

COURT OF APPEAL

ON APPEAL FROM THE PROVINCIAL COURT OF BRITISH COLUMBIA,
FROM THE JUDGMENT OF THE HONOURABLE JUDGE N. PHILLIPS,
PRONOUNCED ON THE 19TH DAY OF AUGUST 2020, AND FROM THE
SENTENCE PRONOUNCED ON THE 19TH DAY OF AUGUST 2020.

REGINA

RESPONDENT

v.

PATRICK HENRY FOX

APPELLANT

TRANSCRIPT

Ministry of Justice, Solicitors for the Crown (Respondent)
Criminal Justice Branch, Criminal Appeals
6th Floor, 865 Hornby Street
Vancouver, B.C. V6Z 2G3
Phone: (604) 660-1126

David Layton, Q.C.

Patrick Fox, Appellant
Appearing on his own behalf

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Vancouver Registry

In the Provincial Court of British Columbia
(BEFORE THE HONOURABLE ASSOCIATE CHIEF JUDGE N. PHILLIPS)

Vancouver, B.C.
August 19, 2020

REGINA

v.

PATRICK HENRY FOX

PROCEEDINGS AT TRIAL AND SENTENCE

Crown Counsel:

C. Johnson

Appearing on his own behalf:

Patrick Fox

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Proceedings

1 Vancouver, B.C.
2 August 19, 2020
3
4 CNSL C. JOHNSON: Good morning, Your Honour. Chris
5 Johnson. I'm appearing for the Provincial Crown.
6 Calling the matter of Patrick Henry Fox.
7 THE COURT: Thank you. Just one moment.
8 Sir, I take it you are Mr. Fox?
9 THE ACCUSED: Yes, that's correct.
10 THE COURT: Thank you. And I understand, Mr. Fox, you
11 do not have a lawyer; is that correct?
12 THE ACCUSED: That's correct.
13 THE COURT: Thank you. And I'm going to go over some
14 information with you in just a moment, but I'll
15 hear briefly from the prosecutor first.
16 THE ACCUSED: Sure.
17 THE COURT: Thank you.
18 THE ACCUSED: Before he begins --
19 THE COURT: Yes.
20 THE ACCUSED: -- would either the court or Mr. Johnson
21 have a pen I can borrow?
22 THE COURT: That was one of the things I was going to
23 cover off, Mr. Fox, so thank you.
24 CNSL C. JOHNSON: I did have paper, if he would like
25 that, and I could probably --
26 THE COURT: Mr. Registrar, I think, has got a pen
27 there. Thank you.
28 CNSL C. JOHNSON: Mr. Registrar has a pen?
29 THE ACCUSED: I have paper. I just need a pen.
30 THE COURT: You've got paper? We can get you a pen.
31 Thank you.
32 CNSL C. JOHNSON: Would you like --
33 THE ACCUSED: No. Thank you.
34 THE COURT: Let me just confirm, Mr. Johnson, that the
35 Crown is ready to proceed. This matter is
36 scheduled for trial?
37 CNSL C. JOHNSON: Yes, the Crown is ready to proceed.
38 The Crown is calling one witness and Mr. Fox has
39 been provided with disclosure.
40 THE COURT: Good. Thank you.
41 Mr. Fox, I'm going to go over some
42 information with you. You can remain seated.
43 Some of this may be information that you've heard
44 in advance, some of it may not, but just bear with
45 me because I think it's important that you have a
46 sense of what's going to happen, then, with the
47 trial this morning.

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1 First of all, let me just tell you I know
2 nothing about this case. All that I've got is a
3 one-page document called the information that just
4 tells me what you're charged with. I have no
5 background knowledge whatsoever about the case or
6 about you. Just so you're clear on that. It's
7 the evidence that I'm going to hear in the course
8 of today's trial, that's the basis upon which I'll
9 make my decision whether there's a finding of not
10 guilty or guilty.

11 THE ACCUSED: Oh.

12 THE COURT: Not any background knowledge or anything
13 outside of the courtroom, just what we're going to
14 hear today.

15 The prosecutor, as you've heard, is Mr.
16 Johnson. He's sitting beside you. It is the
17 responsibility of the prosecutor to prove the
18 essential elements of the offences, the two
19 offences with which you're charged, beyond a
20 reasonable doubt. The clerk is here to assist me
21 opening the court, swearing witnesses, dealing
22 with the documents and marking exhibits. A
23 sheriff is also present to ensure that everyone in
24 the courtroom is safe.

25 There's added layers. Everybody's aware that
26 we're dealing with COVID-19 protocols in the
27 courtroom, so there may be things that we have to
28 do a little bit more slowly, a little bit
29 differently just to make sure that those things
30 are attended to and if you need any assistance in
31 that regard, you need hand wipes, gloves, a mask,
32 anything like that, you shouldn't hesitate to let
33 us know and particularly as we're dealing with
34 documents. There may be some electronic. There
35 may be paper documents. We'll just have to deal
36 with it a little bit more mindfully than we would
37 outside of the pandemic era.

38 When you're speaking to the court, you can
39 call me Your Honour. You should stand when you're
40 speaking while court is in session and if you
41 forget, it's not a big deal, but that's generally
42 the practice, Mr. Fox. You should address your
43 comments generally to the court and not to the
44 witness or to the other party.

45 And if you want to get my attention at any
46 point in time if you want to say something,
47 usually I'm looking fairly carefully, so if you

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1 just stand up or nod or put your hand up, that's
2 probably all you'll need to do to catch my
3 attention. If that doesn't work because I'm
4 perhaps typing something important at that point
5 in time, just perhaps make the indication again
6 and I'll -- I'm sure I'll see you and try to
7 respond right away.

8 In terms of the evidence, the prosecutor has
9 just indicated that there will be one witness for
10 the Crown. What I expect will happen shortly is
11 that the prosecutor may tell me just a little bit
12 by way of an opening about the case. That's not
13 evidence. It's just the evidence from the
14 witnesses on which I'll make my decision. And
15 then Mr. Johnson, I'm assuming, will have some
16 questions for their one witness.

17 At the end of that witness testifying when
18 Mr. Johnson's asking them questions, you'll be
19 given a chance then to ask questions in cross-
20 examination and that's why it's important to have
21 the paper and a pen for a number of reasons, but
22 one is to assist you in thinking about questions
23 for cross-examination.

24 When you're listening to the witness testify,
25 you might want to make some notes. Lawyers often,
26 if they're writing handwritten notes, will draw a
27 line down the centre of the page, jot a few things
28 down about what the witness is saying on one side
29 and the things on the other side that you might
30 want to follow up.

31 Just by way of a hypothetical example, if a
32 witness says, you know, the day -- say this is a
33 car accident case. The day of the car accident
34 was February 28th and it was snowing heavily, but
35 you remember that it wasn't snowing at all. In
36 fact, it was a sunny, dry day. You'll want to
37 make just a note, "Witness says it was snowing".
38 Go back and ask some questions about this.
39 Suggest it wasn't snowing and how could the person
40 possibly remember over the passage of time.

41 So, little things just to prompt you so when
42 I ask you if you have any questions for cross-
43 examination, it makes it a little bit easier
44 because you've got a bit of a note to yourself.
45 If that doesn't work and you need some time just
46 to think about it for a second or longer in terms
47 of the questions that you want to ask the witness,

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1 I'll give you that opportunity, but it's sometimes
2 a bit helpful also to have a bit of a note to that
3 effect. So, keep that in mind.

4 Notes are also helpful because at the end of
5 the case you'll be given a chance, as will the
6 prosecutor, to make closing submissions and
7 sometimes those notes are really helpful to refer
8 to in terms of what the evidence that I've heard
9 was, things that you want to highlight, and I'll
10 come back to that before we get to that stage a
11 bit more.

12 The microphones in the courtroom for the most
13 part, Mr. Fox, do not amplify, they just record.
14 We've got a digital recording system. So, from
15 time to time I may be asking somebody to speak up
16 a bit louder, and if you can't hear somebody,
17 don't hesitate to say, "I'm not able to hear the
18 person", because it's critical that everybody be
19 able to hear.

20 THE ACCUSED: Okay.

21 THE COURT: Similarly, if a person's speaking a little
22 bit too fast because we're trying to take notes,
23 then please don't hesitate -- if you're finding it
24 too fast, probably everybody else is as well, so
25 don't hesitate to say something. And I may just
26 ask a person, including yourself perhaps, to slow
27 down. It's not at all to be critical. It's so
28 that I can make sure I'm making a note of what's
29 going on.

30 My notes are really just to assist me.
31 They're not the recording device. There's that
32 separate recording device and I may need to
33 consult it, I may not, but I do try to take some
34 computer notes of what's going on in terms of the
35 witness testimony.

36 Just in terms of court sitting hours, Mr.
37 Fox, we -- the morning sessions goes to 12:30
38 roughly. Then we'll take a lunch break and start
39 up again at 2 o'clock and then carry on for the
40 afternoon. We finish up for the day usually about
41 4:30.

42 Let me just say, Mr. Fox, you do not need to
43 decide now whether you will testify or whether you
44 will call other witnesses on your behalf to
45 testify or whether you want to do both, and you
46 probably shouldn't tell me at this point in time.
47 It's not necessary for you to do that and there

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1 may be a strategic reason not to.
2 If you did intend to call other witnesses,
3 you would need to have them available today unless
4 something had gone awry, despite your efforts they
5 weren't here, and then you can tell me what's
6 happened and we can try to sort it out. Let me
7 just ask you, Mr. Fox, without you having to say
8 right now whether you intend to call evidence on
9 your own behalf, did you expect to have other
10 witnesses come and testify about the event on your
11 behalf today or not?
12 THE ACCUSED: I do not.
13 THE COURT: Okay, thank you. So, I won't say anything
14 more about that because that doesn't sound like
15 that's going to be an issue. Mr. Fox, I'm
16 assuming at an earlier stage in the process you
17 were probably advised that you did have the right
18 to have a lawyer represent you?
19 THE ACCUSED: Yes.
20 THE COURT: You're content, are you, today to proceed
21 without a lawyer assisting you; is that correct?
22 THE ACCUSED: Yes.
23 THE COURT: Okay, thank you. If over the course of
24 today's trial something comes up that you perhaps
25 were not anticipating that you would like to speak
26 to a lawyer, it may be possible to speak to an
27 out-of-custody or in-custody duty counsel lawyer
28 in the building today who's usually available.
29 Not always, but you can keep that in the back of
30 your mind.
31 Mr. Johnson mentioned a few moments ago that
32 he has provided, or the Crown has provided its
33 disclosure of the case against you. I take it you
34 got that. You've had a chance to look that over,
35 have you?
36 THE ACCUSED: I have, yes.
37 THE COURT: Do you have it with you today should you
38 need to refer to it?
39 THE ACCUSED: It was provided to me in electronic
40 format on a laptop --
41 THE COURT: Oh, okay.
42 THE ACCUSED: -- and I'm not able to bring the laptop
43 from the jail to the court. Now, in the other
44 matter that I was representing myself on, the
45 Crown would usually bring another laptop to the
46 court that had --
47 THE COURT: Okay.

