DUE TO THE QUALITY OF THE AUDIO, THERE ARE AN
UNUSUAL NUMBER OF MISSED WORDS IN THIS TRANSCRIPT)

THE COURT: Okay, thanks. Good morning. Mr. Fox is
here and Mr. Wolfe is here. Okay.

MR. WOLFE: Yes, Your Honour, Wolfe, initial B., for
the Provincial Crown, continuing with the case
against Mr. Fox.

THE COURT: Yes.

MR. WOLFE: Yes, Your Honour, just for the record,
noting the time. It's [indiscernible] 9:54. I
apologize for the delay. I printed off a document
for Mr. Fox from a disc, a DVD he had --

THE COURT: Yes.

MR. WOLFE: -- which he considers part of his defence.
He now has -- I have a copy, and there are three
copies for Mr. Fox. One, I expect, would be for
Your Honour, one for him personally, and then what
happens to the -- the remaining one remains to be
seen.

THE COURT: Okay. Thank you. Yes, so we -- the case
for the Crown has -- is in. The -- they closed
their case. Mr. Fox, you had indicated, if you
were going to call some evidence on your behalf,
and that you were going to take the stand, is that
right?

THE ACCUSED: Yes.

THE COURT: Okay.

THE ACCUSED: That is my intention for today, but I
would ask that I could have just a moment, please,
'cause when the sheriffs go through the box before
I come up here, sometimes they get everything all
mixed up, and so [indiscernible].

THE COURT: Okay.

THE ACCUSED: Just so that when I need to find
something, later --

THE COURT: Yes.

THE ACCUSED: -- they won't be scattered about.

THE COURT: Yes, and the -- anything you wish to refer
to, you should bring up with you.

THE ACCUSED: Right. There is a preliminary matter,
though, before I testify, that I want to bring up.
One of the issues or one of the statements that
I'm going to be making in my testimony will

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1 directly contradict Officer Polisak's testimony,
2 and so it's something that should have been
3 presented to her when she was testifying, but it
4 simply didn't occur to me.
5 THE COURT: Okay.
6 THE ACCUSED: And my understanding is that might raise
7 a potential *Browne v. Dunn* issue.
8 THE COURT: Potentially, but I mean the -- the import
9 of that case is you don't really know what it's
10 going to be until the end of the -- of all of the
11 evidence. So, I mean obviously your -- your
12 version of the event -- you'll let us know, but
13 from the -- from the tenor of your submissions,
14 which are not evidence, throughout this case, I
15 think everybody gets a sense of what your --
16 THE ACCUSED: Right.
17 THE COURT: -- your position is.
18 THE ACCUSED: Okay. And I do have actual physical
19 evidence to support what I'm going to be saying,
20 which contradicts Officer Polisak.
21 THE COURT: Okay.
22 THE ACCUSED: And so that's why I was a little
23 concerned that this should have been presented to
24 her at the time, but as I said it simply didn't
25 occur to me because I was so focused on the issues
26 -- that she was claiming that she hadn't seen
27 certain stuff in the computer. I presented her,
28 at the time, with a hard copy of the FOSS record.
29 When I -- well, it was on my phone. And the --
30 I'll just save it for when I testify, or should I
31 bring it up now?
32 THE COURT: Yes. Yes, come on up. And you -- you did
33 put to her a suggestion that -- that she'd said
34 something to you based on the information
35 available to me, then what I've seen -- that you
36 would be inadmissible to Canada and she -- she
37 denied that suggestion, so..
38 THE ACCUSED: Right, right.
39 THE COURT: Okay. Thanks.
40 THE ACCUSED: What -- what I didn't bring up to her was
41 -- or, what I didn't bring up at that time was
42 that I showed her the FOSS record that was on my
43 phone, which obviously on there it clearly says,
44 "Country of birth: United States of America,"
45 which is what she was adamantly denying when she
46 was testifying, that she had ever seen that
47 information. And the reason --

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1 THE COURT: Much of it's going to be the -- the
2 relevance is going to be dependent on -- on a
3 number of different things, but you -- she -- she
4 just -- she -- her evidence is that she didn't
5 recall you presenting other documentation to her.
6 THE ACCUSED: Right.
7 THE COURT: So, in any event, I -- in fact, I think the
8 gist of her evidence is she didn't recall,
9 independently, much outside of what her notes had
10 indicated. So --
11 THE ACCUSED: Right, and she did make a vague allusion
12 to it in her notes, here.
13 THE COURT: But in any event, are you going to -- are
14 you taking the stand today, or not?
15 THE ACCUSED: Yes. Yes, I am.
16 THE COURT: Okay. Come on up.
17 THE ACCUSED: Let me just gather the documents that
18 I -- oh, I have also, Mr. Wolfe --
19 THE COURT: Madam Registrar, do we have a -- did we
20 make an extra copy of -- of 12? Or no? Do you
21 have it?
22 THE CLERK: [Indiscernible/background noise] the
23 exhibit.
24 THE COURT: You have the exhibit copy. Okay. Thanks.
25 Come on up. And you should bring any
26 documents that you wish to refer to that are not
27 exhibits.
28 THE ACCUSED: I have some notes here of issues that I
29 wanted to make sure I didn't forget to mention.
30 It's my understanding that I'm actually required
31 to provide the Crown a copy of that, am I not, if
32 I'm going to be referring to it?
33 THE COURT: If you're going to refer to them?
34 THE ACCUSED: Yeah.
35 THE COURT: To -- to jog your memory?
36 THE ACCUSED: Right.
37 THE COURT: Mr. Wolfe -- Mr. Wolfe --
38 THE ACCUSED: Sorry, I should have given this to you
39 earlier, but I forgot.
40 THE COURT: He's -- he's done a bit of research on the
41 evidentiary issues, it sounds like, but it's up
42 to --
43 THE ACCUSED: This is all from when I was preparing for
44 the criminal [indiscernible].
45 THE COURT: It's up to you whether you want to press
46 the issue with that.
47 MR. WOLFE: Oh, to me, I would -- I would take kind of

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1 a traditional approach here. Witness relies on
2 his memory, he exhausts it. He can refresh his
3 memory on anything. At that point, I might want
4 to have a look at a note. I don't know that I
5 need to be provided with it in advance. It's his
6 case.

7 THE COURT: All right. Fair enough. Come on up, Mr.
8 Fox.

9 THE ACCUSED: Okay. Yes. Let me just -- I'm gathering
10 the things I think I might need.

11 THE COURT: Okay, and the -- is that -- screen need to
12 be there?

13 MR. WOLFE: No, I don't think so. I put it up there,
14 Your Honour, thinking at some point we would be
15 looking at something, yes, but --

16 THE COURT: Okay.

17 MR. WOLFE: -- I can certainly take it down.

18 THE COURT: Let's take it down, just -- it doesn't
19 obstruct my view of -- of Mr. Fox, but it just --
20 thanks.

21 Now, Mr. Fox, do you prefer to swear an oath
22 on a Bible or to make a solemn affirmation?

23 THE ACCUSED: I'll make the solemn affirmation only,
24 because it's not a Jewish Torah.

25 THE COURT: Yes, fair enough.

26 THE ACCUSED: Should I stand, or?

27 THE COURT: Yes.

28

29

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30 the Accused herein, called
31 on his own behalf,
32 affirmed.
33

34 THE CLERK: Please state your full name for the record.

35 THE WITNESS: Patrick Henry Fox.

36 THE COURT: Okay. Thank you. You can have a seat if
37 it's more comfortable for you. So -- and because
38 you have no lawyer, Mr. Fox, sometimes -- you
39 know, sometimes a judge will just ask some open
40 ended questions to get you started, but it seems
41 to me that you kind of know what -- you have some
42 familiarity with the process, so if you want to
43 tell us your version of the events, this is your
44 time.

45 THE WITNESS: Right. In this particular respect, I
46 have no experience or very little knowledge of how
47 to proceed. I was under the impression that I

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1 would just go into a narrative of my version of
2 what happened on that day or what I believe --
3 THE COURT: Sure.
4 THE WITNESS: -- is relevant.
5 THE COURT: Absolutely. Okay. All sort of under the
6 umbrella of what we've discussed thus far about
7 being -- you know, what is relevant in this case
8 or not.
9 THE WITNESS: Right. So, on March -- well, let's
10 see --
11 THE COURT: First of all, let me -- let me just ask you
12 a few questions to --
13 THE WITNESS: Sure.
14 THE COURT: -- set the context.

QUESTIONS BY THE COURT:

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16
17
18 Q Do -- are you -- you deny that there was a
19 probation order?
20 A I do not deny that. I -- I admit that, yes.
21 Q Okay, and that it was in existence on the date, on
22 March 15, 2019?
23 A Yes.
24 Q And on -- and on following days, in the following
25 days.
26 A Yes.
27 THE COURT: Okay, go ahead.

EVIDENCE IN CHIEF BY THE ACCUSED:

28
29
30
31 THE ACCUSED: On March 14th, 2019, I had a hearing in
32 the Supreme Court, to try to change the probation
33 conditions, specifically, the condition
34 prohibiting me from leaving British Columbia
35 without my probation officer's consent. That
36 request was denied, but I had told the court and
37 the Crown, at that time, that regardless it is my
38 intention to turn myself in or present myself to
39 CBSA for the purpose of being removed from Canada,
40 and that if I did it in that way, as long as the
41 office that I presented myself to was not within i
42 100 metres of the border then I wouldn't be I
43 violating probation.
44 THE COURT: Okay, this -- and -- and you have to go
45 just a -- a little bit slower, so --
46 THE ACCUSED: Sure.
47 THE COURT: -- we can all take notes. You told the

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1 presiding justice, was it still Madam Justice
2 Holmes?
3 THE ACCUSED: Holmes, yes.
4 THE COURT: You told Madam Justice Holmes that after
5 the denial of your application that you were going
6 to present yourself to a Canadian Border Services
7 office.
8 THE ACCUSED: I had actually stated that before she
9 made her decision on the matter.
10 THE COURT: Okay, and what did you say, exactly?
11 THE ACCUSED: I can get the transcript, if you want --
12 THE COURT: No, no.
13 THE ACCUSED: -- to know the exact wording.
14 THE COURT: No, not exactly. The gist of what you were
15 saying.
16 THE ACCUSED: Okay. The gist of it was regardless of
17 what decision you make today in this matter, it's
18 my intention, I think I said within the next week
19 or in the very near future, to turn myself in to
20 CBSA, for the purpose of being removed from
21 Canada. And I also stated that by doing it in
22 that way I wouldn't be violating probation, and
23 that I had already discussed that with Mark Myhre,
24 the Crown counsel.
25 THE COURT: Okay.
26 THE ACCUSED: If at any time I'm going too fast and you
27 need me to pause, just let me know.
28 THE COURT: Okay. Yes, okay, go ahead.
29 THE ACCUSED: So, then the next day, on the 15th, I
30 reported for probation first thing in the morning.
31 I met with Abeed Bhimji. He had testified here,
32 back in August. I informed him about what had
33 happened in court the day before, that --
34 THE COURT: That was your probation officer? What was
35 the name, again?
36 THE ACCUSED: Abeed Bhimji.
37 THE COURT: Oh, yes, Bhimji, yes.
38 THE ACCUSED: So, I informed him about what happened in
39 court the day before, that the request had been
40 denied. And I told him also that it is my
41 intention, within the next week or within the next
42 few days, to turn myself in to CBSA, so that I
43 would be removed.
44 Then, from there, I took care of some odds
45 and ends here in Vancouver that I needed to settle
46 up before I left, and then I made my way down to
47 the Peace -- or, the Douglas border crossing,

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1 using public transit. I think Delta or White Rock
2 or someplace like that, the farthest that the
3 public transit would take me. From there, I
4 walked to the Douglas border crossing. When I got
5 -- well, that's not -- there was an officer
6 standing outside, in the booth, before I went into
7 the secondary inspection area. She very angrily
8 told me to put out my cigarette. I can't smoke
9 there, 'cause it's federal government property or
10 something like that. Put out the cigarette.
11 Explained the situation to her. She directed me
12 into the secondary inspection area, told me to go
13 to Counter A.

14 Then I proceeded to Counter A. That's where
15 Officer Polisak was working. I explained the
16 situation to Officer Polisak, that I'm a United
17 States citizen, I have no status in Canada, I was
18 born in the United States. I told her I've been
19 in contact with IRCC and CBSA, numerous times. I
20 have documents from IRCC and CBSA clearly stating
21 that I was born in the United States, that I have
22 no status in Canada, and that I'm not a Canadian
23 citizen. Told her that I have these documents on
24 my telephone and that I can show them to her. She
25 didn't seem to have much interest in it, but I
26 said, "No, please, I want to show these to you
27 anyway."

28 And now here's where we're getting into that
29 area that I thought might be a *Browne v. Dunn*
30 issue. So, I showed her the FOSS record on my
31 phone. Oh, at that same time, when I first got
32 there, of course, I gave her my laptop bag and the
33 phone, and she held both of those behind the
34 counter, while she did her investigation. But I
35 showed her the FOSS record on my phone. I showed
36 her, explicitly, where it states, "Country of
37 birth: United States of America." I showed her,
38 also, the documents that I had from the Ministry
39 of Social Development, where it has their commu --
40 or, shows -- it describes their communication with
41 IRCC, where IRCC told them that a certificate of
42 citizenship has never been issued for a Richard
43 Riess or a Patrick Fox, for me, at all.

44 The two pieces of information being that I
45 was born outside of Canada and that a certificate
46 of citizenship has never been issued for me are
47 more than sufficient, I believe, for an

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1 immigration official to infer that I am not a
2 Canadian citizen and don't have status in Canada.
3 Then, she told me to have a seat while she did her
4 investigation or inquiries.

5 Before I proceed further on that, the -- the
6 matter of the documents on my phone, if there's
7 any question about the truthfulness of that or
8 whether or not that really happened and the
9 documents are on my phone, I would like to point
10 out that we have the audio-video recording of my
11 interview with CBP officer Geoffrey Obrist. In
12 that recording, I also tell him about the
13 documents on the phone and give him the phone.
14 And he looks at it and he makes some comments
15 about the "Remarks" section and also the Ministry
16 of Social Development document. So, that should
17 sufficiently prove that I did have those documents
18 on me and I did present them to the officials.
19 Unfortunately, CBSA destroyed the video of me on
20 the CBSA side, so -- but then getting back to the
21 chronology of the matter.

22 So, I sat down in the waiting area, for
23 whatever time -- I think it might have been 15
24 minutes or so. Officer Polisak called me back to
25 the counter, and she said that -- and here, this
26 might not be a verbatim quote. I'm just
27 paraphrasing, but as I remember it, it was
28 something along the lines of, "Based on the
29 information available to us or available to me,
30 you appear to be inadmissible to Canada." That
31 was sufficient for what I was seeking at that
32 time. I just wanted to make sure that when I
33 present myself to CBP, that CBSA was not going to
34 do as they had done before and said, "Yes, you can
35 deport him, here." And then I'd end up back here
36 and just being going in this infinite loop,
37 forever.

38 So, based on that, I asked her where I go
39 next. She said go back out those doors. I went
40 out those doors. There was an officer standing
41 there. I explained to him that I had just been
42 told that I'm inadmissible. How do I get back to
43 the U.S. -- the U.S. side or CBP, from there? He
44 instructed me to go through these other doors. I
45 guess that would be the breezeway that Officer
46 Polisak was referring to. And then he kind of
47 followed somewhat behind me. I continued to walk

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1 down the sidewalk, toward the U.S. side.
2 Periodically, I would check over and I would see
3 that he was still there.

4 When I got to the actual physical border, it
5 was somewhat of a happy moment for me to be back
6 in the United States, so I relished that for a
7 moment. Then I continued walking on to the CBP
8 office. So, that is the chronology of what
9 happened on that day, and --

10 THE COURT: On March 15th.

11 THE ACCUSED: Yes.

12 THE COURT: Yes.

13 THE ACCUSED: And that was all around 4:30 to 5:30, in
14 that timeframe. And I'm just looking over my
15 notes, here, to see if I miss anything.

16 Oh, I had also told Officer Polisak about the
17 audio recordings of my conversations with IRCC and
18 CBSA, where they both acknowledged in the
19 recordings that I'm not a Canadian citizen and
20 that I have no status in Canada. Whether or not
21 she listened to those recordings, I don't know,
22 but I told her that they're on the phone and
23 they're also on the website.

24 And I see from my notes here that I covered
25 everything that was in these notes. Uh, sorry,
26 I'm just looking at this CPIC report, and I'm
27 thinking -- I'm thinking of whether or not there's
28 a way to -- that this would fit into my testimony.

29 THE COURT: What is it about the CPIC report that you
30 think is relevant?

31 THE ACCUSED: Well, it -- again, to refute or two rebut
32 Polisak -- Officer Polisak's testimony. The CPIC
33 report states, also, country of birth as United
34 States of America.

35 MR. WOLFE: Sorry, I think [indiscernible].

36 THE COURT: Yes. I was just asking you what -- about --
37 I'm try -- to determine relevance, firsts.

38 THE ACCUSED: Okay.

39 THE COURT: But the -- but you say that the CPIC report
40 has some indication on it that your citizenship
41 status [indiscernible] your citizenship. Is that i
42 right?