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1 THE ACCUSED: -- the same disclosure material on it. I
2 was going to ask --
3 THE COURT: Okay.
4 THE ACCUSED: -- Mr. Johnson about that, because I may
5 need to refer to it while --
6 THE COURT: Okay.
7 THE ACCUSED: -- I cross-examine the witness.
8 THE COURT: Thank you. And I don't know, Mr. Johnson,
9 whether you have paper that might be of assistance
10 or --
11 CNSL C. JOHNSON: I -- I'm sure I could arrange for
12 that.
13 THE COURT: Okay.
14 CNSL C. JOHNSON: I hadn't -- it hadn't occurred to me
15 about the laptop issue, but why don't -- if we
16 proceed and then if Mr. Fox wants anything, I will
17 do my best to provide it.
18 THE COURT: Good. Okay, thank you. We can probably
19 find a workaround, I think then, Mr. Fox, and I'll
20 just invite you right now, as that comes up, let
21 me know --
22 THE ACCUSED: Okay.
23 THE COURT: -- and we'll take the steps necessary to
24 sort that out. Mr. Fox, just let me tell you a
25 little bit more about my role. In terms of the
26 process, as I said, I know nothing about this case
27 except the two counts that you're charged with and
28 only in the barest form. So, my job is really
29 that of a referee. I'm here to make sure the
30 process is fair, that there's a fair trial, that
31 the rules are followed.
32 Part of that responsibility on my part is to
33 make sure that you have a fair trial so that the
34 process is fair. I can't enter the fray and
35 become your lawyer, obviously. That's not
36 appropriate, but I want to apply the legal
37 principles in a fair manner.
38 I don't have any issue -- from to time if you
39 have questions about the process, I'd rather you
40 just ask them and we'll do our best to sort them
41 out. If the question is one that I can't answer
42 because it's asking me as a judge to give you
43 legal advice, I'll let you know, but I'd rather
44 you ask the question.
45 There's no inappropriate question. I may
46 simply be able to say I can't answer it, but I'm
47 going to do my best. So, if things come up, don't

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1 wait. Get my attention and we'll try to sort it
2 out. It's always better to deal with it as soon
3 as it arises than to let things kind of boil over
4 until it becomes a problem.

5 I do have an obligation to control the flow
6 of the case and if at some point I think, well, a
7 question is inappropriate, I'll let you know, but
8 that's unlikely in my experience.

9 I made mention already that sometimes it's
10 hard to hear witnesses, sometimes people speak too
11 fast. Sometimes it's simply a question of the way
12 something was worded being difficult to
13 understand. If that's the case, it's appropriate
14 for me as the judge to say, "Can you rephrase the
15 question?" or either you or Mr. Johnson just are
16 not clear about the question or didn't think it
17 was worded to the point where the witness could
18 really understand it, not perhaps intentionally,
19 although that's possible, but just because the
20 wording is a bit awkward. If you let me know,
21 we'll try to sort that out.

22 Nobody's trying to use trickery here. It's
23 important for me to get the evidence and make sure
24 that the witness understands the question as it
25 gets -- as it gets asked. When you're cross-
26 examining the witness, Mr. Fox, there may be
27 things that I think I'll want to ask the witness
28 about and I'll keep a mental note of that. You
29 may ask them in cross-examination. If you finish
30 your cross-examination and there is an area that I
31 think should be explored, in fairness to you and
32 to the process I may ask that. It's not a
33 criticism of you. As a judge I need to perhaps do
34 that. It may or may not occur.

35 THE ACCUSED: Mm-hmm.

36 THE COURT: Mr. Registrar, can I just confirm that not
37 guilty pleas have been recorded on both Counts 1
38 and 2 on the information?

39 THE CLERK: Your Honour, I don't have an indication on
40 the record --

41 THE COURT: Okay, thank you.

42 THE CLERK: -- [indiscernible/overlapping speakers].

43 THE COURT: Mr. Fox, with that in mind I'm just going
44 to in a formal sense read you both counts on the
45 information and just confirm after I've done that
46 that you understand them and just ask you how you
47 plead. So, Count 1 on this information is an

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1 allegation that between March 7th and March 21st,
2 2019, at Vancouver, B.C., while bound by a
3 probation order made by the Honourable Madam
4 Justice Holmes in the Supreme Court of British
5 Columbia on November 10th, 2017, did without
6 reasonable excuse fail to comply with such order
7 by making publicly available the website,
8 www.desicapuano.com, contrary to s. 733.1 of the
9 *Criminal Code*. Do you understand that charge, Mr.
10 Fox?

11 THE ACCUSED: I do.

12 THE COURT: And with respect to that charge, how do you
13 plead, guilty or not guilty?

14 THE ACCUSED: Not guilty.

15 THE COURT: Thank you. And with respect to Count 2,
16 same process to follow, Mr. Fox. A very similar
17 allegation. Between the same days, March 7th and
18 21st, 2019, in Vancouver, B.C. the same order of
19 Madam Justice Holmes, of the Supreme Court from
20 November 10th, 2017, another allegation of breach
21 of probation by failing to -- excuse me, without
22 reasonable excuse failing to comply with such an
23 order by accessing the internet or any computer or
24 cellular network. Again, Mr. Fox, do you
25 understand that charge?

26 THE ACCUSED: I do.

27 THE COURT: And with respect to that count, how do you
28 plead, guilty or not guilty?

29 THE ACCUSED: Not guilty.

30 THE COURT: Thank you. So, not guilty pleas formally
31 recorded. Mr. Johnson, I see the Crown's
32 proceeding by indictment on this matter as well.
33 Is that your --

34 CNSL C. JOHNSON: Yes.

35 THE COURT: -- understanding? Thank you.

36 CNSL C. JOHNSON: But it is an absolute jurisdiction --

37 THE COURT: Right. Thank you.

38 So, Mr. Fox, just going back to the two
39 charges in front of the court, then, you can only
40 be convicted of a charge if the Crown proves each
41 essential element of the charge against you beyond
42 a reasonable doubt. You're entitled to the
43 presumption of innocence. The essential elements
44 of the offences are set out in that information.
45 For example: your identity; the jurisdiction,
46 Vancouver, British Columbia; the existence of that
47 probation order; proof that you were bound by it;

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1 that there was a breach of it and no reasonable
2 excuse for the breach.

3 We'll go over that in a bit more detail later
4 on, but the two counts are very similar in terms
5 of those aspects that the Crown has to prove in
6 the case against you.

7 The phrase "reasonable doubt" has sparked a
8 tremendous amount of legal analysis, but let me
9 just say right now it does not require proof to an
10 absolute certainty or beyond any doubt, nor is it
11 an imaginary or frivolous doubt, but it does
12 involve a significant level of proof far beyond
13 the balance of probabilities which is often
14 sometimes -- or often referred to as more likely
15 than not which we apply in civil cases.

16 And that burden on the Crown is not to be
17 based upon sympathy or prejudice. Rather, it's to
18 be based on reason and common sense. It's
19 logically derived from the evidence I'm going to
20 hear in this trial or the absence of evidence.
21 And as I said earlier, I'll make my decision on
22 the basis of the evidence I hear in this case and
23 that is primarily the witnesses as they testify
24 and any documents or exhibits that are introduced
25 and admitted in court.

26 If you do call evidence later on and you wish
27 to submit a document or something in addition to
28 your testimony, you can bring that up at the time
29 and we'll deal with it and go through the process.
30 You'll see, perhaps, the prosecutor doing that
31 earlier.

32 Mr. Fox, a couple more things about cross-
33 examination. You've already heard the prosecutor
34 say he's going to call one witness and you'll be
35 given a chance to ask that witness things in
36 cross-examination. It's important to bear in mind
37 that the cross-examination has to be relevant. It
38 shouldn't be argumentative, but it can certainly
39 be probing in terms of the issues that are
40 necessary for me to decide.

41 If you are contemplating testifying in your
42 defence later on in the trial and you're intending
43 to say something about your defence that the
44 witness may not have spoken about when the
45 prosecutor asked the witness questions or when you
46 cross-examine the witness questions, you'll want
47 to think about whether you need to give that

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1 witness a chance to comment.

2 For example, and I'll try to be a bit more
3 specific here, if -- and to go back to this car
4 accident example, so it's not related to this
5 dispute at all. If you're absolutely certain that
6 it was sunny that day and the witness said it was
7 snowing and it's important to the case -- say, for
8 example, the issue might be whether the roads were
9 slippery at the time or there was good visibility.

10 And you're going to call, perhaps, just to
11 give you a real hypothetical, somebody from
12 Environment Canada who will have records to say it
13 wasn't snowing that day, it was in fact a warm day
14 on February 28th and sunny. You should give the
15 witness in cross-examination a chance to comment
16 on that if it's critical to your case.

17 For example, you can say to the witness, "You
18 told the court in your direct evidence that it was
19 snowing that day. I suggest to you that it was in
20 fact a sunny day". And the witness may say, "I
21 disagree". You might want to go at it a bit more
22 and say, "And I'm going to produce evidence to
23 show that it was in fact a remarkable early spring
24 day in Vancouver".

25 Give the person one more time a chance to
26 respond, because when you testify and say
27 something different, that will allow me to
28 consider your evidence in a much more kind of
29 whole way if the person was given a chance to
30 respond. There isn't a need necessarily to do
31 that on minor matters, but if it's something that
32 really is critical to your evidence if you later
33 call evidence, you should keep that in mind
34 otherwise the prosecutor may say, "The witness
35 wasn't given a chance to comment on that. You
36 should take what Mr. Fox said perhaps with -- give
37 it less weight". So, keep that in mind.

38 THE ACCUSED: Okay.

39 THE COURT: Just bear with me again for a moment.

40 In terms of cross-examination, that example I
41 just gave you really goes to the substance of the
42 witness's testimony, but there may be things,
43 Mr. Fox, that are not so much about the substance
44 of the person's testimony. Say, for example, a
45 witness is a little bit kind of casual or flippant
46 about their evidence. You could perhaps not touch
47 that in your cross-examination and simply ask me

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1 in your closing argument to -- just to say to me,
2 "Well, Your Honour shouldn't perhaps give that
3 witness much weight because they were not
4 prepared, they were pretty casual, didn't take the
5 process seriously".

6 So, there may be other things that don't
7 necessarily go to the substance of the testimony
8 that you will want to keep in mind in your closing
9 arguments and as you're cross-examining a witness.
10 It may be that the witness testifies about
11 something and you think, well, how can he possibly
12 remember that? It happened, you know, 18 months
13 ago or 24 months ago. You might want to ask the
14 witness in cross-examination about that. "Did you
15 make any notes? Have you refreshed your memory
16 from notes? How can you possibly recall that?"