43 THE ACCUSED: Right, right. And the reason it's
44 relevant is only as it relates to Officer
45 Polisak's testimony, because I believe that she
46 had testified that she did see the CPIC report.
47 And I did want to confront her with this at the

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1 time, but there was some -- and maybe I'm not
2 phrasing this in the best way, but it seemed to me
3 that there was resistance on the part of the court
4 and the Crown.
5 THE COURT: There's no resistance. It's -- I think her
6 evidence, however, is -- is that she must have --
7 she must have seen it. She just has no
8 independent recollection of seeing it.
9 THE ACCUSED: Oh, the CPIC report? Well, she would
10 have had to have.
11 THE COURT: Well --
12 THE ACCUSED: I mean she admitted to that, that she did
13 see --
14 MR. WOLFE: Well, her evidence, though, said she could
15 not recall.
16 THE COURT: Yes.
17 MR. WOLFE: And she indicated that she had access to
18 databases, making a particular kind of query and
19 that's -- that she said that she had access to
20 whether or not a person had been arrested --
21 THE ACCUSED: Mm-hmm.
22 MR. WOLFE: -- in Canada. She could not give -- she
23 did not give evidence about the depth of -- the --
24 the databases available to her through -- like it
25 could be a global query. So, for example, she
26 couldn't -- and she didn't indicate that she had
27 access to Toronto Police Department -- or Toronto
28 Police Services. It was in that context that she
29 states she could determine or had information
30 about whether or not somebody had been arrested.
31 THE COURT: It -- yes, her -- her --
32 MR. WOLFE: So -- so we don't -- we -- we don't know
33 particularly what she did or didn't see or how
34 deep the -- that query drills down.
35 THE COURT: No, she -- she was asked -- she was asked
36 question by Mr. Wolfe that -- sorry, by -- by you,
37 Mr. Fox, that, "Did you check my CPIC?" And her
38 answer was, "I wrote in my notes that -- that both
39 the names that you provided, Riess and Fox, have
40 multiple convictions." So, therefore she assumed
41 -- she presumed from that portion of her notes
42 that she must have run you on CPIC. That was her
43 evidence.
44 THE ACCUSED: Okay. Right, right. And the reason that
45 I was -- that I had wanted to present it to her
46 was because in her notes, that she had stated that
47 "all of whom seem" -- and by "all of whom," she

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1 means IRCC, CBSA and RCMP, all of whom seem to
2 agree that he is a Canadian, which is what she
3 wrote in her notes. But then, the IRCC
4 documentation and CBSA documentation, as we saw,
5 clearly stated that I was born in the U.S. And
6 then, also the RCMP documentation, which is the
7 CPIC report, would also clearly state, country of
8 birth as -- or place of birth as United States.
9 THE COURT: Yes, I -- I guess we've had this discussion
10 sort of many times is -- is your citizenship
11 status.
12 THE ACCUSED: Right.
13 THE COURT: How is it relevant to the case that is
14 against you?
15 THE ACCUSED: Here's how. CBSA is only an enforcement
16 agency. And so, by their own admission to me in
17 an email, previously, which I don't have
18 unfortunately, now, but I could always get it,
19 they're only authorized to act on or enforce
20 orders or directives from IRCC. And if IRCC says
21 that a person is not a citizen or --
22 MR. WOLFE: May I -- may I rise, here? This was a line
23 of inquiry that might have been put to Polisak.
24 And I appreciate that Mr. Fox is -- if I could
25 just -- is at a disadvantage because he's
26 representing himself, but I find that at this
27 juncture he's explaining, for example, he -- I
28 just wrote down, "CBSA is only an enforcement
29 agency."
30 THE COURT: Yes.
31 MR. WOLFE: That is such bold -- like a statement --
32 THE ACCUSED: Yes.
33 MR. WOLFE: -- in stark relief.
34 THE ACCUSED: That is how they phrased it.
35 MR. WOLFE: That really -- it really beggars the
36 question about his ability to -- to say that,
37 because he's not an employee of CBSA. There is no
38 evidence from Polisak directly about the four
39 corners of the authority of CBSA.
40 THE COURT: No, and -- and I understand that. In fact,
41 the -- what Mr. Fox is saying right now, I am not
42 -- it's really not evidence. I think I'm just
43 asking him a -- a question to establish relevance.
44 MR. WOLFE: Okay.
45 THE COURT: And that -- and that's what I'm -- that's
46 why I'm accepting what you're -- I mean I'm
47 accepting what your words are with respect to the

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1 issue of relevance, but I'm not -- I'm not --
2 certainly not -- none of what you say has --
3 has -- is for the truth of its contents.
4 THE ACCUSED: Right.
5 THE COURT: I'm just asking you: With respect to the
6 citizenship status that you had at the time, how
7 is any of that relevant to whether you voluntarily
8 breached the two conditions that you are alleged
9 to have breached in this case?
10 THE ACCUSED: And I was just about to reach that --
11 THE COURT: Okay.
12 THE ACCUSED: -- point in my explanation.
13 So, if I had gotten to the border and if CBSA
14 had evidence that I'm not a Canadian citizen, or
15 more specifically not admissible, but they allowed
16 me to be -- to return to Canada, or if they stated
17 that, "No, you are admissible," that would be an
18 egregious error on CBSA's part. And so, if they
19 had this documentation from IRCC saying that I was
20 born outside of the country, and then other
21 documentation saying that I've never been issued a
22 certificate of citizenship, and then they have me
23 admitting that I was convicted of an indictable
24 offence, plus convicted of a felony in the U.S.,
25 all of that would make me extremely inadmissible
26 to Canada.
27 THE COURT: Okay, let me ask you this question, which
28 is going to be part of the evidence. Did -- what
29 argument did you make in -- in front of Madam
30 Justice Holmes, in order to seek your -- a change
31 in the conditions that you were seeking, that you
32 wanted to get?
33 THE ACCUSED: I showed or presented the FOSS record,
34 showing that IRCC acknowledges that I was born
35 outside of Canada, and the document from the
36 Ministry of Social Development, wherein they state
37 that I'm not a Canadian ci --
38 THE COURT: Presented documents at that -- at that
39 hearing.
40 THE ACCUSED: Right.
41 THE COURT: Yes, okay.
42 THE ACCUSED: And also the recordings of my
43 telephone conversations with CBSA and IRCC.
44 THE COURT: Okay, so the court considered the FOSS
45 record, the documents that you were presenting,
46 the recordings that you've spoken about here
47 today?

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1 THE ACCUSED: Yes.
2 THE COURT: That fair?
3 MR. WOLFE: And I do have a court certified copy of her
4 ruling on that, which I can -- if it's convenient
5 or it's relevant or appropriate, I can hand --
6 hand that up and produce it to Mr. Fox.
7 THE COURT: Okay. And --
8 THE ACCUSED: I believe I also have the transcript of
9 that [indiscernible].
10 THE COURT: And -- and you presented these documents
11 and -- and made an argument to Madam Justice
12 Holmes, not -- not unlike the argument you're
13 making here, that you're not a -- a Canadian
14 Citizen.
15 THE ACCUSED: Correct.
16 THE COURT: Okay, and -- and you made those arguments
17 for the purposes of -- of justifying a variation
18 in your probation order.
19 THE ACCUSED: Yes.
20 THE COURT: Okay, what -- what happened as a result of
21 it?
22 THE ACCUSED: Justice Holmes had said that based on the
23 information or based on the evidence that I'm
24 bringing, it's insufficient for her to conclude
25 that I'm not a Canadian citizen.
26 THE COURT: Okay. And -- and your application was
27 dismissed.
28 THE ACCUSED: Yes.
29 THE COURT: And -- and you told her, regardless of her
30 decision, that you were going to go ahead and --
31 and present yourself at the border.
32 THE ACCUSED: Yes.
33 THE COURT: Okay.
34 THE ACCUSED: Well, I didn't say specifically at the
35 border. I just said that I was going to --
36 THE COURT: At a Canadian Border Service office.
37 THE ACCUSED: -- turn myself in to CBSA. Yeah.
38 THE COURT: All right.
39 THE ACCUSED: And the reason that I chose going to the
40 border as opposed to a much closer office in
41 Vancouver, for example, is because of how a person
42 is treated differently at a port of entry, where
43 the -- the whole issue of the burden of proof, as
44 we were talking about on Wednesday. If I had gone
45 into a CBSA office in Vancouver, then the burden
46 would have been on CBSA to prove that I'm -- that
47 I'm not entitled to be in Canada, before they

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1 could arrest me or remove me. But at a port of
2 entry, the burden then is on the person who is
3 seeking entry to Canada, rather than it being on
4 CBSA.
5 THE COURT: Okay. And what else did you want to tell
6 us?
7 THE ACCUSED: Well, I'm thinking that that might be all
8 that is directly relevant to this matter.
9 Because, really, I think the only part that is
10 critical to all of this is what happened with
11 Officer Polisak when I presented myself at the
12 Douglas border crossing.
13 THE COURT: Okay, and Ms. Polisak testified that --
14 that when you left her she had made no directions
15 or instructions, or -- or she didn't issue any
16 kind of removal order. Do you agree with that?
17 THE ACCUSED: She did testify to that, yes. I,
18 however, have a list of --
19 THE COURT: And do you agree that she didn't instruct
20 or direct you to leave Canada?
21 THE ACCUSED: I disagree with that statement. I agree
22 that she said that in her testimony, but --
23 THE COURT: Said she -- the evidence was -- was that it
24 was negative evidence. So, you said you you
25 agree that she said what?
26 THE ACCUSED: I agree that she denied denying me
27 admission, at that time.
28 THE COURT: No -- yes, but do --
29 THE ACCUSED: Sorry, go ahead and ask the -- I forget
30 the wording that you used a moment ago. I was
31 just trying to be clear --
32 THE COURT: She -- she testified that --
33 THE ACCUSED: Yes.
34 THE COURT: -- at no time did she direct or instruct
35 you to leave Canada. Do you agree or disagree
36 with that evidence that she gave?
37 THE ACCUSED: I disagree with that evidence.
38 THE COURT: Disagree. Okay, then, what -- if she
39 didn't instruct you to leave -- or -- leave
40 Canada, what did she say?
41 THE ACCUSED: Oh, well, I'm sorry. Okay, she didn't --
42 well, she didn't explicitly instruct me to leave
43 Canada. She only told me that I'm inadmissible.
44 THE COURT: Okay.
45 THE ACCUSED: But she didn't say, "You're inadmissible,
46 and you must leave." But I think that that's a
47 reasonable inference for a person to make, if

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1 they're at the border and a border officer tells
2 them that they're not admissible. The only thing
3 that they can do at that point is leave or get
4 arrested.

5 THE COURT: But you -- you agree you attended that
6 office from within Canada.

7 THE ACCUSED: Yes.

8 THE COURT: Okay. All right. Well, why don't I ask
9 Mr. Wolfe if he has some questions for you, and
10 you -- and if something comes up er if you forget
11 that -- something that you wanted to say, you can
12 always ask, you know, I'll -- I'll give you that
13 opportunity, after Mr. Wolfe has asked you some
14 questions.

15 MR. WOLFE: So, I -- I gave formal document notice to
16 Mr. Fox by way of letter dated July 23rd, 2019,
17 that Crown would seek to certify -- sorry, seek to
18 tender a certified true copy of the oral ruling of
19 Madam Justice -- the Associate Chief Justice
20 [indiscernible] Holmes, dated March 14th 2019.
21 Mr. Fox has referred to it. At this point, I
22 think what I should do is hand up the certified
23 true copy. I'll show it to Mr. Fox, first. I
24 reckon -- probably more familiar with this case
25 than anyone, and will immediately recognize the
26 copy of the decision.

27
28 **CROSS-EXAMINATION BY MR. WOLFE:**

29
30 Q Do you -- do you rec --
31 A Sure.

32 THE COURT: Is that something you recognize, Mr. Fox?

33 A I mean I wouldn't know off the top of my head, but
34 okay.

35 THE COURT: Is -- do -- do you -- I mean -- I mean
36 you've probably read that decision before, but --

37 A Yes, but it's been -- it's been a while. I
38 mean --

39 THE COURT: Yes, okay.

40 A I'm going to assume it is an authentic document.

41 THE COURT: Yes.

42 MR. WOLFE:

43 Q Well, the seal is right down on the bottom right.

44 A Mm-hmm.

45 Q And -- and if you run your hand -- finger over it,
46 you can feel --

47 A Yeah. Yeah, I'm not challenging or contesting the

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1 authenticity of it, at all.
2 THE COURT: Okay.
3 MR. WOLFE: I seek to have that filed.
4 THE COURT: Right, ex --
5 A [Indiscernible] it's got your --
6 THE COURT: This is Exhibit 14.

7
8 **EXHIBIT 14: Decision of Madam Justice Holmes**
9

10 THE ACCUSED: Thank you.
11 THE COURT: And that is the certified copy of Madam
12 Justice Holmes' decision on March 14th, was it?
13 Okay. Do you have a -- do you have another copy,
14 Mr. Wolfe?
15 MR. WOLFE: It -- probably be somewhere. Oh, I have a
16 PDF.
17 THE COURT: If you don't -- if you don't --
18 MR. WOLFE: But [indiscernible].
19 THE COURT: Not a problem. You want --
20 MR. WOLFE: I will -- I will crank off a few copies.
21 THE COURT: It's not an issue right now -- for now. I
22 mean we can get -- we can get copies later --
23 MR. WOLFE: Yes, I'm so --
24 THE COURT: -- but for --
25 MR. WOLFE: Yeah, and I apologize. That's not correct.
26 THE COURT: Did you want to ask him some questions on
27 that document?
28 MR. WOLFE: Perhaps later, but not at the moment.
29 Q I just wanted to clarify something, if I could,
30 Mr. Fox. His Honour initially asked you whether
31 you denied the -- and I'll paraphrase, and if I
32 get it wrong just let me know, please -- whether
33 you denied the existence of the probation order.
34 And you didn't contest that -- that it existed.
35 It's the one that was binding -- or applied to you
36 and governed you, if I can put it that way, on the
37 15th of March 2019. I've got it right so far, do
38 I?
39 A Yes.
40 Q Thank you. And -- but a little more than that,
41 you're familiar with the terms and the conditions,
42 correct?
43 A Yes.
44 Q If only by implication, because you brought on an
45 application before the associate chief justice to
46 vary your -- the conditions. You must be familiar
47 with all of them, and that includes the ones that

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1 bind you to -- or oblige you to report as directed
2 and then not be within a hundred metres of a
3 United States border, and certainly not to leave
4 the province of British Columbia without the
5 written permission of the probation officer. And
6 you -- you recall specifically those conditions
7 and agree that -- I apologize this is a bit long,
8 but -- but you recall those conditions, do you?
9 A I do.
10 Q And those are the ones that are binding -- were
11 binding on the 15th of March 2015, correct?
12 A Yes.
13 Q Okay, and you, as well, at some point
14 [indiscernible/background noise] either by the --
15 the JPs who testified or [indiscernible] when Mr.
16 Bhimji dealt with you, you were cautioned about
17 the potential consequences of breaching that
18 order, in other words might result in a new
19 charge, or -- am I correct on that?
20 A Yes.
21 Q And not to appear to be to simple-minded about
22 this, it may seem very unnecessarily detailed, but
23 you -- you will agree with me that when you left
24 the Douglas border crossing and walked,
25 approaching the Peace Arch international border,
26 at some juncture, you unavoidably would have been
27 within a hundred metres of the U.S. border,
28 agreed?
29 A Yes.
30 Q Okay. And in fact you walked right across it,
31 dealt with Officer Obrist, and then ultimately you
32 were given an expedited removal order
33 [indiscernible] made subject -- you were made
34 subject to that, correct?
35 A Yes.
36 Q And then transported to Tacoma, Washington, where
37 you were housed, if I can put it that way,
38 until -- until you were transported back to the
39 Canadian border. Am I correct on that?
40 A Yes.
41 Q You wanted to -- you dearly wanted to be in front
42 of an immigration judge -- U.S. immigration judge,
43 when you dealt with Obrist. I mean it's part of
44 your objective, so that you could advocate for
45 sort of permanent entry or -- or re-entering into
46 the United States? Would that be a fair
47 suggestion?

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1 A Are you asking what was my reason for wanting to
2 go before an immigration judge?
3 Q Essentially.
4 A No, I would say that that is incorrect. The
5 reason that I wanted to go before the immigration
6 judge in the U.S. is to bring the new evidence
7 that wasn't available to me at the time order of
8 removal was made, proving that I'm not the person
9 that they had deported me as --
10 Q The bin --
11 A -- in the hopes of getting the removal order
12 vacated.
13 Q But -- but by -- but consistent, then, with an
14 objective to get -- getting back into the United
15 States. That has to be the endgame, no?
16 A I -- I would say that would be collateral.
17 Q Not your primary objective? Why would you march
18 across the border and deal with an officer and --
19 and make a claim which resulted in your detention,
20 and want to be in front of an immigration judge,
21 if you really just didn't want to get back to the
22 U.S. of A.? On a permanent basis, because you were in
23 the U.S. of A. for a little bit, but not under
24 ideal circumstances, from your point of view,
25 'cause you're in a detention centre. That's not
26 what you want. You'd like to get back to L.A. in
27 California, no?
28 A Well, I would like to get back to Los Angeles,
29 yes. But it would be incorrect to say that my
30 sole motivation at the time was just to be able to
31 get back to the U.S. and to Los Angeles. A
32 significant motivation was also to prove that the
33 order of removal and the perjury conviction were
34 wrong, and to get those vacated.
35 Q And -- and irrespective of the odds of that
36 happening, because I don't know how one gauges
37 that, but if that were to occur, then you could
38 stay in the U.S., if you wanted.
39 A Well, I mean maybe, maybe not, because all I was
40 interested in -- I was not interested in proving
41 to them that I was a United States citizen, only
42 that I was not the person that I was deported as.
43 Now, from Officer Obrist's comments in his
44 interview, simply proving that I'm not the person
45 who was born Ricky Riess, and that I'm not a
46 Canadian citizen, doesn't automatically mean that
47 I'm a United States citizen.

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1 Q When you were -- can put this to you, that when
2 you crossed over you dealt with Obrist, you
3 anticipated you would be detained or held for a
4 period of time?
5 A Yes.
6 Q And may I suggest to you that that's predicated,
7 in part on a prior experience, when you were held
8 for about two and a half weeks?
9 A Well, it's based on that experience, but also
10 other experiences.
11 Q Sure. So, that factors into your -- your prior
12 experience. Whether or not other factors are
13 brought into play, that's one [indiscernible] your
14 personal experience -- your prior detention was
15 not for overnight or a couple of days. It was for
16 an extended period of time, right?
17 A I expected at that -- well, the immediate answer
18 would be yes. The complete answer would be I
19 anticipated that I was going to be in Homeland
20 Security custody for at least a number of months.
21 I expected that I would be in ICE custody until I
22 eventually went before the immigration court and
23 the matter was resolved. That could have been
24 anywhere from six to 18 months, maybe even more.
25 Q Sure. So -- so, the detention -- if we look at
26 this -- if I can [indiscernible] try and use the
27 analogue of dominoes, and I appreciate analogies
28 are clumsy things, but you were the architect, if
29 I can use that term, of -- of your detention for a
30 number of days, which started on 15th of March
31 2019, extended until you were -- you were returned
32 to Canada. Like it -- it flowed from first
33 causes. Your first cause --
34 A Mm-hmm.
35 Q -- was showing up with an intention and an
36 objective. You could see it was going to --
37 A Mm-hmm.
38 Q -- result in your detention, and it did.
39 A Are you --
40 Q You can't ask me a question.
41 A I believe -- I believe where this is going is to
42 get me to admit that it's my own fault that I was
43 in custody, and therefore I should be held
44 responsible for not reporting for probation. I --
45 I fully admit that, yes, it is my actions that
46 resulted in me being detained, just like it is my
47 action -- well, isn't my actions the problem here?