17 Keep in mind you might get an answer you
18 don't like, so you may not want to ask the
19 question. You know whether you've got a witness
20 statement from somebody, so there may be some
21 basis upon which you want to go down that path,
22 but it's not just the substance necessarily of a
23 witness's testimony.

24 It may be about their ability to recall, how
25 accurate they are, and how truthful they are, and
26 those can be very different things. A witness can
27 be trying very hard to be truthful with the court,
28 but actually have a very poor memory of something.
29 So, not necessarily trying to mislead the court,
30 but their basis for being able to say what they're
31 saying today may be based upon, you know, passage
32 of time, failing memory, or they simply didn't
33 record anything at the time in terms of helping
34 them prepare for court and being confident in
35 their testimony.

36 THE ACCUSED: Okay.

37 THE COURT: And a witness may also have a bias. It
38 might be that a person is involved, say for
39 example, in a corporate dispute or, say for
40 example, that car accident case might be a better
41 one to stay with. Perhaps it's an ICBC adjuster.
42 They might have an interest in the outcome of the
43 case financially. Now, they may still be telling
44 the truth, but you might want to explore whether
45 that is causing them to slant their evidence a
46 bit. And you can make that argument in your
47 closing as well, too.

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1 And just to go back to the closing, then. At
2 the end of the Crown's case after their single
3 witness has testified and you've been given a
4 chance to cross-examine that person, Mr. Fox, I'm
5 then going to ask you whether you want to call
6 evidence and it's only at that point in time that
7 you have to then make a decision.

8 Think about when you're coming to that
9 decision whether the Crown has met the burden on
10 them of proving the case beyond a reasonable
11 doubt. If you think that they have not done
12 something to prove each element of the offence
13 against you -- say, for example, nobody told the
14 court where this incident occurred and that
15 sometimes happens. People forget to say it
16 happened in Kamloops or it happened in Kelowna or
17 whatever.

18 You may ask the court to come to a verdict --
19 a directed verdict without having to choose to
20 call evidence. That's probably unlikely, but it
21 is something to keep in mind. There are some
22 technical things that flow from that depending on
23 the type of verdict that you're asking me to draw
24 and I can come back to that later if it arises as
25 to whether or not you can still testify once
26 you've made that decision. Sometimes it precludes
27 you from deciding to testify later on, but as I
28 said, we can come back to that.

29 And just one last thing there, Mr. Fox,
30 before we start hearing evidence. As I've said,
31 both sides will be given an opportunity to make
32 closing arguments at the end. You can't tell me
33 anything new in your closing argument, nor can Mr.
34 Johnson. It has to be based upon the evidence
35 that I've heard in the course of the hearing.

36 So, if somebody starts to add something, then
37 I'll simply say, "You can't tell me that. There's
38 no evidence. You have to stick to the evidence in
39 terms" -- and that can be from you, it can be from
40 other witnesses, it can be just based upon the
41 Crown's case.

42 THE ACCUSED: Right.

43 THE COURT: And I have to make a separate verdict, just
44 so it's really clear here, on each of the counts.

45 There may be other things, some other legal
46 issues that come up, Mr. Fox, over the course of
47 the trial in which case I'll do my best just to

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1 pause, explain the legal issue behind them,
2 perhaps I'll need to make a ruling on the
3 admissibility of evidence and the like, and then
4 we'll carry on.

5 One -- sorry, one point on that is oftentimes
6 there will be evidence in front of the court that
7 is hearsay. What that means is that a witness is
8 telling me something that either they've been told
9 by another person or something that's happened out
10 of the courtroom. So, they're relying on
11 something that's kind of second-hand or third
12 party. Generally speaking, that's not admissible.
13 It has to be the witness's own personal knowledge
14 about the event.

15 There are some exceptions to that. There may
16 be a case here where a witness will testify about
17 something that is second-hand knowledge or
18 happened out of the courtroom, but they're just
19 doing it to help me understand the flow of the
20 story, not to prove the truthfulness of that
21 particular part of their testimony.

22 So, it's admissible for that purpose, just to
23 follow the story, the narrative as we call it, but
24 I'm not going to rely on it as to whether it's
25 truthful or not in terms of assessing and coming
26 up with my verdict on each of the counts. I will
27 do my best to catch that if somebody's saying
28 something they shouldn't that's inadmissible
29 hearsay and either you or Mr. Johnson may say,
30 "Well, I don't want you to rely on it for its
31 truthfulness. I'm leading it so it can help
32 understand the story", in which case it's probably
33 admissible for that limited purpose, and there are
34 some exceptions to that in terms of paperwork. We
35 can get into that if it -- if and when it arises.

36 Mr. Fox, that's a lot to absorb I appreciate
37 at the outset. Do you have any questions about
38 what I've covered with you in the last 15 minutes
39 or so?

40 THE ACCUSED: No, I don't. Thank you. I'm quite clear
41 on it.

42 THE COURT: Okay. Do you have any questions separate
43 from that?

44 THE ACCUSED: That I do.

45 THE COURT: Okay.

46 THE ACCUSED: Usually there's a jug of water out here.
47 I see there isn't now.

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1 THE COURT: And that's because of the pandemic and we
2 can probably get a bottle of water provided.
3 THE ACCUSED: That would be great if we could do that.
4 It's just my mouth is a little dry.
5 THE COURT: Yes. It is dry in here because we turned
6 up the circulation, I think. I don't know, Mr.
7 Registrar, if that is something we could get
8 addressed?
9 THE CLERK: I'll message my supervisor --
10 THE COURT: Thank you.
11 THE CLERK: -- [indiscernible/overlapping speakers].
12 THE ACCUSED: Thank you.
13 THE COURT: Anything else, Mr. Fox?
14 THE ACCUSED: No.
15 THE COURT: Mr. Johnson, anything else from your
16 perspective, then, before we start the evidence
17 for the Crown?
18 CNSL C. JOHNSON: Perhaps two bottles of water.
19 THE COURT: Two bottles of water? Thank you.
20 And let me just ask, Mr. Johnson, in terms of
21 the document disclosure, did you want to try to
22 sort that out now before we get started if we
23 stood down for a moment, or would it be better --
24 CNSL C. JOHNSON: I think it would be better if -- Mr.
25 Fox, who I've dealt with on a number of occasions,
26 is a very bright fellow and I think there's no
27 dispute about that. I think he likely knows the
28 evidence quite well. But again, having said that,
29 if there is anything that he decides that he wants
30 a paper copy of, I think then I could make that
31 inquiry.
32 THE COURT: Good. So -- and, Mr. Fox, we will take a
33 morning break at some point as well and we can
34 stand down also for that sharing of paperwork to
35 occur. So, let me know or let Mr. Johnson know if
36 things are coming up and you need to access that
37 paperwork, and particularly at the morning break
38 perhaps the sheriff can just -- when I stand down,
39 he'll just give you a moment just to convey to
40 Mr. Johnson if there are items that you'd like to
41 see and he can perhaps make arrangements over the
42 break to make sure you got those.
43 THE ACCUSED: Sure.
44 THE COURT: And if you need a bit of time to review
45 them, we'll make sure that happens as well. Thank
46 you.
47 THE ACCUSED: Thank you.

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1 THE COURT: Case for the Crown, then. Thank you.
2 CNSL C. JOHNSON: Thank you, Your Honour. So, the
3 first order of business is that there was a -- Mr.
4 Fox appeared in Supreme Court on other matters,
5 was convicted of some of those matters by
6 Associate Chief Justice Holmes, and was sentenced
7 on November 10th of 2017 to some jail and three
8 years of probation.
9 So, the first thing I'm required to do is
10 obviously prove that Mr. Fox is on probation. I
11 believe that he admits that, but I'm not a hundred
12 percent certain on that. And so, what I've done
13 is I've filed with Mr. Clerk the record of
14 proceedings from Supreme Court that would indicate
15 that, and particularly page 6 of that document.
16 And I do also have a copy of the reasons for
17 sentencing of Madam Justice Holmes should that be
18 necessary, and I do have a copy for Mr. Fox if he
19 wants. I suspect he probably has that.
20 THE ACCUSED: I have that here.
21 THE COURT: Okay, thank you.
22 THE ACCUSED: Will I need to refer to it in these
23 proceedings, though? Will you be referring to it?
24 CNSL C. JOHNSON: I won't be referring to it except --
25 perhaps you could assist here. What I'm -- in the
26 process of establishing that you were, in fact on
27 probation --
28 THE ACCUSED: Mm-hmm.
29 CNSL C. JOHNSON: -- at the time and I think about
30 three or four appearances ago you indicated that
31 you agree with that, that you were on probation.
32 I'm required to prove that. So, if you admit it,
33 then I don't need these reasons.
34 THE ACCUSED: I can admit that I was on probation at
35 the time specified in the charges in March of
36 2019.
37 THE COURT: Thank you.
38 CNSL C. JOHNSON: Thank you. Given that, then, Your
39 Honour, I will not file the reasons, but you do
40 have before you the record of proceedings.
41 THE COURT: Yes. Thank you.
42 CNSL C. JOHNSON: And that having taken place, then,
43 I'm prepared to call the only witness that the
44 Crown is calling, which is Detective Constable
45 Jennifer Fontana.
46 THE COURT: Thank you.
47 CNSL C. JOHNSON: I could just step out and --

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1 THE CLERK: Sure.
2 THE COURT: Certainly.
3 THE CLERK: Thank you.
4 THE COURT: Thank you.
5 CNSL C. JOHNSON: I gather the paging system isn't
6 working.
7 THE COURT: Okay, thank you.
8
9

10 **JENNIFER FONTANA**
11 a witness called for the
12 Crown, affirmed.

13 THE CLERK: Please state your name for the record and
14 spell your last name and your badge number.
15 A Yes. It's Jennifer Fontana, F-o-n-t-a-n-a, and my
16 badge number is 2671.
17 THE COURT: Thank you.
18

19 **EXAMINATION IN CHIEF BY CNSL C. JOHNSON:**
20

21 Q You are detective constable; is that correct?
22 A Yes, Your Honour.
23 Q And you've been with the Vancouver Police
24 Department for the past 12 years?
25 A Yes.
26 Q And I gather that you're currently in the Domestic
27 Violence and Criminal Harassment Unit of the
28 Vancouver Police Department?
29 A Yes, Your Honour.
30 Q And how long have you been in that unit?
31 A I've been in that unit for the past two and a half
32 years, Your Honour.
33 Q Now, Detective Constable Fontana, do you know a
34 person named Patrick Henry Fox?
35 A I do.
36 Q And could you tell the court, please, how it is
37 that you came to know Patrick Henry Fox?
38 A I became aware of Mr. Fox when I was assigned a
39 criminal harassment investigation in March of
40 2019.
41 Q And so, that's when you first heard of Mr. Fox.
42 Did you ever meet him personally?
43 A I did, yes. I interviewed him June 24th, 2019.
44 Q And so, would it be fair to say that you've known
45 Mr. Fox, then, for -- since June of 2019?
46 A Yes, Your Honour.
47 Q And you would be able to identify Mr. Fox, would

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1 you?
2 A I would, Your Honour.
3 Q Okay. Could you look around the courtroom and
4 indicate to Her Honour whether Mr. Fox is present?
5 A He is, Your Honour.
6 Q Thank you. Could you please point him out?
7 A Yeah, he's sitting in the red shirt there, Your
8 Honour.
9 THE COURT: The indication noted for the record.
10 CNLSL C. JOHNSON:
11 Q Now, you indicated that you were assigned a
12 criminal harassment investigation in this matter;
13 is that correct?
14 A Correct.
15 Q And was that in relation to a specific website?
16 A It was. It was the www.desicapuano.com, Your
17 Honour.
18 Q And is that d-e-s-i-c-a-p-u-a-n-o?
19 A Correct.
20 Q And are you aware if there is a person by the name
21 of Desirée Capuano?
22 A Yes, Your Honour, that is the ex-spouse of Mr.
23 Fox.
24 Q And have you met or spoken to Ms. Capuano?
25 A I've never met her in person, but I have spoken
26 with her on the phone.
27 Q Now, you are, I gather, aware that Mr. Fox was
28 sentenced in 2017 and as a result of that is on
29 probation out of a Supreme Court order?
30 A Yes, Your Honour.
31 Q And you're aware that there are conditions of that
32 order that bring you here to court today?
33 A Yes.
34 Q And are you able to tell Her Honour what those
35 conditions are?
36 A Yes. They are making public the website
37 www.desicapuano.com and also accessing the
38 internet.
39 Q Now, you indicated that you were assigned to an
40 investigation in March of 2019. Were you the
41 person responsible for investigating whether
42 Mr. Fox committed breaches of this probation
43 order?
44 A I was, Your Honour.
45 Q And could you tell the court what you did first in
46 that regard with respect to your investigation?
47 A Yes. The first step I took was to see if there

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1 actually was a website by the name of
2 www.desicapuano.com that was made public, and I
3 went onto our internet at the police station and I
4 was able to, through a Google search, find it
5 quite easily.
6 Q All right. And you were able to access that
7 website?
8 A I was, Your Honour.
9 Q And are you able to tell us the date on which you
10 did that?
11 A March 18th, 2019, Your Honour.
12 Q And have you subsequently followed up on that to
13 see whether that website is still in existence?
14 A I have, Your Honour. I did it quite frequently
15 throughout the investigation and I also went on
16 there this morning before I came here to see if it
17 was still active, and it was.
18 Q And when you say active, it would be in your
19 experience active and available for the public to
20 view?
21 A Correct, Your Honour.
22 Q Now, with respect to Mr. Fox's sentence in 2017,
23 you're aware that some of it involved jail and
24 some of it involved probation?
25 A Correct, Your Honour.
26 Q And you're aware that at some point in time he was
27 released from jail and then was on probation?
28 A Correct.
29 Q By the time you dealt with Mr. Fox in June of
30 2019, where was he located?
31 A He was at the North Fraser Pretrial Centre, Your
32 Honour.
33 Q And that was with respect to other matters that
34 are not before the court; is that correct?
35 A Correct.
36 Q Now, with respect to the website
37 www.desicapuano.com, you've viewed it, have you?
38 A I have, Your Honour.
39 Q And are you able to just very briefly tell us the
40 gist of that website?
41 A Yes. There's quite a bit of information on there.
42 Most of it is very -- is about Ms. Capuano. It
43 states her address, her phone number, her email,
44 and depicts her in --
45 THE COURT: Sorry, just one moment.
46 A Yes. My apologies.
47 THE COURT: Thank you. Go ahead.

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1 A It depicts her in a very negative light. There's
2 just very negative postings about her and her
3 personal life, including the men that she dates,
4 arrest reports of those men, her own arrest
5 reports. There's pictures of her home, the
6 inside, the outside, and there's also -- all of
7 the information or documents from the trial in
8 2017 have all been added on there, including audio
9 recordings of interviews, audio recordings of the
10 trial itself, certain testimonies, as well as all
11 the police reports, notes of police officers.
12 It's quite an overwhelming amount of information
13 that's on there, Your Honour.

14 CNSL C. JOHNSON:

15 Q To your knowledge has that website ever been shut
16 down during the period of time that you've been
17 involved with this matter?

18 A It was, Your Honour. I was able to go through the
19 hosting provider GoDaddy and I was able to have
20 the website shut down for 90 days. Unfortunately,
21 that's the longest period of time they will shut
22 it down without a judicial authorization and they
23 will not accept a Canadian judicial authorization.
24 They require an American one. So, I have not been
25 able to obtain one of those yet.

26 Q Now, Detective Constable Fontana, did you ever
27 receive mail from Mr. Fox?

28 A I did, Your Honour.

29 Q And in particular, did you receive a letter from
30 Mr. Fox that was dated June the 6th of --

31 A Yes, I did.

32 Q -- 2019?

33 A Yes, I did.

34 Q And that is a four-page handwritten letter?

35 A Correct.

36 CNSL C. JOHNSON: And I can provide Mr. Fox with a copy
37 of it.

38 THE ACCUSED: Thank you.

39 CNSL C. JOHNSON:

40 Q That letter you've brought to court, have you?

41 A I did, Your Honour.

42 Q And it's dated June the 6th of 2019 and it's
43 addressed to you; is that correct?

44 A It is, Your Honour.

45 Q And it has a subject heading which says,
46 "Investigation into Patrick Fox, Desicapuano.com
47 website"; is that correct?

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1 A Yes, Your Honour.
2 THE ACCUSED: Thank you.
3 CNSL C. JOHNSON:
4 Q And your belief is that Mr. Fox authored that
5 letter --
6 THE ACCUSED: Oh, thank you.
7 CNSL C. JOHNSON:
8 Q Authored that letter and had it mailed to you from
9 the jail in Port Coquitlam; is that correct?
10 A Yes, Your Honour.
11 Q With respect to that letter, I'm going to ask you
12 another question which is did you ever go to see
13 Mr. Fox to speak to him?
14 A I did, yes, June -- I believe it was June 24th,
15 2019.
16 Q And again, that was at the jail in Port Coquitlam;
17 is that right?
18 A Correct.
19 Q But one other question before I move on to that.
20 When you accessed the website,
21 www.desicapuano.com, you indicated that you did
22 that from the police station; is that correct?
23 A Correct.
24 Q And that was the police station -- the Vancouver
25 police station?
26 A Correct, yes. The station located at 3585
27 Graveley Street in Vancouver.
28 Q That's in the city of Vancouver, province of
29 British Columbia?
30 A It is.
31 Q Now, sorry, going back to meeting with Mr. Fox,
32 you indicated that you did so on June the 24th of
33 2019?
34 A Yes.
35 Q And on that occasion did you take a letter, the
36 letter that you have with you, dated June the 6th?
37 A I did, Your Honour.
38 Q And you did speak to Mr. Fox?
39 A Yes, I did.
40 Q And did you advise him --
41 CNSL C. JOHNSON: And, Your Honour, I don't know
42 whether Mr. Fox takes issue. I'm not leading a
43 statement from him, but I am leading some
44 conversation, and so I can go through the
45 formalities of that.
46 THE COURT: Thank you. I think perhaps we should and
47 let me just take a moment just to explain this a

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1 bit further to Mr. Fox. Give me one moment.
2 CNSL C. JOHNSON: I should say, Your Honour, if it
3 helps, what I would seek to adduce from the
4 witness is that she met with Mr. Fox, he admitted
5 that he authored the letter and, furthermore,
6 admitted that he authored the website
7 www.desicapuano.com.
8 THE COURT: Okay. Thank you.
9 Mr. Fox, when the prosecution seeks to lead
10 statements in any form that are made by the person
11 who is charged and in front of the court, you in
12 this instance, typically speaking a judge will
13 declare a trial within a trial, you may have heard
14 the phrase voir dire, so that the court can assess
15 the admissibility of the statement.
16 And there are a number of things that the
17 court looks at, but primarily to determine whether
18 the statement was voluntary and whether it
19 complies with certain *Charter* rights that a person
20 is entitled to.
21 If the Crown wants to use some of the
22 statements that you made to Constable Fontana when
23 she met with you back on June 24th, 2019, I have
24 to assess their admissibility on that basis. The
25 Crown has to prove those things beyond a
26 reasonable doubt. And just to be clear here,
27 voluntary in the sense means that the police did
28 not make any threats, suggesting things would go
29 worse if you did not make a statement, or promise
30 that things would go better if you did make a
31 statement.
32 In addition, the Crown must prove that you
33 knew what you were saying when you made the
34 statements, so your mind was aware of what was
35 going on, essentially, and as I said, without any
36 of your *Charter* rights being breached.
37 Now, you may not take issue with this. It
38 may be best that we declare a voir dire. Mr.
39 Johnson can ask the officer those questions. If
40 you have some questions that you would like to ask
41 in that mini trial of the officer, you can about
42 the issues of voluntariness and any *Charter* issues
43 that might arise.
44 For example, you might want to ask whether
45 you were told that you could speak with a lawyer
46 or have the availability to speak with somebody
47 from Legal Aid. You could be asking questions or

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1 you could ask questions about whether there was
2 some hope that things would go better that was
3 held out to you if you spoke with the officer, or
4 some threat made to you if you didn't speak to the
5 officer.
6 If, however, you don't take issue with any of
7 those things, if you agree there were no threats,
8 promises or inducements made and that there was no
9 disregard or violation of your *Charter* rights, it
10 may not be necessary to hold a voir dire. Lawyers
11 often say on behalf of their client, "It's not
12 necessary to hold a voir dire, I don't take any
13 issue with the fact that it was my client who
14 spoke with the officer, that there was no issue
15 with respect to the voluntariness of their
16 conversation in the statement taken, and no issue
17 with respect to any *Charter* rights being
18 breached".
19 But because you don't have a lawyer, it might
20 be prudent, Mr. Fox, for me to declare that mini
21 trial and we can briefly hear the officer's
22 testimony. I don't know if you have any thoughts
23 on what you would like to see happen at this point
24 in time, but go ahead if you do.
25 THE ACCUSED: Well, based on what Mr. Johnson had said,
26 that he's seeking from this -- I would have no
27 issue with those --
28 THE COURT: Okay.
29 THE ACCUSED: -- with those issues. Sorry, I don't
30 want to use the word "issue" twice in that
31 sentence. I would have no issue with the
32 information that he's seeking.
33 THE COURT: Okay. With that in mind, then, I'd be
34 satisfied we don't need to enter into a voir dire
35 having explained that process to Mr. Fox --
36 THE ACCUSED: Thank you.
37 THE COURT: -- and his comment to the court just now.
38 So, go ahead now, Mr. Johnson. You can carry on.
39 CNsl C. JOHNSON: Thank you, Your Honour.
40 Q Detective Constable Fontana, when you met with Mr.
41 Fox on June the 24th of 2019, did you advise him
42 that he had a right to speak to counsel before he
43 talked to you?
44 A I did, Your Honour.
45 Q And did he have a response to that?
46 A He declined, Your Honour.
47 Q And did he indicate whether he wished to talk to