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1 That's a different matter. Uh, but the fact is I
2 was in custody. I was detained and physically
3 incapable of reporting for probation, regardless
4 of why it happened, regardless of who was
5 responsible for putting me in custody. And --
6 Q Well, but you put yourself there, didn't you?
7 A Regardless, I was there. I mean --
8 THE COURT: How lo -- I -- I'm -- I didn't understand
9 this, earlier. How long were you in custody with
10 the -- the U.S. [indiscernible]?
11 A It was only for about two and a half weeks.
12 MR. WOLFE:
13 Q If -- correct me -- it would been have -- would
14 have been from the 15th of March, when Obrist --
15 2019 --
16 A Right.
17 Q -- when Officer Obrist essentially said you come
18 along with me, if I put it in kind of a cartoonish
19 fashion, until Mr. Fox was then transported back
20 to the Canadian border on the 4th of April 20
21 [indiscernible] --
22 THE COURT: Yes, that -- okay --
23 A Yes.
24 MR. WOLFE:
25 Q -- when he was handed over by --
26 THE COURT: -- yes, that's the date I forgot. That's
27 right.
28 MR. WOLFE:
29 Q -- her, if I recall, to a Hawkins and Brown --
30 THE COURT: Okay.
31 MR. WOLFE:
32 Q -- on the Canadian side, correct?
33 THE COURT: Thank you.
34 A Yes.
35 MR. WOLFE:
36 Q And that -- and that, as you said, earlier --
37 well, actually, it -- it seems fair to me to
38 suggest to you that your anticipated length of
39 detention, months, however long, was actually
40 quite short, by the return to Canada. It still
41 extended to be a couple weeks or whatever, but it
42 still flowed, you know, like -- like dominoes from
43 your initial approach to Obrist [indiscernible]?
44 A Yes.
45 Q And -- and that was eminently -- if I may put it
46 to you this way, eminently foreseeable that your
47 detention would occur.

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1 A Yes, it absolutely was. I absolutely knew before
2 I went down there that once I got back to the
3 United States, I would not be reporting for
4 probation. Even if I was not detained --
5 Q Yes.
6 A -- had I returned to the United States, I would
7 not have been able to report for probation,
8 because I would be physically out of the country,
9 unable to legally return to the country. I had
10 discussed that with Justice Holmes and with the
11 probation officer, beforehand.
12 I would like to say, though, that my reason
13 for wanting to -- to return to the United States
14 was not to avoid the probation. It was because I
15 can't work in Canada. And, sure, I can work
16 illegally, as I was doing before all of this, but
17 because I'm on probation if I violate any laws,
18 then I'm violating probation, and could go back to
19 jail.
20 Q Sure, but -- but --
21 A It puts me in a fairly precarious position. That
22 was the main reason that I wanted to go back to
23 the U.S. is so I can live and support myself and,
24 of course, be with my son and such.
25 Q You -- you knew that you were violating the
26 probation order as soon as you crossed over the
27 border, right?
28 A No, I did not know that and I did not believe
29 that, because --
30 Q But the terms are clear, are they not?
31 A But as I had discussed with Myhre, and I believe
32 it's in some transcripts, Myhre said that I would
33 not be prosecuted for violating probation, if I
34 was removed from the country or told by CBSA or
35 IRCC or somebody that I have to leave.
36 Q The -- the order's in black and white, and the
37 terms are really clear. You understand that,
38 correct?
39 A Yes. And I turned myself in at an office that was
40 not within a hundred metres of the border.
41 Q Sure, but then --
42 A At that point, I was told that I was inadmissible.
43 Then, I left.
44 Q So you say -- so you say.
45 A So I say.
46 Q So you say.
47 A The difference between my testimony and Officer

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1 Polisak is I have a list of lies that she told
2 over there that I'm going to be able to prove in
3 my closing arguments. I challenge you, Mr. Wolfe,
4 to find a single lie that I've told, ever.
5 Q So, okay, just go back so I understand your answer
6 to my question. When you crossed the border, you
7 were certainly contravening a condition that says
8 you can't be within a hundred metres of the U.S.
9 border, correct?
10 A I did not believe that I was violating that order,
11 because under certain circumstances the actions
12 would not be considered violating the order. For
13 example, if I was being removed by force. If two
14 CBSA officers picked me up and carried me over --
15 Q I'm not interested in a hypothetical.
16 A Well --
17 Q I'm interested in what happened on the --
18 A Right.
19 Q -- 15th of March.
20 A And so, the fact that a CBSA officer told me, at
21 that time that I was inadmissible, I was under the
22 impression that the probation conditions did not
23 matter at that point.
24 Q You'll agree with me Polisak was clear, in her
25 answers, that she never removed you or -- or
26 denied you entry. And -- and -- well, let's do in
27 two stages. You'll agree with -- with me that
28 that was her evidence, correct?
29 A I agree with you that, curiously, she had no
30 problem remembering that one particular detail,
31 yet she seems to have forgotten almost everything
32 else that would have happened on that day, based
33 on her testimony.
34 Q So --
35 A That I agree with, yes.
36 Q And -- and in her notes, there's no such
37 reference.
38 A Interestingly, there's not a single mention in her
39 notes about whether she told me I was inadmissible
40 or admissible, which I found very strange. And
41 wanted to cross her on that, but I forgot.
42 Q But -- but it is in black and white in her -- in
43 her notes that all of whom -- this is the fourth
44 line, uh, all of whom -- and she's referring to
45 IRCC, CBSA, RCMP, "all of whom seem to agree that
46 he is a Canadian." And whether or not she's
47 mistaken, her -- in memory, she [indiscernible]

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1 you will agree that she gave evidence that she
2 concluded -- we won't split hairs on -- en
3 confirmed or -- or -- confirmed or concluded that
4 you were a Canadian. That -- that's the thrust of
5 her evidence, correct?

6 A Uh, let me respond to the first part. I find it
7 interesting that you're referring to the same
8 statement in here that I had been referring to
9 earlier, about "all of whom seem to agree that he
10 is a Canadian." However, all the documentation
11 I've shown from those agencies all clearly state
12 that they believe that I was born outside of
13 Canada.

14 Q [Indiscernible] talk about her --

15 A Therefore, I'm not --

16 Q -- we're talking about her actions in relation to
17 you and her actions in relation to --

18 A Well, right, but you brought the sentence up.

19 Q I appreciate that.

20 A And as for her concluding that I'm Canadian, I nev
21 -- I don't remember seeing that in here. Can you
22 tell me where she says in her notes that she
23 concluded that --

24 Q No --

25 A -- I'm a Canadian?

26 Q -- "all of whom seem to agree that he's a
27 Canadian."

28 A Right, right. That's not her. That's her talking
29 about other agencies, and I think that we have
30 established, based on the documents from those
31 agencies, that they don't agree that I'm a
32 Canadian. Now, what she does say in there is, "At
33 this point, it cannot be confirmed that the
34 subject is not a Canadian, and his explanation of
35 stealing Riess's identity cannot be confirmed."
36 In other words, it seems like what she's saying is
37 that nothing can be confirmed. Nobody knows
38 anything about what's going on.

39 Q Her evidence, in -- under oath was to
40 [indiscernible/background noise] you are a
41 Canadian. He claimed he was not. She found that
42 odd. That was her evidence.

43 A [Indiscernible].

44 Q That's consistent, you will agree, with her
45 evidence that she did not remove or deport you or
46 deny you entry, correct?

47 A I understand that that is what she stated under

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1 oath.
2 Q Now, when -- when you dealt with Mr. Bhimji, you
3 indicated to him that you were going to present
4 yourself to the CBSA to be deported. Am I correct
5 on that?
6 A Yes. And that is in his case notes that I
7 confronted him about, while he was testifying. He
8 first testified, on direct, that I never said
9 anything to him about it, and then I confronted
10 him with his case notes, proving that he was
11 either mistaken or lied when he said that to you.
12 Q So -- but -- but you also [indiscernible]
13 appreciate that he described what he told you,
14 that you -- which was your intention to go to the
15 border, correct? To be deported.
16 A Well, he stated that when I confronted him with
17 the proof that he was aware of that, that he
18 stated that. Yes, first he tried to deny it.
19 Q And in fact, when you went to the border you were
20 not deported.
21 A Deported, well, no, because I was using the wrong
22 terminology. I was denied admission.
23 Q So you say, but --
24 A One cannot be deported from a port of entry,
25 because when you're at the port of entry you're
26 considered, for immigration purposes, to be
27 outside of Canada.
28 Q Well, the evidence thus far is you were within
29 Canada.
30 A I was at a port of entry.
31 Q And then you weren't deported.
32 A I was informed that I was inadmissible.
33 Q So you say.
34 A That is what I say.
35 Q So, the day after your application before Madam
36 Justice Holmes is denied --
37 A Mm-hmm.
38 Q -- 14th of March, you beetled right down to the
39 CBSA border -- CBSA office and cross the border.
40 A I'm sorry, may you clarify what you mean by
41 "beetled"?
42 Q Yeah. Okay, so when you initially dealt with
43 Bhimji, you indicated to him that you were going
44 to leave on a Wednesday [indiscernible].
45 A I'm not sure that I had said specifically a day.
46 I said within the next few days.
47 Q Let's see about that. I might have it wrong. You

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1 never know. Sure.
2 MR. WOLFE: So, could we have Exhibit 11?
3 THE COURT: The client log notes or --
4 MR. WOLFE: That's correct.
5 THE COURT: Yes.
6 MR. WOLFE: It's under the "Ministry of Public Safety
7 and Solicitor General client log."
8 THE CLERK: And [indiscernible] that it is
9 [indiscernible].
10 A Okay. Thank you.
11 THE COURT: Okay.
12 A I -- I know what you're referring to and I think I
13 know where you're going with it. I'm just -- I
14 don't want to be presumptive.
15 MR. WOLFE:
16 Q So I'm going to show Mr. Fox page 14 of 107, and
17 an entry dated 2019-03-15 90734, and direct him to
18 the second [indiscernible]. And it reads, "Client
19 reports he remains at Yukon shelter, considering
20 turning himself to CBSA on Wednesday"
21 [indiscernible].
22 A I'm sorry -- yes, I see that.
23 Q "Client report he attended court yesterday, but
24 was unable to have his condition amended." So,
25 you didn't wait until the Wednesday.
26 A Well --
27 Q You went --
28 A Oh, sorry. Go ahead.
29 Q -- the very next day, correct?
30 A First, I'd like to point out that this is just
31 what Officer -- or is it Officer, or probation
32 officer, I guess, Bhimji had put in his client log
33 notes. It's not a transcript of what was actually
34 said that day. He might have been mistaken, or
35 maybe he --
36 THE COURT: Yes -- no, the suggestion -- I guess Mr.
37 Wolfe is asking did you -- you agree that you told
38 him that?
39 A I do not agree.
40 THE COURT: Okay.
41 A I would -- and I'm sure we've all noticed by now,
42 just from what I've been saying in these
43 proceedings -- I'm very careful in what I say and
44 I'm very particular and very specific. I would
45 not commit to a specific day like that.
46 MR. WOLFE:
47 Q So -- and I suggest to you that when your -- when

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1 your application to Madam Justice Holmes was
2 denied, you were really annoyed with that, didn't
3 want to wait until Wednesday, went the very next
4 day [indiscernible] pique, on your part. You
5 [indiscernible] the border, attempting to try and
6 revisit -- something to -- to change your status,
7 when your -- when your application had been denied
8 [indiscernible]. You just really had had enough
9 of the entire [indiscernible] right?

10 A I accept that that is what you suggest; however,
11 you would be grossly mistaken, in that my
12 intentions of -- well, first of all, I wasn't
13 annoyed in the slightest bit about the judge's
14 decision, because I expected that she was going to
15 deny the request, anyway, even as I said at that
16 hearing, in my mind this whole hearing, this
17 procedure, is a formality because regardless of
18 what happens I'm going to present myself to CBSA
19 and get removed.

20 And it wasn't a spur of the moment decision.
21 I mean I had been planning that for -- or
22 intending that for the weeks leading up to it.
23 There was no anger or annoyance about it.

24 MR. WOLFE: Could we have a look at Exhibit, uh -- with
25 a transcript of the interview conducted by
26 Constable Potts? Sixty-three pages. I know it
27 was A on the voir dire, but I must say I don't
28 recall what it -- well, actually it -- it's never
29 been entered. It's now limited to cross, so I'm
30 going to ask that it be marked as an exhibit in
31 the trial.

32 THE COURT: Okay, and this -- this is the -- the
33 transcript --

34 MR. WOLFE: It was A on the voir dire, so now it would
35 become 15 on the trial.

36 THE COURT: Okay -- okay, [indiscernible] find that -- A
37 on the voir dire, and now you want to use that
38 document for the purposes of cross-examination.

39 MR. WOLFE: Correct.

40 THE COURT: And that document, a couple of page
41 transcript, and so that is Exhibit -- Madam
42 Registrar, what did you say?

43 THE CLERK: I have Exhibit A on the voir dire, the
44 arrest script?

45 THE COURT: And the -- the next exhibit is?

46 THE CLERK: Is labelled as of "Arrest Script of Patrick
47 Fox on April 4th"?

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1 THE COURT: Yes, I have that. What's our next exhibit
2 number?
3 MR. WOLFE: It's not -- not the arrest transcript, but
4 the larger document.
5 THE COURT: No, Exhibit A, I have as --
6 MR. WOLFE: They can both go in. They -- I mean I
7 don't know that I'm going to cross him on the
8 arrest script.
9 THE COURT: Exhibit A's the arrest script.
10 MR. WOLFE: Yeah. Oh, so it is. I had B as -- as
11 that. My mistake. I'm so sorry.
12 THE COURT: Okay. When you find your other --
13 MR. WOLFE: Or -- or C, actually, is what I have.
14 THE COURT: -- other one.
15 THE CLERK: Exhibit: C is --
16 MR. WOLFE: The big one'?
17 THE CLERK: -- the big document.
18 THE COURT: C is the thick one.
19 MR. WOLFE: Okay, that's the one I would like put to
20 the --
21 THE COURT: Exhibit C you want marked as the next
22 exhibit, for the purposes of cross-examin --
23 MR. WOLFE: Sure.
24 THE COURT: -- and that is -- where are we at?
25 THE CLERK: Exhibit 15.
26 THE COURT: Fifteen? Thanks.
27
28 **EXHIBIT 15: Large document (was C on voir**
29 **dire)**
30
31 MR. WOLFE:
32 Q Here, so if -- if Mr. Fox could turn to page 20 of
33 63?
34 A I'm sorry, these aren't numbered, the pages. No.
35 UNIDENTIFIED SPEAKER: Oh [indiscernible] I direct you
36 to a line?
37 A But if you refer to a particular paragraph number.
38 MR. WOLFE:
39 Q Sure, line 457. I hope that's going to work out.
40 A Four fifty-seven, yes. Sorry.
41 Q So, the -- this should begin with you saying, "In
42 fact, I had gone to report for probation that
43 morning of the 15th"?
44 A Mm-hmm.
45 Q Is that correct?
46 A Yes.
47 Q [As read in]:

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1
2 And then he told me that, uh, the RCMP was
3 investigating something about a website or
4 something, and that was around the time that
5 I decided that, okay, this is enough. I've
6 had it with this bullshit. This is fucking
7 crazy. So, that was when I decided to leave.
8 And then, I went to the border. Had I not
9 been detained by Homeland Security, I would
10 have contacted him and let him know, but I
11 was detained.

12
13 So, that does indicate a degree of -- of anger
14 about the entire situation you were facing then,
15 including deny -- having your application denied,
16 would you agree with that?

17 A It wasn't -- well, okay -- well, there's --
18 there's two responses that I would have to give,
19 here. First, with respect to anger about the
20 application being denied, it's more anger about,
21 uh, the arrogance and the hypocrisy that I was --
22 and the -- the ridiculousness, in my mind, that I
23 was facing with all of this, that I have all of
24 this evidence that I'm not a Canadian citizen,
25 that I can't work in Canada.

26 The one and only government agency which is
27 authorized to make determinations about whether or
28 not somebody is a Canadian citizen is clearly
29 stating that I'm not, and then I have this
30 prosecutor and the judge saying that, "Oh, no,
31 there's not enough evidence here, so you can just
32 stay here in Canada, even though you can't work
33 and you're going to be homeless for the next three
34 years. We don't care. This is the situation
35 you're going to be in."

36 If I was annoyed or angry -- I wouldn't even
37 say angry, just annoyed. Like it -- it just
38 fascinated me that this would be going on, that --
39 that there would just be such a blatant disregard
40 for -- for any actual evidence. Every time Myhre
41 would show up at these hearings -- Myhre being
42 Mark Myhre, the Crown on the probation hearings --
43 he brought no evidence, at all, to support his
44 claims that I was a Canadian citizen. He would
45 just say, "All the evidence that I've seen seems
46 to suggest that Mr. Fox is a Canadian citizen."

47 Q Could I turn you to --

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1 A But wait, wait --

2 Q I'm so sorry.

3 A The other thing that we need to keep in mind about
4 this interview with Constable Potts is I was
5 dealing with -- er speaking with what I believe to
6 be a corrupt law enforcement agency, and the
7 reason I believe that they were corrupt is what
8 they did with the video in this case, waiting
9 until it would be destroyed. They did almost
10 exactly the same thing with the original criminal
11 harassment case, where CBC had video that if you
12 look at the entire interview, it would have
13 clearly proven that I was not guilty of criminal
14 harassment. And so, the CBSA -- or, the RCMP
15 played all these games to try to avoid having to
16 get it, so they wouldn't have to disclose it. And
17 then I would have to file an O'Connor application
18 to get it, and --

19 Q So -- so, were you lying to Potts?

20 A Yes. Absolutely. I was deliberately manipulating
21 him and saying things to try to influence them to
22 do things. Like, for example, I make absolutely
23 no reference anywhere in this interview about
24 whether I was admitted or not admitted, or whether
25 I was removed or not removed.

26 Q So, if -- so, if we look at line 114 of the
27 transcript, it reads -- and this is you --

28 A Mm-hmm.

29 Q -- and you remember saying this, and this is
30 during the course of your interview with -- with
31 Constable Potts -- or, Corporal Potts, "Judge
32 doesn't care, so on the 14th" -- meaning the 14th
33 of March 2019, correct? Yes?

34 A Mm-hmm, sure.

35 Q Yes. Thank you [as read in]:

36
37 I had another hearing to try to remove that
38 condition. I even brought recordings of my
39 telephone conversations with CBSA and with
40 IRCC. And in those recordings they clearly
41 state that I have no status in Canada. And
42 the judge then says I'm trying to manipulate
43 the system and that I'm playing games, the
44 way I was talking to them on the phone or
45 something. And I'm thinking to myself, wait
46 a second. I'm coming with clear, concrete
47 proof of my claims. Myhre's coming with just

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1 like vague allusions . . .
2
3 It's probably a typo. It should be "allusions"
4 with an A.
5 A Mm-hmm.
6 Q [as read in]:
7
8 . . . and suggestions about stuff. I mean
9 who the hell's playing games? So, she denied
10 the request again, and I went, okay, this is
11 just bullshit. This is fucking insane. Am I
12 supposed to stay here for three years and be
13 homeless and not work or anything?
14
15 You were really unhappy with the judge who accused
16 you of manipulating [indiscernible] and playing
17 games. And that was on the 14th when she rendered
18 her decision. The 15th, you got in a snit and you
19 went across the border. Didn't care
20 [indiscernible].
21 A Is that a question?
22 Q Sir --
23 A Okay. The first part of the question, about being
24 angry with the judge. I was angry with the judge
25 not for her ruling against me. As I said, I
26 anticipated that. I expected that was going to
27 happen. I was angry at what I believe was amazing
28 hypocrisy that they would accuse me of playing
29 games when, for example, what happened here with
30 CBSA, with them insisting that there are no
31 records that I presented myself for five months,
32 until I call out Mr. Wolfe on it. Then, all of a
33 sudden, within a few days, oh, yes, they admit
34 that the records do --
35 Q You called -- sorry, called out --
36 A Oh, I called you out in court that day. I pointed
37 out that if you really believed --
38 Q Oh --
39 A -- what you were saying, then you would want them
40 to testify. And the fact that you've done
41 absolutely nothing to even get the identity of the
42 officer clearly proves that you know that -- what
43 the situation is and that I'm telling you the
44 truth. But anyway, so I get subjected to that
45 kind of --
46 Q I'm sorry, but Polisak [indiscernible] justify
47 [indiscernible].

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- 1 A Yes, only when it meant that if she didn't it was
2 going to look like you were involved in it
3 somehow. But that's a whole other we'll deal with
4 later. So, on the one hand I'm being subjected to
5 that type of misconduct, or what we might called
6 games, on the part of the justice system. And
7 then, when I try to do in like manner, though, I
8 get accused of playing games. I mean it would be
9 almost like if I, now, accused Polisak of lying,
10 and I come with evidence that she's lying, and
11 then I get accused of playing games because I'm
12 attacking her, after five or six months of CBSA
13 lying and denying that any records exist of me
14 presenting myself. And so that's what I was angry
15 about, there.
- 16 Q Sure. So [indiscernible/background noise] you
17 then see --
- 18 A But wait, there was more to your question.
- 19 Q Sure.
- 20 A You were saying, then, that because of that anger
21 or out of that anger, I decided I was just going
22 to go to the border and just -- just leave.
- 23 Q [Indiscernible/overlapping speakers].
- 24 A Sure. Again, I would say no, not at all, because
25 the going to the border, entering myself into CBSA
26 part was very deliberate and very methodical, and
27 I'd been intending to do it for weeks leading up
28 to that point. I'm trying to think of where there
29 might be some proof to support that. I know that
30 the RCMP spoke with some folks at the Yukon
31 shelter, and I think that one of them might have
32 mentioned that I had actually been talking about
33 that for some time.
- 34 Now, I want to emphasize, though, even though
35 I had been planning it for some time, I had been
36 planning to do it legally by -- and just as I had
37 to Justice Holmes at the hearing. It is in the
38 transcripts. There's nothing in the probation
39 conditions that prohibits me from going into a
40 CBSA office with the intention of being removed
41 from the country.
- 42 Q So, if we looked at her reasons at paragraph 7 --
- 43 A How about you look at the transcripts,
44 so that you see what was actually said, rather
45 than just looking at what the judge said
46 afterwards?
- 47 Q [Indiscernible] then have [indiscernible]?

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1 A Are we done with this?
2 Q [Indiscernible].
3 A I'm just wondering if I should give it back.
4 Q [Indiscernible].
5 A Oh, okay.
6 Q [Indiscernible].
7 MR. WOLFE: So, Your Honour, I want to direct Mr. Fox's
8 attention to paragraph 7 of the oral ruling of the
9 Associate Chief Justice [indiscernible] 14th of
10 March 2019.
11 Q You will agree that this is her judgment in
12 relation to your vary -- variation application
13 [indiscernible]?
14 A On -- where's the -- date here is March 14th,
15 yeah, sure.
16 Q Okay.
17 A This is the same one I looked at earlier, right?
18 Q Yes.
19 A Paragraph 7.
20 Q Just have a look at paragraph 7 there.
21 A Yes, I'm very familiar with this, yes. This is
22 the kind of stuff that I'm saying, on the one
23 hand, at the sentencing for the criminal
24 harassment case, I brought a huge amount of
25 evidence proving that my ex-wife, for years, had
26 been doing all this horrible stuff.
27 Q So --
28 A Well, please, I'm the witness, if I may finish.
29 Q I'm [indiscernible] if I haven't asked a question.
30 A Well, you were about to.
31 Q [Indiscernible/overlapping speakers] I asked
32 you --
33 A I'm sorry.
34 Q -- to look at paragraph 7.
35 A Okay, yes.
36 THE COURT: Yes, what was your question, Mr. Wolfe?
37 MR. WOLFE:
38 Q Yes, I just want [indiscernible] paragraph 7, and
39 then I'll give you a question [as read in]:
40
41 Your own evidence to support your claim
42 you're not a Canadian citizen is extremely
43 weak. Then you played two recordings of
44 telephone calls that you suggest confirmed
45 your position that you are not Canadian.
46 However, it's abundantly clear from those
47 recordings that [indiscernible] a form of

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1 evidence [indiscernible] continue to
2 manipulate or attempt to manipulate
3 [indiscernible] in the same way. I conclude
4 you're not [indiscernible] the court. In
5 recordings, you can be heard putting
6 propositions to the people [indiscernible]
7 question [indiscernible] to those
8 propositions were factual and accurate, and
9 there was a serious reason to think that the I
10 [indiscernible/background noise] true. You I
11 then presented a response [indiscernible]
12 necessarily based on these propositions.
13 It's [indiscernible] your position
14 [indiscernible] fact that the [indiscernible]
15 calls were [indiscernible] clarify.
16
17 You recall reading that on Friday
18 [indiscernible] --
19 THE COURT: Yes.
20 MR. WOLFE:
21 Q -- [indiscernible] that relates to [indiscernible]?
22 A Sure.
23 THE COURT: Just hang on, just for a minute. Yes.
24 THE CLERK: Your Honour [indiscernible] Mr. Wolfe
25 [indiscernible].
26 MR. WOLFE: I'm so sorry.
27 THE CLERK: I'm finding that [indiscernible] that
28 [indiscernible].
29 THE COURT: Okay.
30 THE CLERK: In the [indiscernible] of leaving.
31 THE COURT: That centre one's not as good.
32 MR. WOLFE: Oh, I'm so sorry.
33 THE COURT: Okay.
34 MR. WOLFE: Do I need to repeat that, or are we good?
35 THE COURT: No. Essentially, for -- for the record,
36 you read paragraph 7 of Justice Holmes's ruling to
37 the witness. And you want to ask him a question
38 on that.
39 MR. WOLFE: I do.
40 THE COURT: Okay.
41 MR. WOLFE: Thank you.
42 Q And so, you -- you're still maintaining your
43 position that you were not irritated when
44 [indiscernible] order [indiscernible] and you're
45 angry about having been characterized in this
46 fashion and -- and [indiscernible] just in
47 flagrant violation [indiscernible].

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1 A Seems to me that there are multiple parts to that
2 question, so I'm going to address each in turn.
3 First, yes, I stand by what I was saying,
4 that I did not go to the border out of anger or
5 because I was angry with the judge's decision with
6 respect to my request to change the probation
7 order. I forget what the other points in your --
8 you had just asked about.
9 Q Sure [indiscernible] --
10 A Oh, right, the flagrant disregard --
11 Q [Indiscernible] that's correct, yes.
12 A -- for the -- right. No, I do not believe that,
13 given the circumstances, that I was told by the
14 CBSA officer that I am inadmissible, I do not
15 believe that I violated the probation order, at
16 all. I was very careful to do everything in such
17 a way that it would not violate the order. For
18 example, presenting myself at a port of entry
19 rather than presenting myself at a CBSA office
20 within the country, making sure that the port of
21 entry, the building, the secondary inspection
22 area, was not within a hundred metres of the
23 border.
24 That was something that I had discussed with
25 the CBSA officers when I was at the counter,
26 there. And I had asked them about whether this
27 was within a hundred metres of the border, and I
28 explained about having the probation conditions,
29 and I had a copy of the -- did I? I had a copy of
30 the probation order on the phone. I don't know if
31 I had a paper copy of it, but anyway I did it the
32 same way I would always do anything where somebody
33 like yourself might come and accuse me of doing
34 something inappropriate. I did it in such a way
35 that I did not violate any of the rules.
36 Q Wouldn't you agree that you never had permission
37 from officer -- probation officer [indiscernible]?
38 A Well, this is an issue that came up when he was
39 testifying. And as I said to him, did I require
40 his permission to be removed from Canada? And he
41 said no. I did not have his permission to leave
42 Canada, but then I did not leave Canada
43 voluntarily.
44 Q Sorry, did you have permission to [indiscernible]
45 the [indiscernible]?
46 A No, I did not.
47 Q And by crossing the border, you [indiscernible].

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1 A I did not leave voluntarily.
2 Q The compendious documents -- the documents that
3 were filed [indiscernible] 13th [indiscernible].
4 At the last [indiscernible] you can recall
5 [indiscernible] and [indiscernible] you recall
6 [indiscernible] you cut and pasted
7 [indiscernible].
8 THE COURT: Yes. And before we get there, we should
9 probably take a break at some point. Yes, so the
10 -- just remember, Mr. Wolfe, that microphone is
11 the one that's going to be picking you --
12 MR. WOLFE: Yes, so sorry.
13 THE COURT: -- the best. Let's take -- let's take the
14 morning break, then, okay? Just give me a shout
15 when everybody's back [indiscernible]. Thank you.
16 THE SHERIFF: Order in court. All rise.
17
18 (PROCEEDINGS ADJOURNED FOR MORNING RECESS)
19 (PROCEEDINGS RECONVENED)
20
21 **PATRICK FOX, recalled.**
22
23 THE COURT: Okay. Thanks, Mr. Fox. Come on up.
24 MR. WOLFE: So I'll continue, then, if I could, Your
25 Honour.
26 A I'm sorry. Before we proceed with this may I make
27 one comment or statement about the line of
28 questioning that we've been going down the past
29 few minutes?
30 THE COURT: Sure. What...
31 A So with this idea about me being angry, going to
32 the border, et cetera, trying to flee the
33 probation, I would say that I think that we can
34 all agree that I'm at least moderately intelligent
35 and probably very methodical, and if my goal was
36 to flee, I would think that I probably would have
37 done things very differently. For example, I
38 probably would not have turned myself in to CBSA
39 and then CBP. I probably would have just entered
40 the U.S. not at a port of entry. That would have
41 almost a guaranteed success rate for me to be able
42 to leave the country and get back to the United
43 States.
44 THE COURT: But you're not being charged with fleeing
45 or anything like that.
46 A Right, right. But that's --
47 THE COURT: It's --

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1 A That's what --
2 THE COURT: The charge is pretty specific. It's just a
3 breach of these provisions.
4 A Right. That's why I say it's along the line of
5 questioning that we've been going with here.
6 THE COURT: Okay.

7
8 **CROSS-EXAMINATION BY MR. WOLFE, CONTINUING:**
9

10 Q So -- so you weren't angry, is what you're saying,
11 then?

12 A Not -- oh, no, I certainly wasn't angry about the
13 judge's decision. I was admittedly angry about
14 things like the hypocrisy I'd been encountering
15 and what I perceived to be injustices and
16 misconduct on the part of law enforcement and
17 prosecutors. But --

18 Q So -- so if you go to line 328 of the transcript.
19 THE COURT: Okay. This is, you know -- this is
20 Exhibit 15, line 328.

21 MR. WOLFE:

22 Q And I guess we can start a little higher than
23 that. Line 324 [as read in]:
24

25 I lost custody of my son, I got deported to a
26 foreign country I had no status in that
27 originally or initially I was working here
28 illegally but it wasn't a big deal because if
29 I got caught, I would just get deported.
30

31 Potts says, "Yeah." You say [as read in]:
32

33 But I can't work illegally now because I'm on
34 probation. I can go to jail for it because
35 if I break the law, that's a breach and so
36 this evil woman does all this stuff --
37

38 That's your wife, right?

39 A Yes, Desiree Capuano. Ex-wife.

40 Q Thank you. [as read in]:
41

42 And then completely cuts off all contact with
43 my son. And yes, there's going to be hard
44 feelings.
45

46 Potts says, "Yeah." And you say [as read in]:
47

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1 And yes, this probation bullshit can go ahead
2 and the court and Myhre can play their games
3 for the next two years and eight months, but
4 after three years it's going to end and I'm
5 going to say "fuck the court" and I'm going
6 to say "fuck Myhre" and I'm going to say fuck
7 everything else and I'm going to go back to
8 my country of origin and everything goes back
9 to normal.

10

11 And those were your words, right?

12 A Those are my words. And if you watch the video as
13 opposed to just reading in here and putting your
14 own --

15 Q We did watch the video.

16 A I'm sorry?

17 Q We did watch the video.

18 A Right, right. But what I'm saying is when you
19 watch the video, you hear the tone in my voice.
20 You'll see I'm not going to be angry. There's no
21 anger. There is anger toward my ex-wife. That's
22 why I created a website and published all that
23 stuff. And as far as the -- let's say the
24 injustices or what I perceive to be the injustices
25 that have occurred against me in the criminal
26 harassment trial, that's why you publish all of
27 that corruption. You let the world know the kinds
28 of injustices and corruptions that are happening.
29 I don't see what any of that would have to do with
30 whether or not I wanted to or did actually go back
31 to the United States.

32 Q Well, if you go back to the States, you can
33 continue to harass Capuano.

34 A Oh, and I have every intention of doing so.

35 Q Right.

36 A The probation is -- just like I told Myhre and
37 everyone else, the probation will eventually end.
38 The moment it does, everything is going to go back
39 to normal. Once those conditions are gone and I
40 won't be violating them, of course I'm going to go
41 back to it.

42 Q Sure. So --

43 A Oh, I should also mention, though, I won't be in
44 Canada, though, and so it will be out of Canada's
45 jurisdiction. It will be just as it -- just as it
46 was right from the beginning. It's an issue
47 between two Americans that has absolutely nothing

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1 to do with Canada or anybody in Canada, but...
2 Q You'll agree that from your perspective, a
3 reasonable perspective, the wording of the
4 probation order is to protect Capuano.
5 A The wording of the probation order is to protect
6 Capuano. And how do those conditions protect
7 Capuano?
8 Q Well, whether they do or they don't, if you'll
9 look at the wording of it, you'll agree that, for
10 example, that's why you can't cross into the U.S.,
11 correct?
12 A How does that protect her?
13 Q So that's not a protective order, then?
14 A I don't see how crossing into the U.S. or not or
15 having a condition about that would protect her in
16 any way.
17 Q So just on a more technical line of questioning
18 for you.
19 A Sure.
20 Q You recall that the, do you not, that the
21 appointment slip was put into evidence for your
22 probation meeting with Bhimji?
23 A Sure.
24 Q That's your signature. It's clear it's
25 March 19th, 2019, right?
26 A March 15th.
27 Q No, I mean the next reporting date was the 19th.
28 A Oh, sure. Yes.
29 Q Right? And you executed it on the 15th.
30 A Yes.
31 Q For the 19th, correct?
32 A Yes.
33 Q Thank you. So clearly you didn't lose sight of
34 that reporting date. You had to be aware of it on
35 the 15th when you crossed the border, correct?
36 A Yes. I was aware of it, and, in the event I was
37 still in Canada or still in Vancouver at the time
38 that the next probation appointment was to occur,
39 then I would've reported it.
40 Q So you took a bus, public transit of some sort, to
41 get you down to the Douglas border crossing, yes?
42 A Close to it. And then I walked the rest of the
43 way.
44 Q A couple of hours?
45 A I can't remember how long it took.
46 Q May I suggest it took at least an hour?
47 A Oh, definitely more than an hour, yes.