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1 you?
2 A He did. He stated that he would be willing to
3 speak with me.
4 Q And did you advise him that he wasn't required to
5 speak to you?
6 A I did, Your Honour.
7 Q And did you have a discussion with him about the
8 conversation being recorded?
9 A I did, Your Honour. He actually asked me if our
10 conversation would be recorded, and I advised him
11 that it would, and he was pleased by that.
12 Q And just very briefly, did you promise him
13 anything in return for talking to you?
14 A I did not, Your Honour.
15 Q Did you offer him any favours?
16 A No, I did not.
17 Q Did you threaten him in any way?
18 A Not at all, Your Honour.
19 Q How long did you talk to Mr. Fox for on this
20 occasion?
21 A I believe it was about 20 or 25 minutes, Your
22 Honour.
23 Q And did you produce the letter that I've asked you
24 about to Mr. Fox?
25 A I did.
26 Q And you've brought a copy of that letter with you?
27 A Yes, Your Honour.
28 CNSL C. JOHNSON: Your Honour, I'm seeking to file that
29 letter as Exhibit 1 on this trial and I've
30 provided Mr. Fox with a copy of it.
31 THE COURT: Mr. Fox, again just because there are legal
32 steps here to be followed, the court has to be
33 satisfied that anytime an exhibit, paperwork or
34 otherwise is asked to be marked as an exhibit
35 number, because then it becomes something I can
36 consider in reaching my verdict on each one of the
37 counts, I've got to be satisfied that the document
38 in this case is legally admissible.
39 So, the Crown has to prove here -- there are
40 a number of things, that this witness has some
41 personal knowledge of it because she didn't author
42 it, that's clear, who authored it, how she knows
43 that, that it's relevant to the case at hand.
44 You're entitled to object to its admissibility now
45 and tell me why you think it's not admissible and
46 then I'll rule on that.
47 If I rule against you, then I'll mark it as

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1 an exhibit. If you agree it should be an exhibit,
2 that's fine, we don't need to go through this
3 process, but you're entitled to tell me that you
4 don't agree and why and I'll sort out the legal
5 issue. If I do, even after the legal issue is
6 argued, mark it as an exhibit, that doesn't end
7 the matter because in the closing argument it is
8 still open to both sides to ask the court to use
9 that letter for certain purposes.

10 And Mr. Johnson may say it's important in
11 terms of proving the Crown's case against you and
12 here's why, and perhaps draw to my attention
13 certain parts of that letter. You may say, "Well,
14 that interpretation isn't clear on the letter".
15 Even though it perhaps has been marked as an
16 exhibit and it's been ruled to be admissible, you
17 may say it doesn't really help the Crown and
18 here's why because it's -- you know, maybe it's
19 ambivalent or equivocal, all those things.

20 So, what we talk about is threshold
21 admissibility and ultimate reliability at the end
22 of the case. So, those are -- those are different
23 things. One doesn't stop you at the end of the
24 day from arguing what I should make of the letter
25 is essentially what I'm saying. With that in
26 mind, Mr. Fox, again the next question is do you
27 have any issue with the court marking that letter
28 as Exhibit 1 in this trial, as an admissible piece
29 of evidence?

30 THE ACCUSED: I do not.

31 THE COURT: Okay, thank you. Exhibit 1.

32 CNSL C. JOHNSON: Thank you.

33 A Do you want it out of the plastic or in the
34 plastic?

35 THE CLERK: You can keep it in the plastic.

36 A Okay. Would Your Honour like to see it?

37 THE COURT: After you've marked it is fine. Thank you.

38

39 **EXHIBIT 1: Handwritten letter from Patrick**
40 **Fox to Detective Constable Fontana dated June**
41 **6, 2019, 4 pages**
42

43 CNSL C. JOHNSON:

44 Q With respect to the letter that's now been marked
45 as Exhibit 1, you've read that letter?

46 A I have, Your Honour.

47 Q And did that letter contain any subject matter

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1 when you read it that related to the charges that
2 are here before the court today?
3 A It did, Your Honour.
4 Q And when you reviewed that letter, did it -- what
5 could you tell us about what it said regarding the
6 website www.desicapuano.com?
7 A Your Honour, in the letter Mr. Fox states that he
8 is the creator of the website and that he demands
9 to be charged with criminal harassment because if
10 he was charged with running the website in 2017
11 and it was deemed criminal harassment, that it
12 should also be deemed criminal harassment in 2020.
13 Q And you, I gather -- I think you've already
14 indicated this, but you showed that letter to Mr.
15 Fox when you visited him on June the 24th?
16 A Yes, Your Honour.
17 Q And did he indicate anything to you about whether
18 he was the author of that letter?
19 A He actually asked me when I got there if I had
20 received his letter and I told him I had and I
21 gave him the letter that I had received and
22 allowed him to review it before speaking with me,
23 and he reviewed it and said -- while he was
24 reading it commented, "Oh, yes", and then handed
25 the letter back to me.
26 Q And with respect to your discussion with Mr. Fox
27 generally on June the 24th, 2019, did he indicate
28 to you whether he was, in fact, operating the
29 website www.desicapuano.com?
30 A Yes, Your Honour. I asked him if he was running
31 it and had created it, and he stated that he had.
32 Q And did he provide you with any explanation as to
33 why he had not shut the website down?
34 A Sorry, I don't understand.
35 Q Mr. Fox, you indicated, was in jail when you spoke
36 to him.
37 A Correct.
38 Q And you indicated that previous to being in jail
39 he'd been out of jail?
40 A Correct.
41 Q And did you ask him or engage in any discussion
42 with him as to why, when he was out of jail, he
43 did not shut the website down as required?
44 A I didn't speak with him about that, Your Honour.
45 Q I gather that -- from what you indicated that when
46 you did speak to Mr. Fox on June the 24th of 2019,
47 he indicated that he -- or perhaps I'll ask this

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1 in a more open question. Did he indicate to you
2 whether he intended to shut that website down?
3 A Your Honour, it is my belief that he -- Mr. Fox
4 has no intention of shutting the website down and
5 I was told that if he were to be released again,
6 he will make sure it continues to operate.
7 CNSL C. JOHNSON: Thank you. Those are all the
8 questions I have of this witness, Your Honour.
9 Actually, perhaps I could just ask one last
10 question just to cover something off.
11 Q In your experience, in order to access the website
12 or to operate the website one has to go onto the
13 internet in order to do that; is that correct?
14 A I'm no technology expert, but I do believe that
15 that would be a requirement. To have it up and
16 running on the internet would be to access the
17 internet and the maintenance of the website I
18 believe is also done on the internet.
19 Q And so, to add materials, for example, to a
20 website such as some of the court documents that
21 you've referred to, one would have to access the
22 internet?
23 A I believe so, Your Honour.
24 CNSL C. JOHNSON: Thank you.
25 THE COURT: Thank you. Just give me one moment,
26 please.
27 CNSL C. JOHNSON: Sorry, Your Honour, I'm just
28 inquiring with Mr. Fox if there's anything else
29 that he needs --
30 THE COURT: Yes.
31 CNSL C. JOHNSON: -- [indiscernible/overlapping
32 speakers].
33 THE COURT: And I actually intended to do the same
34 thing, so go ahead, Mr. Johnson. Thank you.
35 THE ACCUSED: I was actually going to ask if it's
36 getting close to the time for the morning break,
37 perhaps we should do that --
38 THE COURT: It is.
39 THE ACCUSED: -- before I begin and maybe I can have a
40 couple of minutes to speak with Mr. Johnson.
41 THE COURT: I think that makes sense.
42 CNSL C. JOHNSON: Yes.
43 THE COURT: So, let's just take a slightly longer
44 break, then. So, if there's any paperwork that
45 needs to be printed off and passed along, you can
46 have a few minutes to review it. Let's reconvene,
47 then, at quarter after 11. Thank you.

Proceedings

1 THE CLERK: Order in court. All rise.
2
3 (WITNESS STOOD DOWN)
4
5 (PROCEEDINGS ADJOURNED FOR MORNING RECESS)
6 (PROCEEDINGS RECONVENED)
7
8 THE ACCUSED: They took the pen from me downstairs.
9 CNSL C. JOHNSON: Oh, did they? Okay.
10 THE ACCUSED: They would not give it back to me.
11 CNSL C. JOHNSON: Okay. Wonderful. That's fine.
12 THE COURT: We'll get you another pen if we can.
13 THE ACCUSED: Thank you.
14 THE CLERK: And I forewarned them that you'd be coming
15 down with it.
16 THE COURT: Mr. Registrar, thank you.
17 THE CLERK: But I did ask them to make sure that --
18 THE ACCUSED: Wonderful. Thanks very much.
19 THE COURT: Thank you.
20 CNSL C. JOHNSON: Your Honour, I can say that over the
21 break I spoke to Mr. Fox. He had a concern which
22 he raised to me a couple of months ago about some
23 evidence that he wants to adduce. I'm not sure
24 the relevance of it and I make no comment on that
25 at this point, but he indicated that he would like
26 it to be before the court that on -- Mr. Fox, was
27 it June 22nd?
28 THE ACCUSED: Yes.
29 CNSL C. JOHNSON: Yes.
30 THE ACCUSED: June 2020.
31 CNSL C. JOHNSON: That on June 22nd of 2020 he posted a
32 post on his Facebook timeline -- just one second.
33 THE COURT: Yes. Thank you.
34 CNSL C. JOHNSON: What I did was I -- he told me his
35 Facebook name. I went onto his Facebook timeline.
36 He can confirm that that is his. But on June the
37 22nd he posted on his Facebook timeline the
38 comment which is, "Still here, mother fuckers!"
39 And there's an attachment which is
40 www.desicapuano.com which I didn't review the
41 attachment, but I believe Mr. Fox would like me to
42 admit that it's the website and I'm willing to do
43 that. Is that correct, Mr. Fox?
44 THE ACCUSED: Essentially, yes, but the critical part
45 of that that I would like the Crown to admit is
46 that that was done while I was in custody.
47 CNSL C. JOHNSON: Yes, Mr. Fox was in custody on June