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1 Q You never made any attempt to call Bhimji along
2 the way to rebook that appointment.
3 A No.
4 Q No intention of --
5 A At that point there was no guarantee that I wasn't
6 actually going to be removed and that I would oe
7 back in the U.S. Perhaps I may have notified him
8 after I had returned to the U.S.
9 Q Perhaps.
10 A Well, I say "perhaps" because once I would be
11 removed from Canada the probation order somewhat
12 becomes moot at that point. I mean, I'm in a
13 foreign country. There'd be no way to enforce it.
14 This is an issue that Justice Holmes brought up at
15 the probation hearing as well.
16 Q Can I suggest to you that when you -- when you
17 mentioned Bhimji -- and the word "deport" is
18 used --
19 A Sure.
20 Q -- in the log. It's an attempt by you to create a
21 record that makes it appear that you're going to
22 be deported or you don't have a legal status in
23 Canada. It's like a sleight of hand on your part.
24 Isn't that really what you're doing when you tell
25 Bhimji you're going to be deported?
26 A Please clarify how that would be a sleight of
27 hand. I'm not sure what you mean.
28 Q Well, it's now in a provincial corrections
29 probation officer's log that you advised him that
30 you were going to go to the border, not for a
31 visit, but to be deported. So now it's there --
32 A There was no secret about it. I said it to the
33 court the day before that. I said to Justice
34 Holmes and to Mark Myhre, this is my intention; I
35 am going to turn myself in to CBSA expressly for
36 the purpose of being removed from Canada. I
37 wasn't trying to create some record to confuse
38 anybody or to confuse the issue.
39 Q Aren't you just trying to manipulate Bhimji when
40 you tell him that the way you were trying to
41 manipulate Potts when you gave your statement?
42 A I don't recall the conversation with Bhimji well
43 enough to know if I was trying to manipulate him
44 or if it was just something that came up in
45 passing. But as for whether I was trying to
46 manipulate any of them, again, I don't see how
47 that has any relevance on whether or not I went to

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1 the border and left the country. I mean, you can
2 ask the question. I'm not objecting to it and
3 I'll answer it the best I can. I'm just saying I
4 don't see how it's --
5 Q No, I understand.
6 A -- in any way relevant.
7 Q Sure.
8 A Also I would like to take this opportunity to
9 apologize if I seem arrogant or overly confident
10 at all. That's not my intention. And I know I
11 might come across that way sometimes when I'm
12 speaking.
13 Q No. No offence taken.
14 A I'm just very direct and I don't sugar coat
15 things. If you ask a question, I'm just going to
16 give you a direct answer. Unless of course I
17 think I might incriminate myself, in which case
18 I'm going to contemplate it for a moment and think
19 well, should I say this, or...
20 Q Sure.
21 A I just wanted the court to know so I don't seem
22 like I'm being arrogant.
23 Q Yeah. No.
24 THE COURT: No, that's not -- that's not something that
25 is -- arrogance is not normally a relevant factor
26 for me to consider in any event, so...
27 MR. WOLFE:
28 Q Absolutely. No offence taken.
29 So if I understand, one of the points you're
30 making is that you have no status in this country,
31 so you were deemed inadmissible and then you went
32 across the border. Am I sort of -- forgive me if
33 that's an oversimplification, but that seemed to
34 be what you were saying.
35 A My response to that would be that my statements in
36 that respect, just like my statements in almost
37 every respect, are based on documents and
38 physical, tangible evidence. The whole reason
39 this dragged on for so long, you might recall, is
40 because I was pursuing evidence because I didn't
41 want to just testify and just have words because
42 in reality people lie, and because of the perjury
43 conviction I have before, I know that there's
44 going to be questions about if I'm telling the
45 truth. So to answer your question, according to
46 IRCC, who is the only organization or agency
47 authorized to determine whether or not somebody is

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1 or is not a Canadian citizen and may or may not
2 work or have status in Canada according to them, I
3 am not a Canadian citizen. I was born outside of
4 Canada and I've never been issued a certificate of
5 citizenship; therefore I have no status in Canada.
6 It is not an inference or an assumption that I'm
7 making. The document's right here; we went
8 through it. The GCMS. It says right in there.
9 Q So -- so on this point, then, if I could direct
10 you to the transcript at line 34.
11 A I'm sorry. Thirty-four?
12 Q Yeah. Thank you.
13 THE COURT: Thirty-four?
14 MR. WOLFE: Yeah.
15 Q And at 33 Potts -- it's about your -- your cup of
16 coffee being black.
17 A Sure.
18 Q It starts there. But: at 34 you say [as read in]:
19
20 Well, I've got two countries, both of which
21 are saying I'm not a citizen of that country
22 and was born in the other country, but I've
23 got CBSA with their heads up their asses
24 going, "We're going to do whatever Homeland
25 Security tells us," so they're allow Homeland
26 Security to deport me here, even though I've
27 got documentation from IRCC and CBSA saying
28 I'm not a Canadian citizen, so I've been
29 better.
30
31 And that's what you said to Potts, correct?
32 A That is.
33 Q And then if we -- we go over to line 190, and this
34 is where you're at the CBSA. You're relating to
35 Potts your trip to the CBSA office at the Peace
36 Arch.
37 A Mm-hmm.
38 Q He says at 188, "But I understand that. I had
39 first gone to the CBSA office at Peace Arch."
40 You say, "Yeah" -- or he says "Yeah."
41 And you say [as read in]:
42
43 And I told him that I intend to leave. I'm
44 going to back to America and I just want to
45 know if Homeland Security contacts you, like,
46 in an hour or something and asks about my
47 status, you're going to play these stupid

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1 games where you say, "Oh, yes, as far as
2 we're concerned he's a Canadian citizen and
3 you can deport him," or are you going to
4 finally stop with that nonsense and say that,
5 no, he's not a Canadian and we're not going
6 to accept him. So then I sat down while they
7 investigated and stuff, and then the woman
8 calls me over to the counter --
9

10 That'd be Polisak, right?

11 A Yes.

12 Q [as read in]:

13
14 -- and says, "As far as we're concerned,
15 you're a Canadian citizen and you'll always
16 be admitted back to Canada." And I say,
17 "What are you basing this on?" I mean, IRCC
18 themselves have said -- you see --
19

20 THE COURT: Where are you right now?

21 MR. WOLFE: Line 190, about four lines from the bottom
22 of that segment.

23 THE COURT: Yes. 190. Okay.

24 MR. WOLFE:

25 Q Yeah. [as read in]:

26
27 And I say, "What are you basing this on?"
28 And, I mean, IRCC themselves have said -- you
29 see the documents right there. And she said,
30 "Oh, well, we checked with California." And
31 I say, "But California has no authority to --
32 to determine if I'm a Canadian citizen or
33 not. Anyway, that's the kind of stupid
34 bullshit.
35

36 A Yes. That is what I told -- that is what I told
37 him. Would you like me to tell you why I told him
38 that?

39 Q No. My question is the -- the two references to
40 your citizenship, one at 34 and then at line 190,
41 are not consistent. You'll agree with that?
42 Because on the one hand at line 34 it says "both
43 of which are saying --"

44 A Yes.

45 Q "-- I'm not a Canadian citizen." And then at --
46 in the second -- which is listed at line 190.
47 It's a whole bunch of text. You've got Polisak

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1 saying, "As far as we're concerned, you're a
2 Canadian citizen." But that's not consistent, is
3 it?
4 A You don't have Polisak saying that. You have me
5 telling Potts that Polisak said that. And the
6 reason to make these statements here is I don't
7 want to RCMP -- at this point I don't want the
8 RCMP to think that I went to the border and then I
9 was denied admission because then there'd be no
10 reason for them to request the video.
11 Q Look, you're dealing with a cop. You've been
12 arrested --
13 A Yeah.
14 Q -- on a warrant in the first instance for a breach
15 of probation, right?
16 A Yeah.
17 Q And you're given a statement which is clearly --
18 could you note foresee -- you must have foreseen
19 the statement like this with the outstanding charge
20 might very well wind up being used as it's being
21 used at the moment, right?
22 A Yes.
23 Q And yet you say you were content to lie to Potts
24 and manipulate him?
25 A Yeah. Because the purpose was to get them to
26 request the video from CBSA, which ultimately they
27 did but they did it exactly a week after CBSA --
28 CBSA's policy required them to destroy it --
29 Q Can I --
30 A -- which is what I was trying to avoid because
31 that's the situation that arose with CBC before.
32 So I knew that they were going to play games with
33 the video, and I wanted to make it seem like I was
34 guilty or that the video would help to prove their
35 case to make sure that they would go ask for it.
36 Q I'm going to suggest to you that the -- the truth
37 for you is a casualty to suit your own agenda,
38 which is to get to back to the States to harass
39 your ex-wife?
40 A First, you may suggest that. Second, if my goal
41 was to get back to the United States for any
42 purpose, to harass my ex-wife or whatever reason,
43 then why wouldn't I just do that?
44 Q Are you not --
45 A I mean, turning myself in to CBSA and then turning
46 myself in to CBP would not be an effective way of
47 me getting back to the U.S. Anybody could --

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1 could know that.
2 Q I'm going to suggest to you that you're
3 manipulating the court today.
4 A It's possible. I don't believe I am, but...
5 Q Just as you were manipulating Potts --
6 A Mm-hmm.
7 Q -- to suit an agenda not related to the -- to the
8 reason you were arrested?
9 A Perhaps, Mr. Wolfe, this whole thing is just some
10 ridiculous scheme on my part to try to gather as
11 much evidence of corruption and injustice in the
12 local justice system as possible so I can publish
13 all of that.
14 Q Okay.
15 A Maybe.
16 THE COURT: Here's the thing. We're going way --
17 MR. WOLFE: Yeah, I get that.
18 THE COURT: -- way outside of --
19 MR. WOLFE: Yeah.
20 THE COURT: -- of what I consider to be the --
21 MR. WOLFE: And I don't have much left.
22 THE COURT: -- relevant issue is whether the
23 explanation that's provided by Mr. Wolfe -- by
24 Mr. Fox provides a reasonable basis --
25 MR. WOLFE: Yeah.
26 THE COURT: -- for a violation of a court order.
27 That's it.
28 A Yeah.
29 MR. WOLFE: And I'm just going to review my notes a
30 little bit 'cause I don't think I've got much
31 left.
32 I think I'm done.
33 THE COURT: Okay. Thanks. Thanks, Mr. Wolfe.
34 Mr. Fox, do you have anything else that -- as
35 a result do you have anything else that you wanted
36 to say to me under oath before you -- I ask you to
37 step down?
38 A Sure.
39
40 **REPLY EVIDENCE BY THE ACCUSED:**
41
42 A I'm trying to think of how to word it so that it
43 would be something which would be relevant. I
44 don't know if it's -- actually this is going to be
45 relevant at all, but --
46 THE COURT: And you're not making submissions now.
47 You're giving evidence, right?

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1 A Oh, yes.

2 THE COURT: Yes.

3 A I believe that -- well, okay. This first part I
4 don't believe. This first part actually happened.
5 I was deported from the United States to Canada.
6 CBSA had to allow the U.S. authorities to do that.
7 I believe clearly they weren't supposed to allow
8 that to happen, but they did. They had the
9 evidence that I was not a Canadian citizen. They
10 allowed it to happen. What's going on now, I
11 believe, the reason, for example, that CBSA for
12 five months or six months adamantly denied that
13 there was any record of me being there and
14 wouldn't let Polisak testify is because they
15 cannot admit that they know that I'm not a
16 Canadian citizen because then why the heck did
17 they allow me to be deported here in the first
18 place? And I believe that's what's going on with
19 that.

20 Let's see if there's anything else relevant.

21 I don't think so.

22 THE COURT: So you're saying that the U.S.A. removed
23 you and Canada allowed you back in. You're saying
24 that they can't admit that you're not a Canadian
25 citizen.

26 A Well, that would put them in a position of
27 liability if were to admit that -- knowing
28 that I'm not a Canadian citizen, they allowed
29 Homeland Security to deport me here two times.
30 And so that's why I believe Officer Polisak, even
31 though she acknowledges everything else in the
32 GCMS record and the FOSS record, was adamant that
33 she didn't see that one country of birth --

34 MR. WOLFE: I don't think --

35 THE COURT: Okay.

36 MR. WOLFE: -- that was her evidence.

37 THE COURT: That -- now you're getting into sort of
38 argument, submissions.

39 A I'm just stating my belief.

40 THE COURT: Okay.

41 A To explain why I believe that a federal government
42 agency would go to such lengths to suppress
43 evidence and to hold evidence, keeping a person in
44 jail for five or six months, knowing that they
45 have this evidence but denying that they have it.
46 I guess that's -- it -- I had a list of false
47 statements that Polisak had made in her testimony,

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1 but it's over there.
2 THE COURT: Well, you can get -- you can make
3 submission on it, but do you have --
4 A Well, I was just going to --
5 THE COURT: Do you have evidence to provide on it?
6 A Well, that's what -- I was hoping I could double-
7 check to see if maybe there's something that I
8 should -- some evidence that I should give to --
9 about that.
10 THE COURT: Okay. Well, do you want to go get your
11 notes?
12 A Thank you. Did you want to see it first, or?
13 MR. WOLFE: No, no. I will see whether or not it's
14 receivable.
15 THE COURT: I think these are just notes for yourself
16 to -- you wanted to respond to some of the
17 evidence that --
18 A Right. Correct. This is not something I'm going
19 to be --
20 THE COURT: Okay.
21 A -- admitting as an exhibit.
22 Does the Crown or the court challenge or
23 question the authenticity of my statement that I
24 had the FOSS documents on my phone at the time
25 that I interacted with --
26 THE COURT: Well, you can only respond to evidence
27 that's already been given under --
28 A Oh, no, the reason -- the reason I'm asking is if
29 there's no question, if it's accepted that yes, I
30 did have the documents there, then I --
31 THE COURT: How do we --
32 A -- wouldn't really require additional proof.
33 THE COURT: How do we know that?
34 A Well --
35 THE COURT: How do we know that?
36 A That's why I'm asking.
37 THE COURT: Unless you tell us.
38 A Because there's video of me with --
39 THE COURT: Well, you can give evidence --
40 A -- Obrist.
41 THE COURT: -- as to what you did, what your actions
42 were --
43 A Right.
44 THE COURT: -- during that interaction and that
45 evidence is weighed and is considered in the light
46 of all of the evidence.
47 A I understand that.

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1 THE COURT: Yes.
2 A But unfortunately I was convicted of perjury, and
3 so I'm not considered a credible witness.
4 THE COURT: Well, it's --
5 A Which is why I rely on physical other stuff --
6 THE COURT: Well, it's my --
7 A -- like the video with Obrist.
8 THE COURT: -- it's my job to determine credibility
9 issues. Nobody raised your perjury conviction.
10 MR. WOLFE: No, I didn't.
11 A No, no, but you'd said before that you were going
12 to.
13 THE COURT: You're the one who raised it.
14 A No, a few months back --
15 THE COURT: Okay.
16 A -- he brought it up. Okay. No, I guess that's
17 it, then.
18 THE COURT: Okay. All right. Thank you. Thank you,
19 Mr. Fox. Come on down.
20
21 (WITNESS STOOD DOWN)
22
23 THE COURT: I'm just wondering whether we should, you
24 know, stand down till 2:00 before we --
25 MR. WOLFE: I think so. And I should go first.
26 THE COURT: Yes.
27 MR. WOLFE: For sure.
28 THE COURT: But let's -- let's get -- solidify a bit of
29 the landscape here. But given the evidence of
30 Mr. Fox there's some issues that we probably don't
31 need to address as far as some of the essential
32 elements.
33 MR. WOLFE: That's true.
34 THE COURT: So let's stick to what -- what we need to
35 address. In my view the -- Mr. Fox has -- there's
36 no issue with respect to identity.
37 MR. WOLFE: No.
38 THE COURT: There's no issue with respect to the date
39 and time of the incidents, that being March 15th
40 for the border cross and March 19th for the
41 failure to report.
42 MR. WOLFE: Mm-hmm.
43 THE COURT: The allegations, in any event. There's no
44 issue as to jurisdiction. The event -- the
45 proof -- everybody agrees that the events took
46 place in -- in British Columbia. There's no issue
47 in my mind with respect to the conviction that

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1 happened in front of Justice Holmes and the -- and
2 the subsequent probation order that was issued.
3 Mr. Fox admits that he was bound by a probation
4 order and he was bound by that order on the dates
5 in question. He admits that.

6 Really what it comes down to is the --
7 whether -- and I think there's no issues that
8 there was physically an act that -- which was
9 prohibited by the prohibition -- probation order
10 in that there was an attendance within a hundred
11 metres and a crossing and a failure to report on
12 the 19th. Really what it comes down to is the
13 last -- I think essentially with the last -- I
14 think the Crown has a prima facie case here. What
15 it comes down to is whether the accused knowingly
16 or recklessly or voluntarily performed or failed
17 to perform.

18 MR. WOLFE: I see -- I agree with you so far. So
19 the -- the case resolve down to intent, mens rea,
20 whether he -- Mr. Fox knowingly intended to breach
21 the order. The actus seems clear with respect to
22 the three counts. And so he either knowingly did
23 it or as subcomponents to the mens rea was either
24 willfully blind or reckless with respect to
25 intent, and I will have submissions on those
26 points.

27 THE COURT: Okay. And I think --

28 MR. WOLFE: Does that make sense?

29 THE COURT: Yes, I think so. I think that the --
30 Mr. Fox is required to establish, at least on a
31 balance of probabilities, the factual foundation
32 for his -- for the -- you know, for his excuse.
33 His reasonable excuse. And then, you know, going
34 on from that I think, Mr. Fox, you have to
35 establish that given those factual foundation it
36 was reasonable -- there's a reasonable excuse for
37 the non-compliance. I think that's -- I think
38 that's where we're at as far as the submissions
39 that need to be made. But let's do that at two
40 o'clock.

41 Mr. Fox, are you prepared to make submissions
42 at two o'clock?

43 THE ACCUSED: Sure. But I would be going after
44 Mr. Wolfe, right?

45 THE COURT: Yes.

46 THE ACCUSED: And so it would be probably sometime
47 after that.

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1 THE COURT: Yes. Okay. I'll see you -- I'll see
2 everyone, then, at two o'clock, okay?
3 MR. WOLFE: All right.
4 THE COURT: Thank you.
5
6 (PROCEEDINGS ADJOURNED FOR NOON RECESS)
7 (PROCEEDINGS RECONVENED)
8
9 THE COURT: Okay.
10 MR. WOLFE: Wolfe, initial B., for the provincial
11 Crown, Your Honour. Recalling the Patrick Henry
12 Fox case for submissions.
13 THE COURT: Okay. Thank you.
14 MR. WOLFE: As we know, normally when evidence is
15 called by an accused, the accused or the accused's
16 counsel goes first when making submissions. In
17 this case because Mr. Fox is self-represented I
18 think it's fair if Crown goes first, actually.
19 THE COURT: Sure. Fair enough.
20 MR. WOLFE: I asked Madam Registrar -- by the way, am I
21 coming through clear on the recording system now?
22 THE CLERK: We did. We worked on the sound system
23 during the break.
24 MR. WOLFE: Thank you. I've asked Madam Registrar to
25 hand you a copy for your personal use of the oral
26 ruling by the --
27 THE COURT: Yes, I've got that.
28 MR. WOLFE: -- associate chief justice.
29 THE COURT: And that was marked exhibit -- what was it?
30 Sixteen? No. Let me see.
31 THE CLERK: Your Honour, that will be Exhibit 14.
32 THE COURT: Fourteen. Thanks.
33 MR. WOLFE: Yes. The Holmes decision is 14. Crown
34 appreciates the court's direction with respect to
35 what it determines is the pivotal, if not the sole
36 issue --
37 THE COURT: Yes.
38 MR. WOLFE: -- to be decided. Along the way as this
39 case has progressed, I've typed up an evidence
40 summary. It may be of some use to the court. I
41 would hand it up. It takes us right up to the end
42 of Polisak's evidence.
43 THE COURT: Okay. I
44 MR. WOLFE: If you care to have it, I can hand it up to
45 the court. And I have a copy for Mr. Fox.
46 It has a staple in it, just so you know. Do
47 you want the staple out now, or?

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1 THE SHERIFF: That's okay.

2 MR. WOLFE: That's okay?

3 THE SHERIFF: Thank you.

4 MR. WOLFE: Sure. So this is one for the court.

5 THE COURT: Thank you.

6

7 **SUBMISSIONS FOR CROWN BY MR. WOLFE:**

8

9 MR. WOLFE: Given the signal from the court about what
10 the -- the issue is --

11 THE COURT: Remaining issues are.

12 MR. WOLFE: Yeah. I think that, you know, one can look
13 pretty quickly at the pages chronicling the
14 evidence of the court clerks or justices of the
15 peace and then Constable Hawkins' evidence --

16 THE COURT: Yes.

17 MR. WOLFE: -- and my submissions on that.

18 And then going over to Obrist at page --
19 beginning at page 5 and then Constable Brown at 6.
20 It also includes some reference to the voir dire
21 evidence, which is not instrumental at the moment.
22 I've included Bhimji's evidence and also
23 included -- and for the evidence summary I've
24 included cross-examinations as well because that's
25 really part of their evidence.

26 And then Officer Polisak's evidence is
27 summarized at page 11. One can appreciate this is
28 the summary.

29 THE COURT: Yes.

30 MR. WOLFE: It's not a transcript and it's not
31 verbatim. It's -- it's predicated on my notes
32 when I listened to the witnesses.

33 THE COURT: Okay.

34 THE ACCUSED: I appreciate all of that. More
35 importantly I appreciate that this is very much
36 from the Crown's perspective.

37 THE COURT: Yes.

38 MR. WOLFE: Well, I mean to be fair. I don't kind of
39 try and cherry pick the stuff, right? I mean,
40 otherwise it's really not going to have a lot of
41 value.

42 THE COURT: I guess one of the -- I guess one of the
43 questions I have might be one of the fundamental
44 ones is even that -- if we were to take Mr. Fox's
45 evidence at its height, which is essentially the
46 difference between Polisak's evidence and his is
47 that at some point she told him I -- "I believe

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1 that you're inadmissible from this country," and
2 then sent him on his way. Even if I accept that
3 at its height, does that still amount to a
4 reasonable excuse?

5 MR. WOLFE: Not a bit.

6 THE COURT: That's the Crown's --

7 MR. WOLFE: Not a bit.

8 THE COURT: That's the crux of the whole thing.

9 MR. WOLFE: Yeah, not a bit. But that should be
10 rejected. But even if from an analytical
11 perspective one wants to consider that, I mean, my
12 position is you reject it completely.

13 THE COURT: Yes.

14 MR. WOLFE: It doesn't amount to a reasonable defence
15 at all. You have an order binding him. You have
16 an order which he willfully and flagrantly
17 breached.

18 THE COURT: Mm-hmm.

19 MR. WOLFE: We knew that --

20 THE COURT: Many foreign nationals are given Canadian
21 court orders when they're here and they commit an
22 offence and they get a Canadian court order.

23 MR. WOLFE: It matters not whether you are Lithuanian
24 or Irish or Jamaican or American. The order
25 gathers its force of law through the compliance of
26 the conditions precedent to the order being
27 issued. The Supreme Court -- British Columbia is
28 a court of inherent jurisdiction. We know that.
29 It's not a statutory court. The order is made.
30 If the formalities are made -- and not only that,
31 I want to avoid any discussion about -- or
32 submissions about collateral attacks.

33 THE COURT: Yes.

34 MR. WOLFE: *Bird*, Supreme Court of Canada, still the
35 leading case on that, as I understand it. One is
36 bound by the order. We know that Mr. Fox is bound
37 by it. We know he's acknowledged it. We know
38 that the terms are in black and white. We know
39 that he understood the order. We know that he
40 brought an application on before the associate
41 chief justice and it was denied, and the oral I
42 ruling has been filed.

43 If you have a problem with the order, apply
44 to have it terminated. If you have a problem with
45 the order, apply to vary it. But don't cloak your
46 either indifference, contempt or hostility towards
47 the order, don't cloak that with an idea that you

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1 may or may not have a foreign citizenship and say
2 from that false premise, the Crown says, like
3 dominoes, inject a lot of other premises that
4 leads you to the false argument that you cannot
5 comply with the order or you have to go or you
6 have no business being in Canada. That's not a
7 reasonable excuse; that's an exercise in creative
8 writing. And it just does not amount to
9 reasonable excuse in law.

10 I have submissions really that were a little
11 more fully fleshed out because when I started
12 writing this some days ago I -- I wasn't -- I
13 would never presume anything regarding the court's
14 perspective and how -- whether all the issues are
15 live or some of them aren't. So the way I've
16 written this is predicated on -- on having to
17 prove all of the material elements.

18 THE COURT: Yes, fair enough. We didn't know if
19 Mr. Fox was going to testify or anything.

20 MR. WOLFE: No, you never know until you know, right?
21 So that's a copy for Mr. Fox. I apologize. I
22 have to sign this one for you. And then I have
23 one for the court.

24 And if I may just take a minute to take you
25 through that.

26 THE COURT: Thanks.

27 MR. WOLFE: Your Honour will see that, you know, I've
28 broken it down into three counts because that's
29 what he's charged with, and then additional
30 submissions at page 3. So we know the order was
31 proven to exist, and then it lays out the JP's
32 evidence. And we know the failure to report was
33 proven by the probation officer. We go into
34 Count 2. There was never any permission to leave
35 the province of B.C., and Bhimji gave evidence he
36 didn't get permission to leave at any time.
37 There's a reference to Obrist's evidence, and then
38 Hawkins. And we go into Count 3 about the failure
39 to report. Sorry. Count 3 about crossing the
40 border. Not being within a hundred metres.

41 So I lay that out. It's very clear from
42 Mr. Fox's own evidence that he walked across the
43 international border line.

44 The additional submissions really -- one of
45 the things -- a couple of things that just come to
46 mind, what I've written in there. Polisak said at
47 one point in her evidence it was just a

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1 conversation. That's how she characterized it
2 overall. That's true. That's obviously evident
3 from her testimony that Mr. Fox presented himself.
4 She had some dead time. Took him on. Dealt with
5 his inquiry. Went onto a database, came back,
6 reached a conclusion -- he's a Canadian -- bade
7 Mr. Fox goodbye, and he walked out the same door
8 he came through. Nothing unsettles that. She
9 made it clear she didn't order his removal,
10 deportation, deny him entry. It was just a
11 conversation.

12 The second that's really interesting from
13 Crown's perspective regarding intent is that it
14 seemed abundantly clear to Crown anyway that
15 Mr. Fox fully anticipated, expected, that once he
16 crossed the border and dealt with Officer Obrist
17 he was going to be held, if not for months. He
18 knew going -- he knew as soon as he was dealing
19 with Obrist he was never going to make that
20 March 19th reporting date and had no intention of
21 making it. And that level of intention with
22 respect to the failure to report charge, he was
23 the architect of his detention. That level of
24 intention is, in Crown's submission, the same
25 level of intention with respect to the other two
26 counts against him.

27 I go back to an earlier point. Cloaking his
28 willful breaches with a supposition on his part
29 that he has -- that he's inadmissible is
30 subterfuge. He never was frog-marched across the
31 border. There never was an order by anyone. But
32 if you create the appearance -- in my submission
33 it was evidence from Mr. Fox that he manipulated
34 or attempted or wanted to manipulate Corporal
35 Potts when he gave the statement. He lied to
36 Corporal Potts with respect to a bigger agenda, a
37 different agenda that relates to his American
38 affairs. And that kind of subterfuge is
39 consistent with his supposition, his construction
40 about something to do with his citizenship or
41 inadmissibility. I would urge the court not to
42 make any finding with respect to that because it
43 fits into Mr. Fox's bigger agenda. What's only
44 necessary here is to consider the strength of his
45 actions, which were clear and certain.

46 He took that long bus ride down to the
47 border. Never changed his date. Knew he was

Submissions for Crown by Mr. Wolfe**BAN ON PUBLICATION 51.7(1.) CCC**

1 going to be detained. Expected it. Didn't care
2 about the order. Says he wasn't in a snit or
3 angry about losing the application before the ACJ.
4 But that -- that answer has to be viewed in light
5 of the sections of his statement which I put to
6 him, which -- forgive my language, but I think
7 it's quoting him at some point, saying "fuck the
8 court." Well, that kind of contempt for an order
9 speaks a kind of action he took the very next day,
10 which was not when he was -- when he told Bhimji
11 he was going to go based on the logs. It was the
12 next day that he went down.

13 It isn't a matter of him planning something
14 that was going to come eventually into fruition.
15 He says -- you know, we listen to the video -- he
16 wasn't angry when he was saying those words.
17 Those words are incharitable words towards the
18 entire court process, the order, he being bound by
19 them, his application having been denied. And if
20 we view the entire context surrounding Mr. Fox and
21 his actions going within a hundred metres of the
22 border, leaving British Columbia and not
23 reporting, the only thing that runs -- not the
24 only thing, a golden thread that runs through that
25 is an utter contempt for being bound by a court
26 order.

27 To offer up the mirage of inadmissibility in
28 light of Officer Polisak's evidence is a sleight
29 of hand. The fact that she appeared to rely on
30 her notes should not cause the court concern.
31 It's a very significant thing for a border
32 officer, in Crown's submission, to know whether
33 they're declaring someone denied entry or being
34 told they're inadmissible. That's like a big deal
35 part of their job, in Crown's submission. It's
36 not like, ah, I'll let you pay duty on that wine
37 or not pay duty on the extra bottle of wine you
38 bought across the border. That's like a
39 significant thing. And she was clear in her
40 evidence she never did that. And she -- rightly
41 or wrongly, whether she read all of the records on
42 FOSS or whatever, it doesn't matter. She came to
43 that opinion, and the opinion was it's just a
44 conversation, and he left.

45 Mr. Fox in his evidence says, I got out there
46 and there was a CBSA officer. And we know that
47 Polisak referenced the CBSA officer who was

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BAN ON PUBLICATION 517(1) CCC

1 positioned there, she said he wasn't supposed to
2 move, or she, depending who the officer was, and
3 he had to be there for an hour. Mr. Fox says he
4 checked over his shoulder. He was walking away
5 after telling the -- if I remember correctly, the
6 officer that he had been deemed inadmissible.
7 Convenient. Convenient except for the fact that
8 he walks across on his own after having
9 encountered and dealt in direct -- encountered
10 Officer Polisak, who lets him go with -- with no --
11 I mean, if he was ruled inadmissible, what would
12 the next step be? We don't -- we don't knew that.
13 It's very interesting and convenient for Mr. Fox
14 then to say, that other officer out there, I'll
15 tell them I'm inadmissible; that'll perk him up,
16 and then he'll look at me as I walk away and I'll
17 be able to say I checked over my shoulder and he
18 was looking at me. Well, we don't know what
19 happened there. But nothing turns on that.
20 THE ACCUSED: We would know if we had the video,
21 wouldn't we? Sorry?
22 THE COURT: One of the curious artifacts in this thing
23 was that -- is the, you know, databases are
24 referred to and the CPIC record, it looks like --
25 at least you presume she must've looked at it.
26 The probation order you'd think would be somewhere
27 on there. It boggles my mind that probation order
28 was never discussed, which has clear terms in it.
29 MR. WOLFE:: Sure. And, you know --
30 THE COURT: With this officer, I mean. Polisak.
31 THE ACCUSED: Am I allowed to respond?
32 THE COURT: Not yet.
33 MR. WOLFE: Not yet. Sooner -- probably sooner than
34 later.
35 THE COURT: But -- but it matters -- it really matters
36 not -- I mean, the issue -- the issue really is is
37 that, you know, this officer's evidence that she
38 didn't issue any direction or piece of paper that
39 said he was inadmissible or advise him that he --
40 that he was inadmissible, that's her evidence.
41 And that, as you say, they had a conversation and
42 he left. My -- the -- you know, if that was -- if
43 that's the evidence to be accepted, and you say it
44 is because that's -- on a balance of probabilities
45 you say that her evidence is --
46 MR. WOLFE: To be preferred.
47 THE COURT: -- preferred because she's made notes,

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1 et cetera, that's pretty -- I would say pretty
2 dispositive of the whole thing. If you took his
3 evidence at this height, I don't know if changes
4 things.

5 MR. WOLFE: It doesn't.

6 THE COURT: Because that's the issue that I'm
7 struggling with. And I'll hear from Mr. Fox. But
8 I don't know if it changes anything because the
9 fact is is that he presented himself from within
10 Canada.

11 MR. WOLFE: Correct. That's correct.

12 THE COURT: He wasn't seeking entry into Canada.

13 MR. WOLFE: No, he was in Canada.

14 THE COURT: When you seek entry you get -- you go to a
15 border person -- the booth was the evidence -- and
16 they direct you, if -- if there was going to be
17 secondary inspection on your entry application --

18 MR. WOLFE: That's right.

19 THE COURT: -- to the office.

20 MR. WOLFE: She made it clear the booth, if you're
21 coming from the south, is your first point of
22 contact.

23 THE COURT: Right.

24 MR. WOLFE: Whether you're a pedestrian or a car,
25 there's sort of a breezeway place for pedestrians
26 to check in is the first point. You're either
27 getting in or you're going to secondary. It's one
28 or the other.

29 THE COURT: Yes.

30 MR. WOLFE: No one ever referred Fox to secondary,
31 right? And we have his evidence he's coming in
32 from the Canadian side. He rides the bus. It's
33 more than an hour. He's coming in from whatever
34 public transit system he took. And we -- that
35 means we know he's coming from the north. And I'm
36 not saying he was seeing Bhimji earlier in the
37 day. He's in Canada; he's in B.C. He walks in.
38 Anything other than that is a construction not
39 predicated on the evidence or common sense. It
40 doesn't change anything. You can't cloak not
41 being bound by an order because you in your own
42 head figure you're inadmissible. That's not a
43 reasonable excuse; it's a capricious excuse.
44 That's a bit of fiction. It's just not correct.
45 It's Crown's position that viewed either way
46 there is no reasonable excuse and that the court
47 should find Mr. Fox guilty on all three counts.

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1 THE COURT: Yes. All right. I'll hear from Mr. Fox
2 and Mr. Wolfe can have a reply, if necessary.

3 So, Mr. Fox -- yes. I guess you can get a
4 sense of what the -- the tensions are in the
5 evidence and what the real issues are. What do
6 you have to say about that?

7
8 **SUBMISSIONS ON HIS OWN BEHALF BY THE ACCUSED:**
9

10 THE ACCUSED: Well, first I'd like to respond to a few
11 of the points that Mr. Wolfe brought up.

12 The first one, the issue of when I got to the
13 port of entry, whether I was coming from within
14 Canada or whether I had been coming from outside
15 seeking entry to Canada, once you're in the port
16 of entry, that's irrelevant because once you're in
17 the port of entry you're deemed to be outside of
18 Canada with respect to the immigration laws.

19 THE COURT: Well, I disagree with you. There's no
20 evidence of that.

21 THE ACCUSED: The thing is if a person is inadmissible
22 because they are deemed to not be a Canadian
23 citizen and they have a criminal history, that
24 makes them inadmissible. It wouldn't matter,
25 then, if I came from the north or the south. When
26 Officer Polisak would look in the computer and she
27 would see the convictions for criminal harassment,
28 for perjury, she would see that I was not born in
29 Canada, that's it. That's the end of it. It's --
30 I mean, it's not that the CBSA officer has to make
31 a determination that a person is not admissible
32 and that that would be a big deal for them.

33 THE COURT: Yes, but your -- your -- what your
34 submission presumes is it's that -- that
35 particular office, anybody who walks into that
36 office is -- that particular office's task is to
37 determine whether those people are admissible to
38 Canada or not. That doesn't make any sense. It's
39 a Canada Border Services Office. It happens to be
40 located at the Douglas border crossing for the
41 sole -- for the major purpose of vetting people
42 who are entering, but it's there for a whole bunch
43 of other purposes.

44 THE ACCUSED: Yes.

45 THE COURT: I mean -- and your purpose was to enter
46 from Canada and to ask them or to seek some kind
47 of declaration that you were inadmissible from

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1 Canada.

2 THE ACCUSED: Yes, that's fair.

3 THE COURT: Okay. So if -- if in fact Officer Polisak
4 said, you know, you're right, you're not -- you're
5 not admissible to Canada, and you're already in
6 Canada, what -- and you say the reasonable
7 response to that would be -- even though you're
8 bound by an order not to leave, that your
9 reasonable response to that would be just to walk
10 across to the U.S. That's what you're saying.

11 THE ACCUSED: It is my understanding, and I guess we
12 can disagree on this, but it's my understanding --

13 THE COURT: I haven't made any determination yet. I'm
14 just -- I'm just challenging the evidence.

15 THE ACCUSED: Well, no, no. I'm -- I'm saying we -- we
16 have a disagreement, I guess, on what CBSA's
17 burden is at the port of entry as opposed to the
18 burden on the person presenting themselves to
19 CBSA. It is my understanding that at a port of
20 entry, regardless of whether the person came from
21 outside of the country or came from within the
22 country, once they enter that port of entry the
23 burden is then on them to prove that they -- to
24 prove to CBSA that they have the right or the
25 authorization to enter Canada. If they were
26 coming from within Canada already, then it would
27 be -- they would have to prove that they have --
28 they have the burden of proving that they're --
29 they have the right to return to Canada.

30 From all of the immigration law that I've read,
31 the Canadian and the U.S. immigration law, that is
32 the same in both countries. That was my whole
33 point of going to a port of entry. Once I entered
34 the port of entry, then I would have to be able to
35 prove that I have a right --

36 THE COURT: You're not entering Canada at that point.
37 You're just visiting a Canada Border Services
38 office. You're not trying to enter Canada; you
39 are in Canada and you always were in Canada.