Proceedings

1 the 22nd of 2020.
2 THE COURT: That addresses the admission that you're
3 seeking, Mr. Fox; is that correct?
4 THE ACCUSED: Yes.
5 THE COURT: Okay, thank you.
6 THE ACCUSED: And it may become relevant during the
7 cross-examination, but it might not.
8 THE COURT: Okay, thank you. Mr. Johnson, just again
9 for the record, you're now concluded your evidence
10 in chief of Officer Fontana?
11 CNSL C. JOHNSON: Yes, I have. Thank you.
12 THE COURT: So, cross-examination, then, Mr. Fox, of
13 the officer. Go ahead when you're ready.
14 THE ACCUSED: Okay. I apologize, I don't have a copy
15 of the probation order with me.
16 THE COURT: I think we can probably make that available
17 to you. I don't know, Mr. Johnson, if you have an
18 extra copy or if we would have it in the court
19 file if it's been filed --
20 DETECTIVE FONTANA: I may have one.
21 THE COURT: -- or perhaps the officer can assist.
22 THE ACCUSED: The important part would be for the
23 witness to have access to that --
24 THE COURT: Oh, okay. So --
25 THE ACCUSED: -- because I may want to ask her --
26 THE COURT: -- if you've got that, Constable Fontana?
27 DETECTIVE FONTANA: I don't believe I have it, Your
28 Honour.
29 THE COURT: We'll let's just take a moment. I'm sure
30 we can find a copy somewhere.
31 DETECTIVE FONTANA: I apologize, Your Honour. I do
32 not have one.
33 THE COURT: That's fine. Thank you.
34 CNSL C. JOHNSON: I do have a copy.
35 THE COURT: You've got a copy? So, I think --
36 CNSL C. JOHNSON: I only have the one copy, but I'm
37 happy to -- if Mr. Fox requires it, I'm happy to
38 lend it to him.
39 THE COURT: Thank you. And I think, Mr. Fox, what
40 you're asking is that that be made available to
41 the officer because you've got some questions
42 about it?
43 THE ACCUSED: I may have some questions.
44 THE COURT: Okay. So, Mr. Johnson's got it there
45 should you need to use it, either you or for the
46 officer or both of you. We should be able to
47 accommodate that. Thank you.

Jennifer Fontana (for Crown)
cross-exam by Patrick Fox

1 THE ACCUSED: Okay. Thank you.

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JENNIFER FONTANA

a witness called for the
Crown, recalled.

CROSS-EXAMINATION BY THE ACCUSED:

Q Good morning, Detective Fontana.

A Good morning, Mr. Fox.

Q You had testified that you became aware of the
website through a Google search on March 18th,
2019; is that correct?

A Yes, Your Honour. I became -- I was told of the
website when the police investigation started, and
on the 18th I confirmed that the website was still
up and running.

Q Okay. In this letter that went as Exhibit 1, did
I state in there when I created or published the
website?

A I don't recall the very specifics of the letter,
Your Honour. I haven't read it recently.

THE COURT: And you can direct her specifically to that
point if there's something in there you'd like her
to have in front of her.

THE ACCUSED:

Q What I'm looking for here is an acknowledgment that
in fact it's not stated anywhere in here when the
website was created or published. So, what I was
looking for was if the answer would've been no,
that it's not. But if you'd like, you could --

A I did hand over my only copy that I brought today,
Your Honour.

THE COURT: Yes. So, let's hand the Exhibit 1 back to
the officer. And then, Mr. Fox, let's just give
the detective a chance to read that over and she
can then specifically address the question.

A Your Honour, there is no specific date listed in
the letter. However, Mr. Fox does reference the
trial from 2017 which would put it more presently
than the previous trial and the previous website
which he was convicted of had a different name
than this current website and he references the
new website name in this letter, which leads me to
believe he's referencing the new website.

THE ACCUSED:

Q Okay. When you came to North Fraser and spoke

Jennifer Fontana (for Crown)
cross-exam by Patrick Fox

1 with me, I believe it was June 24th, 2019?
2 A Correct, Your Honour.
3 Q Did I at that time state to you when I published
4 or created the current version of the website?
5 A Not to my recollection, Your Honour.
6 Q Okay. Do you have any first-hand knowledge at all
7 of when the website became publicly accessible,
8 when it was published?
9 A I believe there were -- it was early March. I
10 want to say March 12th or 13th, but I can't -- in
11 March of 2019, Your Honour.
12 Q So, would that be a yes? Sorry, the question was
13 do you have any first-hand knowledge of when the
14 website -- I wasn't asking when you believed the
15 website became available or became public, but
16 rather whether you have any first-hand knowledge
17 of exactly when it did.
18 A And when you say first-hand knowledge, do you mean
19 from you specifically?
20 Q From me or from the hosting provider. I believe
21 it's GoDaddy is the hosting provider?
22 A Correct, GoDaddy is the hosting provider. I'm not
23 -- I don't have anything with me and I don't want
24 to -- the investigation has gone on for such a
25 long period of time, Your Honour, I'm not -- I
26 don't want to say that I don't have it because I
27 just have so much information, but I can't say
28 with certainty that I do have that.
29 Q Do you know whether the website was made public
30 before or after December 30th, 2018?
31 THE COURT: Sir, can you repeat your question? I just
32 missed it.
33 THE ACCUSED: Sure. Sure.
34 Q Do you know whether the website was made public --
35 in other words, that it was published as opposed
36 to when it was created because that's a whole
37 other issue. Whether it was made public before or
38 after December 30th, 2018?
39 A I believe it was made public in March.
40 Q And what are you basing that belief on?
41 A The information was sent out to multiple news
42 outlets, Your Honour, as well as the previous
43 Crown counsel.
44 Q So, is it reasonable to say that you became aware
45 of it in March?
46 A Correct, Your Honour.
47 Q Okay. But as for when it actually became publicly

Jennifer Fontana (for Crown)
cross-exam by Patrick Fox

1 accessible -- because that's what I'm on trial
2 for, is when it became publicly accessible, not
3 when you became aware of it.
4 A Well, Your Honour, I am not a computer expert and
5 I do not -- I'm not able to tell you when a
6 website was made publicly available. I'm not sure
7 how to look that information up.
8 Q So, is it reasonable to say, then, that you really
9 have no idea whether the website was published
10 before or after December 30th, 2018?
11 A I didn't specifically look for that information,
12 Your Honour.
13 Q Let me ask it another way. Do you have any first-
14 hand -- no. Do you know whether the website was
15 made publicly accessible before or after December
16 30th, 2018?
17 A I don't know how to provide that information -- I
18 don't know how to locate that information, Your
19 Honour.
20 Q Can I accept that as a no, you don't know whether
21 or not it was publicly accessible on or before
22 that date?
23 A I could look it up. At this time I can't say yes
24 or no, Your Honour.
25 Q Well, I mean, either you know or you don't know.
26 Either you know that the website was accessible on
27 a given day or you don't know whether it was
28 accessible.
29 A I don't know. I can't say it was and I can't say
30 it wasn't.
31 Q Right, right. Thank you. That's what I was
32 looking for, is whether you know or you don't
33 know. Do you know when the probation order took
34 effect? When did it start?
35 A May I look at the --
36 Q Sure.
37 A -- probation order, please?
38 THE COURT: Yes.
39 CNSL C. JOHNSON: I've provided the witness with a copy
40 of the order that I have.
41 THE COURT: Thank you.
42 A I believe if I'm reading this correctly, the
43 probation order would have been November 10th,
44 2017.
45 THE ACCUSED:
46 Q Well, that's when I was sentenced.
47 A There's a new variation date of February 6th,

Jennifer Fontana (for Crown)
cross-exam by Patrick Fox

1 2019. I'm not sure, Your Honour ...
2 THE COURT: Sorry, what was that last date?
3 A It says varied on February 6th, 2019, Your Honour.
4 THE COURT: Thank you.
5 THE ACCUSED: Perhaps I can turn to the court and Mr.
6 Johnson for some guidance. In the *Criminal Code*
7 it states that a probation -- a period of
8 probation will commence once the person is
9 released from the current incarceration. Can we
10 agree that that would be the case here?
11 CNSL C. JOHNSON: Yes --
12 THE COURT: Okay.
13 CNSL C. JOHNSON: -- and I believe it says -- oh, no, I
14 have that in a different document --
15 THE COURT: Okay.
16 CNSL C. JOHNSON: -- but I agree with Mr. Fox that on
17 November the 10th of 2017 he was sentenced to a
18 period of incarceration. There was a substantial
19 amount of time served which was deducted --
20 THE COURT: Okay.
21 CNSL C. JOHNSON: -- but there was still time to be
22 served followed by this three-year probation
23 order. So, this probation order would not have
24 taken effect until that incarceration was
25 completed.
26 THE COURT: Good. And I think the law is clear on that
27 as well.
28 CNSL C. JOHNSON: Right. But I would say that there's
29 an inference from the front of the order, which I
30 will file with the court now, that Mr. Fox was not
31 in jail on February the 6th of 2019, because the
32 probation order was varied on that date.
33 THE ACCUSED: That's correct.
34 THE COURT: Okay, good. Thank you.
35 CNSL C. JOHNSON: And so, now that the witness has
36 looked at this document, we'll file it as Exhibit
37 2?
38 THE ACCUSED: Sure.
39 THE COURT: Thank you. So, no issue with that document
40 now being marked? The witness looked at it.
41 THE ACCUSED: Correct.
42 THE COURT: Thank you.
43 CNSL C. JOHNSON: Did you want me to -- sorry, I'm just
44 addressing Mr. Fox for a moment --
45 THE COURT: Yes.
46 CNSL C. JOHNSON: -- but I could look at the reasons
47 for judgment and I'd be able to say when the

Jennifer Fontana (for Crown)
cross-exam by Patrick Fox

1 probation order started if that helps.
2 THE ACCUSED: Oh, no, no, I know exactly when it
3 started. It would've started once I was released
4 from Fraser at the end of the sentence, and that's
5 where I was going with this line of questioning.
6 THE COURT: Okay, thank you. So, let's mark the
7 probation order Exhibit Number 2.
8
9 **EXHIBIT 2: Copy of probation order re**
10 **Patrick Fox dated November 10, 2017**
11
12 THE ACCUSED: And I am going to be referring shortly to
13 the probation order again --
14 THE COURT: Good.
15 THE ACCUSED: -- because there's --
16 THE COURT: So, we'll have it back in front of the
17 detective.
18 A Thank you.
19 THE ACCUSED: But before we go down that road, so --
20 sorry, I'm just trying to think of how I can
21 phrase this as a question to the witness.
22 Q Do you know when it was that my period of
23 incarceration on that charge ended? In other
24 words, when that probation order would have
25 commenced? Are you aware of that or --
26 A I believe, if I remember correctly, it was
27 December 30th --
28 Q Right.
29 A -- 2019.
30 Q Okay. And so, was I -- would I have been bound by
31 the conditions in that probation order prior to
32 December 30th, 2018, since it had not actually
33 started yet?
34 A That I can't say for sure, Your Honour.
35 Q Okay. On direct you had stated -- you had made
36 reference just vaguely to the amount of
37 information that you had seen that's on the
38 website. And you had testified, I believe, that
39 most of it pertains to my ex-wife, Desirée
40 Capuano; is that correct?
41 A Correct, Your Honour.
42 Q And did you find any information on the website
43 that is untrue?
44 A Well, Your Honour, I haven't gone through every
45 bit of it and I don't know Ms. Capuano personally,
46 so I can't attest to her character.
47 Q So, that sounds to me like you're saying no, you