40 THE ACCUSED: I understand that. But as I've said,
41 with respect to the immigration laws and CBSA,
42 that port of entry is kind of a virtual bubble, if
43 you will. And being within that building and in
44 that space you're considered -- for the purposes
45 of the immigration law and admission to Canada,
46 you're considered to be outside of Canada at that
47 point. That's my understanding of it anyway. And

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1 that's why I chose to go to the port of entry.
2 THE COURT: Well, see, if you make the submission that
3 you're considered to be outside of Canada,
4 you're -- the condition -- one of your conditions
5 was to remain in Canada. So how is that -- how
6 does that square with your -- with your theory
7 that you're outside of Canada?
8 THE ACCUSED: Because you're outside of Canada within
9 the context of the immigration laws. You're
10 outside of Canada within the context of whether
11 you would be considered admitted or not. You're
12 still on Canadian soil. You're still within the
13 boundaries of Canada. Some might say it's --
14 THE COURT: And so you're basically saying that you'd
15 be treated differently if you went to a Canada
16 Border Services office in Vancouver, for instance,
17 that there would be a totally different analysis?
18 THE ACCUSED: Yes.
19 THE COURT: Why?
20 THE ACCUSED: Well, because then I would be -- for the
21 purposes of the immigration laws I would be within
22 Canada. Then the burden is on CBSA to prove that
23 the person is removable before the could remove
24 them.
25 THE COURT: So you say if someone shows up at that
26 Douglas border office the whole burden changes,
27 even if they do come from within Canada?
28 THE ACCUSED: Yes. Then the burden is on the person
29 rather than CBSA.
30 THE COURT: That just doesn't make any logical sense.
31 THE ACCUSED: Okay.
32 THE COURT: I mean -- well, you can convince me, but, I
33 mean, on the face of it --
34 THE ACCUSED: Well, that's the thing. I can't convince
35 you right now. I don't have -- I don't have a
36 copy of the <i>Immigration Act</i> and such. I mean,
37 there's not much I can do to bolster my argument
38 at this point.
39 THE COURT: Okay.
40 THE ACCUSED: They have that back at the jail, but I
41 don't --
42 THE COURT: Okay. Let's -- let's go to the point
43 where -- say, if I accept your evidence that
44 Ms. Polisak said something to the effect of, look,
45 you're likely or you are inadmissible to Canada,
46 so if that's the -- if that's the information that
47 you required, there you go; that's my opinion;

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1 thanks for the talk; off you go. At that point --
2 at that point your essential argument is that you
3 at that point were required to leave the country
4 and to enter the U.S. Is that your argument?
5 THE ACCUSED: Yes. Just like when I presented myself
6 to CBP and they said, you're not admissible to the
7 United States. I mean, okay. So the options left
8 are go back to where you came from or sit in
9 immigration in custody in [indiscernible] before
10 an immigration judge.
11 THE COURT: Okay. There you go. You had options.
12 THE ACCUSED: Oh, yes. I could've --
13 THE COURT: Okay. You could've stayed and complied
14 with the order and fought that order from within
15 Canada.
16 THE ACCUSED: [indiscernible] and live on the streets.
17 THE COURT: Okay. That's --
18 THE ACCUSED: I understand that collateral.
19 THE COURT: That's your reason for doing it. That's
20 your reason for wanting to go because -- because
21 it's going to have some negative collateral
22 effects. By complying with this order it's going
23 to have negative collateral effects, and most
24 probation orders do have some sort of impact on
25 folks. That's your reason for not complying with
26 it. But is that -- is that a reasonable excuse
27 under the law that it was going to cause me some
28 grief, it was going to cause me some
29 inconvenience, it was going to cause me some --
30 some -- a negative impact of some kind?
31 THE ACCUSED: I believe that it would not be a
32 reasonable excuse under the law that it would
33 cause me some type of hardship like that.
34 However, I believe it would be a reasonable excuse
35 under the law if the condition necessarily
36 compelled me to violate the law.
37 THE COURT: If the condition -- yes, but -- okay.
38 THE ACCUSED: A probation condition which would force me
39 to break the law would be --
40 THE COURT: Yes, and that's the argument that you
41 made --
42 THE ACCUSED: I brought that up previously.
43 THE COURT: -- in front of Justice Holmes to vary the
44 order and that was a whole different burden that
45 she was looking at, and she was looking at
46 evidence to try to justify changing the conditions
47 for you. And so she was looking at something

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1 completely different than what we are. You were
2 providing to her evidence of -- with respect to
3 your citizenship to establish that these
4 conditions were not -- were not practically -- you
5 weren't able to practically comply with them.
6 That's not the -- that's not my task right here.
7 I mean, I'm just -- I'm just trying to determine
8 whether you -- you had a reasonable excuse with --
9 as it's known within the law and which is
10 objectively reasonable to breach those conditions.
11 And what you're telling me is you had a choice.
12 You had a choice to stay in the country and be --
13 and be inconvenienced or you had a choice to -- to
14 leave.

15 THE ACCUSED: I don't believe that I left voluntarily
16 because I believe the moment Officer Polisak told
17 me that I was inadmissible, which I already knew I
18 was inadmissible and the IRCC documentation shows
19 that I'm inadmissible, so once she verbalized that
20 to me, there was no choice left for me. I mean,
21 my options --

22 THE COURT: You told me you had a choice. You had a
23 choice to remain in Canada and fight that.

24 THE ACCUSED: No. No, no. I'm saying on the U.S. side
25 when I turned -- when I presented myself to CBP.

26 THE COURT: Well, that's after you went to the U.S.

27 THE ACCUSED: Right. The reason I was bringing that up
28 was I was showing that it's not necessarily going
29 to be a big deal for the border officer to tell
30 the person you're inadmissible, as the Crown was
31 trying to make it seem like it would be this big
32 deal and there'd have to be records of it and all.
33 But that's not the case. When a foreign national
34 gets to the border and the border officer says,
35 no, I think that you're inadmissible; I'm not
36 going to allow you to enter at this time, I
37 mean --

38 THE COURT: You don't think it's reasonable for that
39 officer to note -- have some sort of notation as
40 to that decision? Because you can imagine, if you
41 think in the future, what if that person tries 800
42 times --

43 THE ACCUSED: Yes.

44 THE COURT: -- to get into the country at various
45 borders across Canada, you don't think it would
46 be -- it would be -- you know, something that they
47 would want to do is to notate their file as to

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1 people who come to the border are already the
2 subject of an inquiry, are deemed to be
3 inadmissible and then sent back. You don't think
4 there'd be some notation of that somewhere?

5 THE ACCUSED: I would think that under normal
6 circumstances that, yes, they would want to make
7 notations about that. But I think that we've seen
8 over the course of these proceedings that CBSA
9 hasn't necessarily been following the appropriate
10 or standard procedure.

11 THE COURT: Well, one thing I agree with you on is that
12 there's really no explanation, and it's not my job
13 to sort of suss it out right now, and that -- you
14 know, that your initial inquiries weren't met with
15 any kind of positive response and it took so long
16 to get this FOI, et cetera. There's really no
17 explanation for that. But that's, again, sort of
18 collateral to all the issues --

19 THE ACCUSED: Right.

20 THE COURT: -- that I'm dealing with.

21 THE ACCUSED: What -- I think it also has to be -- it
22 has to be emphasized that CBSA doesn't make any
23 determination about whether or not the person is
24 admissible. In my case they didn't make any
25 determination. Those determinations are made by
26 IRCC. And it's already been made with respect to
27 me. CBSA can look at the evidence when a person
28 is coming into the country and say, well, based on
29 this evidence we believe that you're inadmissible.
30 You can appeal that or take that up with IRCC. In
31 the U.S. it would be the immigration board, but
32 here I believe it would IRCC.

33 THE COURT: Okay. So -- but basically what you're
34 telling me in that -- in that phraseology that you
35 put it is that you had certain options. Once you
36 were given the information that you're
37 inadmissible in Canada you have certain options.
38 One of them is to leave thereby breaching your
39 order. One of them is to remain in Canada and to
40 fight the designation or to deal with that
41 designation while you're inside the country of
42 Canada. That's what -- that's the gist --

43 THE ACCUSED: No, no.

44 THE COURT: -- of what you just told me.

45 THE ACCUSED: Well, no, I disagree with the second
46 part. It wasn't an option to remain in Canada
47 because if I'm inadmissible, then remaining in

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1 Canada is not a legal option. If I had chosen to
2 fight it, first I would need some legal grounds
3 under the immigration laws to fight it. I have
4 none. I have no status in Canada, so I have no
5 basis to -- to fight being denied admission. But
6 even if I tried to claim that I did, it wouldn't
7 mean that I'm entitled to return to Canada. I
8 mean, at best I would --

9 THE COURT: You're not outside of Canada yet.
10 You've -- you walked across the border.

11 THE ACCUSED: Returned to Canada meaning from the port
12 of entry.

13 THE COURT: Okay. But when you walked out of that
14 building there's --

15 THE ACCUSED: Yes.

16 THE COURT: -- you're saying there's several things you
17 could've done. One, you could turn and go
18 to the U.S. Two, you could've turned left and
19 just go back to Canada.

20 THE ACCUSED: But had I turned left and gone back to
21 Canada I'd be breaking the law, and that other
22 CBSA officer there surely would've stopped me and
23 said well, where are you going?

24 THE COURT: Breaking what law?

25 THE ACCUSED: The immigration law. Because if I'm
26 inadmissible, then I cannot walk out of the CBSA
27 building and then just walk north into Canada
28 again.

29 THE COURT: Okay. But you're saying that the officer
30 in your evidence --

31 THE ACCUSED: Yes.

32 THE COURT: -- said that you were inadmissible.

33 THE ACCUSED: Yes.

34 THE COURT: Never at no time directed you to go back to
35 the U.S. You're saying that all she told you was
36 that my inquiries show that you're inadmissible.
37 That's what you told her. From then --

38 THE ACCUSED: Yes.

39 THE COURT: -- from that point you have several
40 decisions that you could make at that point. Is
41 that not fair?

42 THE ACCUSED: It seems to me that the only legal option
43 that I had at that point was to leave Canada. I
44 don't see what other legal option I would've had.

45 THE COURT: Okay.

46 THE ACCUSED: It would be as though -- I mean -- okay.
47 Even though Officer Polisak -- or Polisak may not

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1 have explicitly said, you are legally required to
2 leave Canada right now, it would be the same as if
3 a law enforcement officer tells me, oh, you cannot
4 go in there; that would be trespassing. He's not
5 telling me don't go in there, but by telling me
6 that I'm not permitted to enter a certain building
7 it's implied that I must comply with that order,
8 is it not? And that's how I would've saw it when
9 Officer Polisak would have said to me that -- that
10 based on what I've seen, it appears to me that --
11 or it appears to us that you would be in
12 admissible. I mean, it doesn't seem to me, then,
13 that it's necessary for her to say, now you must
14 leave.

15 THE COURT: Okay. Yes. Anything else you want to --

16 THE ACCUSED: Oh, yes. I want to point out that a
17 probation order was discussed, actually, when I
18 was speaking with Officer Polisak. I'm pretty
19 sure I had a copy of it in my laptop bag. If I
20 did, it would still be in my laptop bag, which is
21 in North Fraser Pretrial Centre's --

22 THE COURT: Okay. But all I have to consider in this
23 case is the evidence that's been given -- sworn
24 evidence that's been given and the evidence that
25 is exhibits. Admitted documents.

26 THE ACCUSED: Yes.

27 THE COURT: That's the evidence.

28 THE ACCUSED: And I would've liked very much to be able
29 to show more concrete physical evidence to prove
30 that I had these documents with me --

31 THE COURT: But, again, at the end of the day -- I'll
32 help you out here so -- just to -- just so that
33 you understand you're not prejudiced in any way.
34 I don't see the relevance of any of that stuff to
35 the issues that I have to determine.

36 THE ACCUSED: Okay.

37 THE COURT: So that may assuage your mind with respect
38 to the importance of those documents.

39 THE ACCUSED: In response to Mr. Wolfe's suggestions
40 that I had a large amount of contempt for the
41 probation order and perhaps even for the justice
42 system as a whole, I would say that with what I've
43 been through with criminal harassment proceedings,
44 having gone back to the United States, having an
45 investigation been done, it was determined that
46 there was no crime committed, my firearms licence
47 wasn't revoked or suspended or anything. I went

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1 back to the United States, then I was brought back
2 here to be prosecuted for it. Supposedly the
3 website was criminal harassment. The website's
4 been back online for more than -- well, about --
5 THE COURT: Again, none of that's relevant to what I
6 have to do.
7 THE ACCUSED: My point is yes, I do have contempt for
8 all of the -- for everything and everyone that has
9 been involved in everything that I have gone
10 through over the past few years with all of this.
11 THE COURT: Fair -- fair enough. But, again, I'm
12 tasked with one simple task and it's to provide
13 you a fair trial on the charges that you're --
14 THE ACCUSED: Right. But if Mr. Wolfe is allowed to
15 make statements like that, then I should also be
16 allowed to make such statements in response to
17 them, shouldn't I?
18 MR. WOLFE: Well, it's the context in which I made
19 them.
20 THE COURT: I mean, if it helps you at all, the --
21 the -- I'm not going to be using, you know,
22 evidence that you've -- that you're angry with the
23 justice system as any kind of -- buttressing any
24 of the --
25 THE ACCUSED: Sure.
26 THE COURT: -- evidence that goes to the essential
27 element.
28 THE ACCUSED: And with respect to the failure to report
29 charge I would say it would be no different than
30 if I had been arrested for something here in
31 Vancouver and then detained at North Fraser
32 Pretrial Centre and failed to report because of
33 that. I mean, the fact that I was being detained
34 in a facility outside of Canada because of my own
35 actions is no different than if I'd done something
36 or gotten arrested for something on Hastings
37 Street and I was being detained at North Fraser.
38 THE COURT: Okay.
39 THE ACCUSED: Now, I would like to make some
40 submissions about Officer Polisak's testimony.
41 Let's see. So she testified that when she pulled
42 up my information in the GCMS, she only had access
43 to the remarks section of the FOSS record, but
44 then later on cross-examination I was able to --
45 well, first --
46 THE COURT: Let me -- let me help you --
47 THE ACCUSED: Sure.

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1 THE COURT: -- Mr. Fox. What if I -- what if I, you
2 know, dealt with this case, you know -- as I say,
3 is it -- is the analysis different if -- if I
4 accept your evidence --
5 THE ACCUSED: Yes.
6 THE COURT: -- that -- that you were told or you -- you
7 came to believe somehow with your interactions
8 with Officer Polisak that you were inadmissible or
9 that you had some designation of inadmissibility
10 in this country, is the analysis different?
11 THE ACCUSED: Are you asking would the analysis be
12 different --
13 THE COURT: I guess -- I guess it -- if she hadn't said
14 any of that it might be an easier matter, but
15 if -- if that was said, does it provide you the
16 excuse -- and we've just talked about this and
17 this is what you're on about --
18 THE ACCUSED: Yes.
19 THE COURT: -- the excuse to leave the country. But
20 right now you're giving me submissions just
21 designed to -- to ask me to accept your version of
22 the events --
23 THE ACCUSED: Right.
24 THE COURT: -- instead of hers on that -- on those
25 points, on that.
26 THE ACCUSED: Okay.
27 THE COURT: Yes.
28 THE ACCUSED: I see what you're saying. And I think I
29 need to emphasize again that I do not believe that
30 I left the country. I believe that I presented
31 myself or turned myself in to CBSA and then I was
32 effectively removed by the duly appointed
33 authority, being the CBSA. Even though they may
34 not have put me in handcuffs and dragged me to the
35 border, at the moment that they told me that I'm
36 inadmissible and I'm right at the border, then
37 that was effectively removing me or denying me
38 admission to Canada. So I don't believe -- I
39 don't believe that it's a matter of I have to show
40 that -- or justify leaving Canada. I don't
41 believe that I left voluntarily. I went to CBSA
42 voluntarily, and then from that point I don't
43 believe that it was voluntary.
44 THE COURT: Okay. What about Mr. Wolfe's point that,
45 you know, when you left the building you said -- I
46 guess your evidence was you said something to the
47 officer who was standing out there, well, I guess

Submissions on his own behalf by the Accused**BAN ON PUBLICATION 517(1) CCC**

1 I'm inadmissible, and then you started walking.
2 What -- I mean, what -- if you had said nothing,
3 presumably you could've walked right back into
4 Canada and nobody would've said anything? Is that
5 the --

6 THE ACCUSED: Well -- no, no. Because it's -- I didn't
7 say to the officer, I guess I'm inadmissible. f
8 When I went outside arid then he asked me where I
9 was going, and I told him I have to return to the
10 United States because I was told -- the officer
11 inside told me I'm inadmissible.

12 THE COURT: And that's -- that's the evidence that you
13 gave. Yes.

14 THE ACCUSED: Well, I think I was more brief about it.
15 I didn't go into details. And then I asked him,
16 how do I return; which way do I go? And then he
17 pointed me to the door. Now, other than him there
18 was also a booth a little bit to the north of us,
19 and I guess that was the booth probably that
20 Officer Polisak was referring to. In that booth
21 there was another officer that was working there.
22 Had I not responded to that first officer, then
23 I'm sure the second officer would've asked me.

24 THE COURT: Okay. The -- new, you're -- you were on
25 about -- you wanted to impeach the evidence of
26 Polisak.

27 THE ACCUSED: Well, yes, I just wanted to point out a
28 few of the inconsistencies -- or I would call them
29 lies, but to be more diplomatic the
30 inconsistencies in her testimony.

31 THE COURT: Okay.

32 THE ACCUSED: To show that in my opinion I don't
33 believe that certain parts -- or the important
34 parts of her testimony are particularly credible.

35 THE COURT: Okay.

36 THE ACCUSED: The first is when she was confronted with
37 the FOSS record at first she said that she only
38 had access to the remarks section. She didn't see
39 all of the other stuff. Mainly she didn't want to
40 admit that she had seen the country of birth part.

41 THE COURT: I think -- to be fair, I think to properly
42 characterize her evidence is that she only made
43 notes of the remarks section and that she --
44 she -- she allowed that the whole document must've
45 been available to her and she just can't -- she
46 doesn't have any independent recollection of the
47 thing.

Submissions on his own behalf by the Accused**BAN ON PUBLICATION 517(1) CCC**

1 THE ACCUSED: Well -- and then I questioned her about
2 it more. Like --

3 THE COURT: Yes.

4 THE ACCUSED: Because in her notes she explicitly
5 mentioned the Edmonton CIC. And so I had asked
6 her, did you see this other information in these
7 other fields that were on the FOSS record, and at
8 that point she said no, she only had seen the
9 remarks section. So then I presented to her,
10 well, how did you -- how could you have known that
11 it came from the Edmonton CIC? And then she
12 had -- she had said that's why I didn't put that
13 in my notes. And I said, well -- but you did put
14 it in your notes; it's right here. At that point
15 I was hoping to try to figure out a way that I
16 could get her to also admit that she saw the other
17 part, and that's where it would've been good if I
18 had remembered that I had the -- I had showed her
19 the PDF on my phone at the time, but -- and I
20 would've been able to cross-examine her on that.

21 THE COURT: I think the gist of her evidence is she
22 doesn't recall much of the interaction other than
23 what was revived -- her memory was revived by
24 reading her notes. So there's -- there are
25 necessarily going to be parts of your interaction
26 that she just won't be able to testify about
27 because she doesn't recall.

28 THE ACCUSED: Well, right. But with respect to the
29 country of birth field in the FOSS report -- or
30 FOSS record, that she explicitly stated that she
31 did not see, that she didn't have access to it.

32 THE COURT: Okay.

33 THE ACCUSED: That it simply didn't show up. And then
34 I moved on to the GCMS record. In that one she
35 flat out said that the information wasn't there
36 when she looked at it because there's no way she'd
37 be able to deny having access to the GCMS record.
38 And then I presented to her the created date on
39 that -- in that section of the record states
40 2019/01/18, which is two months before I was
41 interacting with her. She had no explanation
42 further for why the information wasn't there.

43 I would suggest that the information was
44 there in both cases. She simply -- I think -- it
45 is my belief that she was instructed not to make
46 any admissions about CBSA knowing one way or the
47 other about my citizenship, and I think that's why

Submissions on his own behalf by the Accused**BAN ON PUBLICATION 517(1) CCC**

1 she was being so evasive about those two fields.
2 Now, I also questioned her very directly and
3 explicitly about whether everything in her notes
4 and in her declaration was true and correct to the
5 best of her knowledge. She responded that it was.
6 THE COURT: Yes.
7 THE ACCUSED: But then I pointed out to her the
8 discrepancy between "confirmed" and "concluded"
9 and in that the remarks that she had read did not
10 say "confirmed" at all, it said only "concluded"
11 even though she had written it down as confirmed,
12 and they're two very different words.
13 Also on direct there was the issue that she
14 had stated that I had a Canadian passport, but
15 then on cross it was determined that I never -- or
16 sorry, she stated on direct that I told her that I
17 had a Canadian passport, but then on cross we came
18 to find that I hadn't actually told her I had a
19 Canadian passport but rather that I had applied
20 for and received a Canadian passport under
21 fraudulent pretenses.
22 MR. WOLFE: Actually I don't recall her giving the
23 evidence that way. I'm sorry. I don't --
24 THE COURT: Yes. I don't --
25 MR. WOLFE: My own note is that she --
26 THE COURT: -- remember the fraudulent --
27 MR. WOLFE: He had a Canadian passport, Richard Riess.
28 THE ACCUSED: Yes.
29 MR. WOLFE: Passport, Canadian; Richard; Sudbury,
30 Ontario. She gave a date of birth. I don't
31 recall her saying that she elicited that from
32 Mr. Fox or Mr. Fox said that.
33 THE COURT: I thought that was her referring to the
34 remarks section of the FOSS record.
35 MR. WOLFE: That's what -- that's right. Yeah.
36 No, I think you've got that wrong. That
37 wasn't her evidence.
38 THE COURT: In any event, it's kind of --
39 THE ACCUSED: Right, right. Well, I'll move on from
40 that, then.
41 On direct she also testified that she did not
42 have any info indicating that I'm -- that I'm not
43 a Canadian. But then on cross there were a number
44 of items that I brought to her attention, some of
45 which she admitted that -- that she had seen but
46 she was always very evasive about it.
47 MR. WOLFE: I beg your pardon. That's not a proper

Submissions on his own behalf by the Accused**BAN ON PUBLICATION 517(1) CCC**

1 characterization of her evidence.
2 THE ACCUSED: Right. I'm trying to --
3 THE COURT: Okay. You can -- I'll give you a chance to
4 reply, Mr. Wolfe.
5 THE ACCUSED: Well, I'm trying to think of the concrete
6 examples. On the FOSS record, she was evasive
7 about that. She denied that she had seen that.
8 Later -- at this point, though, my evidence would
9 be that I did show her the PDF file on my phone.
10 I would love to be able to confront her with that,
11 but I don't think that's going to be an option.
12 And then there was the CPIC report. I would
13 have loved to show her the CPIC report as well,
14 but that was -- I would -- to be direct, I would
15 say that I was discouraged from doing that.
16 Because in the CPIC report it clearly states that
17 my place of birth is the United States of America.
18 THE COURT: Yes, but here's the thing. None of that
19 really goes to the question of admissibility.
20 So -- so, you know, what is -- what seems to be
21 accurate, however, is the officer's conclusion
22 that there were a number of removals by the U.S.
23 and that you didn't show up with any kind of valid
24 documents to actually enter the U.S. and that
25 she -- and that would seem to follow from that to
26 be reasonable for her to advise you you're going
27 to have trouble.
28 THE ACCUSED: Oh, yes.
29 THE COURT: You're going to have trouble going down
30 there because you have no passport and you've been
31 removed several times.
32 THE ACCUSED: Yes. And my response to her, I'm not
33 sure if it came up during her testimony or not,
34 but my response to her -- oh, it's in her notes, I
35 think -- was that that's my problem; I'll deal
36 with that with CBP when I get there.
37 THE COURT: Okay. But the issue of where you were
38 born, that has -- how is that material to the
39 admissibility question?
40 THE ACCUSED: It's about her credibility. It's about
41 her stating that she had no evidence of some
42 particular thing, but in reality she did have
43 evidence of that thing.
44 THE COURT: Okay.
45 THE ACCUSED: And if -- as a CBSA officer, if it can be
46 shown that CBSA had evidence that I'm not a
47 Canadian citizen but they allowed me back in the

Submissions on his own behalf by the Accused**BAN ON PUBLICATION 517(1) CCC**

1 country knowing that I have a criminal record,
2 that's going to be a huge, huge problem for CBSA.
3 THE COURT: Well, it -- it -- you're under a Canadian
4 court order to stay in Canada. I hardly think it
5 would be a problem for Canada Border Services to
6 say look, you've got to stay in Canada.
7 THE ACCUSED: People get deported from Canada all the
8 time when they have orders like that.
9 THE COURT: They do, but there's no evidence that you
10 were deported in this case, even from yourself.
11 THE ACCUSED: And another major problem I had with
12 Polisak's testimony is that she was unable to
13 remember so many of the things that I had asked
14 her about. It seems really the only thing that
15 she did remember very clearly apparently was
16 telling me that I'm admissible or not telling me
17 that I'm not admissible, however she phrased it,
18 and whatever other points would've worked in
19 favour of the Crown.
20 THE COURT: Well, I agree with you that her memory was
21 limited largely to what her notes were. And I
22 think the gist of her evidence is, if -- if I
23 would've told him, you know, he was admissible,
24 that -- that would've been a material note. But I
25 agree with you that her memory's limited to what
26 her notes are.
27 THE ACCUSED: But her notes didn't even say that she
28 told me that I was admissible. Her notes said
29 nothing on it one way or the other.
30 THE COURT: Well, okay.
31 THE ACCUSED: But the point I'm getting to with her --
32 the memory issues here is that if CBSA had not
33 played these games for five months, claiming that
34 there's no record of me going there and delaying
35 all of this for an extra five or six or seven
36 months, maybe her memory might've been better if
37 she had testified back in August rather than
38 testifying a year later.
39 THE COURT: Okay. I'll take that into account. I
40 mean, you know, when somebody shows up at your
41 wicket there and says look, there's a chance I may
42 not be admissible, I mean, it's reasonable for
43 that officer to conduct -- to start an inquiry
44 like -- and put down as -- as part of the -- as
45 the subject inquiry "possible inadmissibility" and
46 then conduct an inquiry. That's what she
47 testified she did.

Submissions on his own behalf by the Accused**BAN ON PUBLICATION 517(1) CCC**

1 THE ACCUSED: Their own records right here that she had
2 access to on that day had all the information that
3 she would've needed to suspect that I am not a
4 Canadian citizen and to perform an investigation
5 and not allow me back into Canada until it was
6 proven that I am a Canadian citizen.

7 MR. WOLFE: This isn't about what the witness didn't
8 do.

9 THE COURT: No. Fair enough.

10 THE ACCUSED: Right.

11 THE COURT: And nor is it -- is it an inquiry about
12 allowing you back into Canada. You weren't
13 seeking entry into Canada at that point.

14 THE ACCUSED: Right. I was seeking to be denied entry
15 into Canada.

16 THE COURT: Well, you weren't seeking entry. There was
17 no inquiry as to whether you were eligible for
18 entry into Canada. You visited the office and
19 told them you may possibly be inadmissible.

20 THE ACCUSED: No, I told them I am inadmissible.

21 THE COURT: Okay.

22 THE ACCUSED: I showed them the documentation. I told
23 them about being convicted of criminal harassment.
24 I told them I'm on probation and I can't be within
25 a hundred metres of the U.S. border and I told
26 them that my objective, my goal, is for them to
27 remove me from Canada at that time.

28 THE COURT: Okay.

29 THE ACCUSED: So the one last issue that I would like
30 to come back to again is the question if when a
31 person is at a port of entry whether they are
32 considered to be outside of Canada seeking
33 admission or outside of Canada for the purposes of
34 the immigration law because that is something I
35 would be able to prove to the court that that is
36 the case, but it's not something I would be able
37 to prove right now because obviously I don't have
38 the legal materials here. But it is something I'd
39 be able to look up and be able to prove that that
40 is the case if I had access to the law library and
41 such, but that's up to the court.

42 Otherwise I guess I'm done.

43 THE COURT: Okay. Thanks, Mr. Fox.

44 Mr. Wolfe, do you have any reply to that?
45
46
47

Reply for Crown by Ms. Wolfe

BAN ON PUBLICATION 517(1) CCC

REPLY FOR CROWN BY MR. WOLFE:

MR. WOLFE: There's a circularity in Mr. Fox's reasoning which amounts to saying, I'm illegal, so I must go; I must go because I am illegal.

THE ACCUSED: It's the same thing.

MR. WOLFE: And that's the circularity.

THE ACCUSED: No, I know what a circular reference is. That's not a circular reference. You're stating the same thing two different ways.

MR. WOLFE: Well --

THE ACCUSED: It's not A equals B equals A. That would be a circular reference. You're saying A equals B; B equals A.

MR. WOLFE: Let me use a different point.

THE ACCUSED: Okay. Thank you.

MR. WOLFE: Thank you. His argument is predicated on his false assumption, and the false assumption is his admissibility status. The evidence of the officer is such that were he inadmissible, clearly that would've been marked in her notation. There is nothing indicated to that extent in any of her notations. This would have been an exceedingly glaring error, particularly in the context of her evidence that she said it was just a conversation, she came to a conclusion. Your Honour said Mr. Fox had choices, that he -- he had choices. He had a choice not to enter into the CBSA building or to enter. He had a choice to engage to a certain degree or not. He engaged with an agenda which was to try and capture the CBSA officer into saying something consistent with his theory about how to get out of -- get out from under a B.C. order governing him, which he doesn't have [indiscernible]. And it's really not any more complicated than that.

THE COURT: All right. Yes. Let's -- yes. Mr. Fox.

THE ACCUSED: I'm sorry. May I just --

THE COURT: Yes, go ahead.

THE ACCUSED: -- say one thing in response to that?

The fact that Officer Polisak or CBSA did not make a log entry about something doesn't mean that it didn't happen. Officer Polisak herself admitted that sometimes entries don't get made for things.

THE COURT: I agree with you on that point, the fact that she doesn't log something doesn't mean it didn't happen. I just have to -- I have to weigh

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1 all of the evidence and make --
2 THE ACCUSED: Yes.
3 THE COURT: Yes.
4 THE ACCUSED: And the other thing is the Crown's
5 insistence on my false premise that I'm
6 inadmissible, the IRCC documentation is right
7 here. They are the only ones that can say that
8 somebody is or isn't admissible. The
9 documentation is right there. It's not me saying
10 it with nothing to support it. If -- if that said
11 "country of birth, Canada," I'd have nothing to
12 argue about, but it doesn't.
13 That's all.
14 THE COURT: Okay. Yes. So let's -- that's it from --
15 from everybody. Let's finish this today. If you
16 give me -- I'm hoping 3:45 I can come back. I've
17 had a careful review of all of the evidence prior
18 to submissions so that I am familiar with it and
19 I'm hoping that will give me enough time to weigh
20 the -- the arguments. Okay. Just give me a call
21 at 3:45 and I'll tell you whether I'm -- if I'm
22 ready or not.
23 THE CLERK: Yes.
24 THE COURT: Thank you.
25
26 (PROCEEDINGS ADJOURNED FOR AFTERNOON RECESS)
27 (PROCEEDINGS RECONVENED)
28
29 THE COURT: Okay.
30 MR. WOLFE: Wolfe, initial B., for the provincial
31 Crown, Your Honour. Recalling Fox.
32 THE COURT: Thank you. Mr. Fox is here.
33
34 [REASONS FOR JUDGMENT]
35
36 THE COURT: Now, what do you want to do with the
37 sentencing?
38 MR. WOLFE: Adjourn and get a sentencing date. I would
39 apply for a presentence report in this case.
40 THE COURT: So, Mr. Fox.
41 THE ACCUSED: Mm-hmm.
42 THE COURT: What do you say about the request for a
43 presentence report? Do you -- you know what is,
44 I'm assuming?
45 THE ACCUSED: Yes, I'm familiar with that, and I would
46 decline that.
47 THE COURT: You say you don't need it?

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1 THE ACCUSED: I say I don't need it, but even if I was
2 required to participate in it I wouldn't.
3 THE COURT: Yes, okay. Fair enough. The -- how much
4 time do you think we need for something like that?
5 Given -- am I to understand that he's been in
6 custody on this matter for -- for -- since --
7 MR. WOLFE: Since the arrest date.
8 THE COURT: Since April 4th.
9 MR. WOLFE: Right. And he was detained the 10th or the
10 8th of April...
11 THE ACCUSED: April 4th.
12 THE COURT: April 4th you were arrested --
13 MR. WOLFE: Yes, but not detained.
14 THE COURT: -- by Constable Brown.
15 MR. WOLFE: Not detained that date. I think April the
16 10th he was detained. So he's been in custody
17 since the 4th and detained on -- on the 10th of
18 April.
19 THE COURT: On this matter?
20 MR. WOLFE: Yes. And then he had a 525 review where
21 Mr. Justice Groves upheld the detention order, and
22 that was in July.
23 THE COURT: Yes.
24 MR. WOLFE: I conducted that.
25 THE COURT: Okay. Does the Crown have a position for
26 Mr. Fox? I think you did at one point.
27 MR. WOLFE: I do on the jail side, but I would also be
28 seeking a probation order as well.
29 THE COURT: Okay. And have you told Mr. Fox what your
30 position is?
31 MR. WOLFE: I did. It doesn't come to mind
32 immediately. I know I voiced it at the 525
33 review.
34 THE COURT: Okay. Do you know -- do you know what it
35 is, Mr. Fox?
36 THE ACCUSED: No.
37 THE COURT: Okay. Maybe before the next date --
38 THE ACCUSED: I'm sorry. With respect to what he was
39 saying that he would be seeking for jail, I
40 believe it was 11 to 13 months.
41 THE COURT: Okay. Eleven to 13 months.
42 THE ACCUSED: Yes. But there was no mention of
43 probation at that time.
44 THE COURT: Okay. All right. Well, I guess we should
45 get a sentencing hearing sooner than later because
46 as I understand it, Mr. Fox has served
47 essentially --

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1 MR. WOLFE: While he's in custody he has other business
2 before the courts here and in Port Coquitlam and
3 his status is yet to be determined there. I
4 believe he has -- you'll correct me, please -- is
5 it a May 2 trial date?
6 THE ACCUSED: No. May 2nd, I believe that's a pretrial
7 conference or status conference. The trial is
8 scheduled to start in July.
9 MR. WOLFE: July. Thank you.
10 THE ACCUSED: It might get pushed back some. I don't
11 know.
12 THE COURT: Okay.
13 MR. WOLFE: So July on another -- on something else.
14 THE COURT: Okay. Well, in any event, I think we
15 should conclude this matter as soon as we possibly
16 can.
17 MR. WOLFE: Sure. I agree with that.
18 THE COURT: Mr. Fox, you can appear by video to confirm
19 the sentencing date that Mr. Wolfe is going to try
20 to -- to obtain from the judicial case managers.
21 MR. WOLFE: I was thinking maybe an hour and a half or
22 something like that.
23 THE COURT: An hour and a half. Yes. Okay. Yes.
24 THE CLERK: Your Honour, if I may interject. The
25 judicial case managers are now closed for the day.
26 THE COURT: Yes, I figured so. That's why we have to
27 put it to next week.
28 MR. WOLFE: So I think if Mr. Fox could be in 307 by
29 video. I don't really see why he needs to come
30 in.
31 THE ACCUSED: Okay.
32 MR. WOLFE: On the 9th, on Monday.
33 THE ACCUSED: Sure.
34 MR. WOLFE: What I will do --
35 THE ACCUSED: I have video on Monday in PoCo.
36 MR. WOLFE: Oh, sorry. Oh, it's -- but you -- video is
37 video, so it doesn't make any difference.
38 So 307. Could we do it in the afternoon?
39 That will give me some time to go to the JCM
40 office, check the court's calendar.
41 THE COURT: What date is that?
42 MR. WOLFE: That will be the 9th of March, Monday, 307
43 by video.
44 THE COURT: March 9th by video in the afternoon for
45 Mr. Fox to confirm the sentencing date.
46 MR. WOLFE: Yes.
47 THE COURT: All right.

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1 THE ACCUSED: I just want to clarify one point, though.
2 These other cases that have come up recently over
3 the past few months are all related to the same
4 probation order.

5 THE COURT: Yes.

6 THE ACCUSED: Okay. So it's not that I'm a criminal
7 that's going around committing a bunch of
8 unrelated crimes.

9 THE COURT: No, fair enough.

10 THE ACCUSED: It's all just a bunch of nonsense to keep
11 me in jail.

12 THE COURT: You may want to consider or get some legal
13 advice about how you want to proceed on those. I
14 mean, if we're going to wrap up this matter, you
15 might want to get some advice on how to proceed on
16 those other matters.

17 THE ACCUSED: Thank you.

18 THE COURT: Okay. Thanks, Mr. Fox. Thanks for your
19 help, Mr. Wolfe. I appreciate it. Thanks,
20 everyone. Sorry to keep you so late on a Friday
21 afternoon.

22
23 (PROCEEDINGS ADJOURNED TO MARCH 9, 2020, AT
24 2 P.M. TO FIX DATE)

25
26
27 Transcribers:

28
29 A. Wanczura: Start to Morning Recess
30 A. Pinsent: Morning Recess to End of Day
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recording apparatus, transcribed to
the best of my skill and ability.

A. Pinsent
Court Transcriber

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C. Jones
Court Transcriber

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A. Castle
Court Transcriber

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A. Wanczura
Court Transcriber