Jennifer Fontana (for Crown)
cross-exam by Patrick Fox

1 didn't find any information that you knew to be
2 untrue?
3 A I never said any of the information on the website
4 was untrue.
5 Q Right.
6 A I said it was --
7 Q That's why I worded --
8 A -- unkind and did not show her in a very positive
9 light.
10 Q Sure.
11 A I never said it was -- there was anything that was
12 untrue. I can't -- I cannot say whether it is or
13 is not, Your Honour.
14 Q Sure, sure. So, I'd like to turn your attention
15 to the probation order again to the two conditions
16 in particular that would be relevant to these
17 charges. I'm not sure which conditions those are
18 off the top of my head.
19 A I believe one of them would be Condition 12, Your
20 Honour. Would you like me to read it out loud?
21 Q Sure.
22 A Okay. And please correct me, Mr. Fox, or Crown if
23 I'm interpreting the condition incorrectly and it
24 should be a different number. Condition Number 12
25 [as read in]:
26
27 You must not disseminate, distribute, publish
28 or make publicly available in any manner
29 whatsoever, directly or indirectly,
30 information, statements, comments, videos or
31 photographs which refer to or depict by name
32 or description Desirée Capuano, James
33 Pendleton, [name omitted], or any of their
34 friends, relatives, employers or co-workers.
35
36 CNSL C. JOHNSON: I should just rise for a moment to
37 say, Your Honour, that I don't disagree with how
38 the witness read that, but the name [name omitted]
39 is subject to a publication ban --
40 THE COURT: Okay.
41 CNSL C. JOHNSON: -- in the Supreme Court. And so, in
42 the order or in other documents she's known as S.
43 THE COURT: Okay, thank you.
44 A My apologies.
45 THE COURT: No, that's fine.
46 A And I believe the other condition would be
47 Condition Number 14:

Jennifer Fontana (for Crown)
cross-exam by Patrick Fox

1 You must not use the internet or any computer
2 or cellular network except as required to
3 fulfill Condition 13 for the purpose of
4 employment or sending personal emails.
5
6 Your Honour.
7 THE COURT: And sorry, what was the number of that last
8 one?
9 A That was Condition 14, Your Honour.
10 CNSL C. JOHNSON: I'm just -- I'm asking to look at
11 that --
12 THE COURT: Yes. Thank you.
13 CNSL C. JOHNSON: -- exhibit if I might, Your Honour.
14 And it's Mr. Fox's cross-examination. There is
15 one portion that also applies.
16 THE COURT: Okay.
17 CNSL C. JOHNSON: I don't know if I should draw that to
18 his attention now or not.
19 THE COURT: Perhaps you can just mention it to Mr. Fox
20 and then he can deal with it as he sees fit.
21 CNSL C. JOHNSON: Sure. Condition 13 is the condition
22 that indicates you are to, within 24 hours of your
23 release, etc.
24 THE ACCUSED: Yes, I'm familiar with that.
25 THE COURT: Okay, thank you.
26 THE ACCUSED:
27 Q So, in those two conditions that you just read, do
28 you agree that the restrictions on conduct that
29 are stated therein apply specifically to me?
30 A Yes.
31 Q Okay. Do you agree that those restrictions on
32 conduct do not apply to any other person in the
33 world alive right now or ever, just me? Does it
34 state in there directly or indirectly or does it
35 make any reference to any other person not being
36 permitted to do that?
37 A It says you must not make publicly available, Your
38 Honour.
39 Q Right. I must not make publicly available.
40 A I would interpret that as -- that that information
41 should not be made publicly available by -- and it
42 says in any manner whatsoever. So, therefore,
43 personally, Your Honour, I would interpret that to
44 mean that this information is not to be made
45 publicly available by any means.
46 Q I'm not certain, but I do believe a probation
47 order cannot be imposed upon people who have

Jennifer Fontana (for Crown)
cross-exam by Patrick Fox

1 absolutely nothing to do with the charges, but
2 neither here nor there. Where I'm going with this
3 is, is there anything that you see in the wording
4 of those conditions that prohibits somebody else
5 from engaging in conduct on my behalf?
6 For example, at the jail sometimes I'll need
7 to look up something on the internet, say an
8 address for a government agency, for CBSA for
9 example, and so I will ask the officer at the jail
10 if he could look up CBSA's address in Ottawa.
11 That would be accessing the internet indirectly.
12 Is there anything in the wording there that you
13 see that would prohibit me from doing something
14 like that?
15 A Well, I think accessing an address and posting
16 personal information about someone are two very
17 different --
18 Q Sure, but that's not my question. My question --
19 A -- uses of the condition.
20 Q You see, the court could have phrased it as you
21 cannot do these things directly or indirectly.
22 However, the court didn't phrase it in that way.
23 The court only imposed these conditions upon me.
24 I'm asking you, do you agree, the way I'm
25 interpreting that, is that literally how it is
26 phrased?
27 A Sorry, can you repeat the question again?
28 Q Yeah, sorry, I didn't really phrase that well.
29 Are those conditions literally phrased such that
30 they apply only to me, not to other parties who
31 may be acting on my behalf?
32 A Well, I'll go back to the -- the make publicly
33 available in any manner whatsoever --
34 Q Sure.
35 A -- because if there's been information that's been
36 given to you and only you and it's been shared
37 with someone --
38 Q Mm-hmm.
39 A -- then I think that you are responsible for that
40 information --
41 Q Sure.
42 A -- and what that person does with it.
43 Q What if the information in question was public
44 before I came in contact with it? What if it was
45 information that was obtained from the other
46 person's Facebook page? What if she was the one
47 that made the information public?

Jennifer Fontana (for Crown)
cross-exam by Patrick Fox

1 A I can't --
2 Q I certainly can't be responsible for what other
3 people do with information that was made public by
4 the complainant. Do you - sorry -- to make that a
5 question, do you agree with that, that I can't be
6 responsible for what third parties do with
7 information that the complainant herself made
8 public?
9 A I don't know what information you're speaking to,
10 Your Honour.
11 Q Well, a lot of the information on the website was
12 information obtained from public sources and from
13 Ms. Capuano's own Facebook page. Much of the
14 information on there was not information that was
15 given exclusively to me. Anyway, we'll move on.
16 Now, earlier there was some brief discussion of
17 something that was posted on my Facebook timeline.
18 You were present when that was discussed a little
19 while ago?
20 A Just now, Your Honour, yes.
21 Q Right. Is it your understanding that on June
22 22nd, 2020, when that was posted on my Facebook
23 page or Facebook timeline, that I was in custody?
24 A To the best of my knowledge, yes, Your Honour.
25 Q Okay. So, is it reasonable to say, then, that it
26 is entirely possible that even though I was in
27 custody prior to December 30th, 2018, stuff still
28 could've been put onto the internet maybe on my
29 behalf or by other people?
30 A Well, it's possible. Yeah. Anything's possible,
31 Your Honour.
32 Q All right. Sorry, I'm just double-checking my
33 notes -
34 THE COURT: Certainly.
35 THE ACCUSED: -- to make sure I didn't miss anything.
36 Perhaps one last thing I want to ask you
37 about. You testified on direct that you had some
38 communication with GoDaddy and that that resulted
39 in the website being shut down or suspended for 90
40 days?
41 A Correct, Your Honour.
42 Q And why is it that you didn't take any further
43 action after that? I believe that they -- you had
44 said that they had told you that they would need a
45 U.S. court order in order to suspend it
46 permanently?
47 A Correct, Your Honour, and I still haven't ruled

Jennifer Fontana (for Crown)
cross-exam by Patrick Fox

1 that out. These investigations take a lot of
2 time --
3 Q Really?
4 A -- and you're not my only file; and I have
5 multiple other files on the go as well. So, it's
6 merely an issue of resources at this time, Your
7 Honour.
8 Q Oh. Yet the Crown, not specifically Mr. Johnson,
9 but the B.C. Prosecution Service in general and
10 certain members of the justice system here seem to
11 believe that I am subjecting Ms. Capuano to just
12 outrageous trauma with this website, yet neither
13 Ms. Capuano nor yourself or even the victim
14 services people that keep hounding her to push
15 this matter have done anything at all to get the
16 website suspended or taken down.
17 A Well, I did get it suspended, Your Honour. I did
18 that --
19 Q Oh, sorry.
20 A -- in the interim.
21 Q Yes.
22 A And like I said, yes, we deal -- the way that I
23 deal with my files is those victims that are in
24 imminent danger physically, those are my number
25 one concerns. And as I go down through my files,
26 Ms. Capuano's personal safety is not in danger at
27 this point, therefore I have worked on other files
28 as well, but I've definitely not ruled out going
29 that route, Your Honour.
30 Q Okay. And finally, so to confirm so that we're
31 all completely clearly on this, it is my
32 understanding that you're saying that you have
33 absolutely no idea whether the website was made
34 publicly accessible before or after the probation
35 order took effect.
36 A I do not have that date on hand, Your Honour.
37 Q Okay. Can I also assume that you have no first-
38 hand knowledge about whether I made the website
39 publicly accessible or somebody else did it either
40 on my behalf or completely independent of me?
41 A Well, I believe when we met in person, Your
42 Honour, that you stated to me that you had created
43 the website and were maintaining the website.
44 Q Created, yes, but bear in mind the website that's
45 online right now is the same website that was
46 created back in 2014. It's just a newer version
47 of the website, but to say that it was created,

Jennifer Fontana (for Crown)
cross-exam by Patrick Fox

1 the website was created back in 2014. That's why
2 I keep saying --
3 THE COURT: You have to put that in the form of a
4 question, Mr. Fox, otherwise --
5 THE ACCUSED: Sorry.
6 THE COURT: -- I can't consider it.
7 THE ACCUSED: Sorry, sorry.
8 THE COURT: You can go down that route --
9 THE ACCUSED: Yeah.
10 THE COURT: -- and the officer may or may not have
11 knowledge about it.
12 THE ACCUSED: Right, right.
13 THE COURT: But without that, then the question can be
14 given no consideration.
15 THE ACCUSED: My apologies.
16 THE COURT: No, that's fine.
17 THE ACCUSED:
18 Q Is it your understanding that I wanted to be
19 prosecuted for criminal harassment based on this
20 current version of the website that's online?
21 A Yes, Your Honour.
22 Q Okay. And is it your understanding that I have
23 said or done some things to try to antagonize or
24 convince or maybe even coerce the B.C. Prosecution
25 Service and possibly even the VPD to pursue that
26 prosecution for criminal harassment?
27 A I believe you brought the new website to light
28 knowing that an investigation would follow, Your
29 Honour.
30 Q Did I state in this letter, "So, anyway, enclosing
31 -- respectfully request you charge me with
32 criminal harassment and ..." Etc., etc.?
33 A Correct, Your Honour. It's there in writing, yes.
34 Q Okay. Is it reasonable or do you agree that it is
35 reasonable that perhaps I'd been saying some
36 things to the police and maybe even to the B.C.
37 Prosecution Service and maybe even openly in court
38 to try to provoke the justice system here to
39 prosecute me for criminal harassment which --
40 things which may or may not be true? For example,
41 admitting to things that maybe I didn't do just
42 because I'm trying to provoke you to do that.
43 A I can't answer to what your intentions may be,
44 Your Honour.
45 Q That's fine. The important thing, though, is --
46 well, the important thing is whether -- whether
47 the website was made publicly accessible before or

Jennifer Fontana (for Crown)
re-exam by Cnsl C. Johnson

1 after December 30th and we've established that you
2 have no knowledge of when that happened. That
3 being the case, I don't believe I have any further
4 questions.

5 THE COURT: Thank you. Just give me --

6 THE ACCUSED: Thank you.

7 THE COURT: -- one moment, please.

8 THE ACCUSED: Sure.

9 THE COURT: Just bear with me for a moment, please.

10 I don't have any questions for the witness,
11 so let me just ask Mr. Johnson, on behalf of the
12 Crown, if there's any redirect.

13 CNSL C. JOHNSON: Yes.

14 THE COURT: Thank you.

15

16 **RE-EXAMINATION BY CNSL C. JOHNSON:**

17

18 Q The first thing I would like to ask the witness is
19 in the interest of fulness. If the witness could
20 also read out Condition 13 of the probation order
21 because I do believe it has some relevance.

22 A Yes. [As read in]:

23

24 Within 24 hours of your release from custody
25 you will take all necessary steps to ensure
26 that any website, social media page or other
27 publication which you have authored, created,
28 maintained or contributed to which contains
29 any information, statements, comments,
30 videos, pictures which refer to or depict by
31 name or description Desirée Capuano, James
32 Pendleton, S. Capuano, or any of their
33 friends, relatives, employers or co-workers,
34 including the website published under the
35 domain www.desireecapuano.com is no longer
36 accessible via the internet or by any other
37 means.

38

39 THE COURT: Thank you.

40 CNSL C. JOHNSON: I see Mr. Fox is on his feet.

41 THE COURT: Yes.

42 CNSL C. JOHNSON: I'll let him speak first. I do have
43 some more questions.

44 THE COURT: Oh, okay. Thank you.

45 THE ACCUSED: I just wanted to point out I'm in no way
46 charged with violating that condition, so I object
47 to this. I don't think it's relevant.

Jennifer Fontana (for Crown)
re-exam by Cnsl C. Johnson

1 THE COURT: Okay. Anything -- Mr. Fox, that really is
2 a matter for argument at the end.
3 THE ACCUSED: Sure.
4 THE COURT: But I have your point.
5 CNSL C. JOHNSON: Thank you.
6 THE COURT: Thank you. I think there's further
7 questions in redirect.
8 CNSL C. JOHNSON:
9 Q Detective Constable, you indicated in response to
10 Mr. Fox's cross-examination that when you went to
11 interview him in June of 2019, that he stated to
12 you that he had created and updated the website of
13 which you were speaking?
14 A Yes, Your Honour.
15 Q And you've indicated in response to Mr. Fox's
16 questions that you are unable to say exactly when
17 the website was created?
18 A Correct, Your Honour. I don't know internet
19 website creation at all.
20 Q But I gather that when he said updated, you took
21 that to be current as opposed to something else?
22 A Yes, Your Honour.
23 Q And are you able to elaborate on that as to the
24 timing of that?
25 A My understanding is that the initial website that
26 Mr. Fox was convicted of was
27 www.desireecapuano.com and I have reviewed that
28 website as well and when I look at
29 www.desicapuano.com, I can see that they are --
30 everything on www.desicapuano.com is on the
31 desireecapuano.com website, plus new information,
32 including information from the trial, emails,
33 recordings, police reports, things that would've
34 been, I believe, given to Mr. Fox through
35 disclosure which leads me to believe that this
36 information would have been updated to the website
37 after he was released from custody because he was
38 in custody until December 30th and these -- the
39 website -- I got notified of the website in early
40 March and these were items that were given to him
41 through disclosure and he was put in custody after
42 he was convicted. I don't think -- I don't think
43 I explained that very well.
44 THE COURT: Just give me one moment, please. Thank
45 you. Anything else?
46 CNSL C. JOHNSON: No, thank you, Your Honour.
47 THE COURT: Thank you. Mr. Fox, generally speaking,

Jennifer Fontana (for Crown)
re-exam by Cnsl C. Johnson

1 you don't get a chance to ask further questions in
2 response to the Crown's redirect. It's a chance
3 for the Crown to go -- excuse me, to ask the
4 witness questions that arose from the cross-
5 examination. So, they don't get to go back
6 either --
7 THE ACCUSED: Right.
8 THE COURT: -- but you're a self-represented
9 individual. Let me just pause for a second.
10 Without asking the question, do you have
11 anything that you wanted to follow up on from
12 those last few questions raised by the Crown? I
13 appreciate you've made some comments and I do
14 think they go to closing remarks.
15 THE ACCUSED: No.
16 THE COURT: Okay, thank you. So, can the officer be
17 excused, then?
18 CNSL C. JOHNSON: Yes.
19 THE COURT: Detective Constable Fontana, thank you for
20 attending. You're excused.
21 A Thank you, Your Honour.
22 CNSL C. JOHNSON: And, Your Honour, that is the
23 evidence I'm calling on behalf of the Crown.
24 THE COURT: Thank you. And I just want to make sure,
25 then, that we've got from the officer the
26 probation order --
27 CNSL C. JOHNSON: Oh, the probation order.
28 THE COURT: -- and the letter back.
29 A Oh.
30 THE COURT: Thank you.
31 CNSL C. JOHNSON: And the letter.
32 A Sorry about that.
33 CNSL C. JOHNSON: That's okay.
34 THE COURT: Thank you. That's fine.
35 CNSL C. JOHNSON: Thank you.
36
37 (WITNESS EXCUSED)
38
39 THE COURT: Mr. Johnson --
40 CNSL C. JOHNSON: So, I'll just say again, Your Honour,
41 I'm formally closing the Crown's case.
42 THE COURT: Thank you. Just bear with me for a moment,
43 then, please.
44 So, Mr. Fox, just to go through the
45 formalities. Now that the Crown has closed its
46 case and finished calling all of their evidence,
47 you have the following options. You may move for

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1 a directed verdict of acquittal. This means that
2 you'll be asking the court to dismiss some or all
3 of the charges at this stage because you believe
4 there is no evidence in relation to at least one
5 of the essential elements of the offence that the
6 Crown must prove.

7 Bear in mind as I indicated earlier, if you
8 move for such a directed verdict and I rule
9 against you, you will then be allowed to decide
10 whether or not to call a defence. If the judge
11 rules for you, you'll be acquitted on, you know,
12 one or both counts depending on how that pans out.

13 This is the other piece of evidence -- or the
14 other important thing -- distinction to bear in
15 mind. You may decide not to present evidence and
16 then argue that the Crown evidence is insufficient
17 for a finding of guilt. If you choose not to
18 testify and not to call any witnesses, I will
19 decide the case based only on the evidence
20 presented during the Crown's case. At this point
21 you'll be convicted only if I find that every
22 essential element of the offence has been proven
23 beyond a reasonable doubt.

24 The disadvantage to this second approach is
25 that if -- is that it means you cannot ask to
26 reopen your case and call evidence and tell your
27 side of the story if I'm satisfied the Crown has
28 met the burden on them. So, the first one you
29 can, the second one you can't just so it's clear.
30 If you choose not to testify or call evidence, I
31 cannot draw an adverse inference against you from
32 doing that because of the presumption of innocence
33 just so it's really clear. You have the right to
34 remain silent, of course.

35 You may decide to call evidence in your
36 defence. You've indicated that won't be
37 additional witnesses, but it can include that or
38 include you testifying on your own behalf. As
39 I've pointed out, you're not obligated to call
40 evidence. The Crown bears the burden. It remains
41 on them at all times. Nor are you obligated in
42 any way to testify.

43 If you do testify, you must go into the
44 witness box and affirm to tell the truth. You can
45 then tell me what happened, what you'd like to
46 tell the court about this matter, but bear in mind
47 after that the Crown then gets a chance to cross-

Proceedings

1 examine you. They can question you about your
2 criminal record if you have one. The Crown cannot
3 bring up your criminal record if you testify.

4 Now, that's a bit artificial in this
5 instance. I've got to disabuse my mind of the
6 fact that probation order relates to a conviction.
7 I'm going to. I'm just going to look at the
8 nature of the charges in front of the court and
9 whether there was a breach of that order without
10 looking at that background piece. It just
11 provides that narrative.

12 If the Crown -- if you do testify and the
13 Crown cross-examines you about your criminal
14 record, Mr. Fox, you should bear in mind that the
15 record is relevant to your credibility, not to
16 whether you had the tendency or have the tendency
17 to commit the type of offence that you're charged
18 with today, the breaches of probation.

19 Bear in mind if you do not call evidence,
20 you're left to argue that the Crown has not proven
21 some or all of the elements against you beyond a
22 reasonable doubt and you can ask in that regard
23 that there's certain inferences to be drawn. So,
24 you can kind of talk about it at kind of a face
25 level, that they missed something, or that there's
26 an inference to be drawn that should cause the
27 court to find that there's a reasonable doubt.
28 So, there's a subtlety to it as well.

29 Regardless of whether you choose to testify
30 or not, Mr. Fox, you will be given an opportunity
31 to make your closing submissions. So, you'll
32 always have that opportunity. It's not foreclosed
33 whether you testify or not. Mr. Fox, with all of
34 that in mind, before I ask you, then, whether you
35 wish to call evidence, do you have any questions
36 about understanding the options available to you?

37 THE ACCUSED: No, no. I think I'm clear on them.

38 THE COURT: Okay.

39 THE ACCUSED: Thank you.

40 THE COURT: With that in mind, then, Mr. Fox, do you
41 intend to call evidence?

42 THE ACCUSED: I'm leaning towards saying no at this
43 point. Sorry, it's just I'm running everything
44 through in my mind and --

45 THE COURT: Yes. Take your time.

46 THE ACCUSED: -- thinking if there's anything that the
47 officer testified about that I should respond to

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1 and --
2 THE COURT: Let me ask you this, Mr. Fox. If I gave
3 you five minutes just to mull that over, would
4 that be of assistance to you?
5 THE ACCUSED: I think that that would be very
6 beneficial, yes.
7 THE COURT: Okay. So, let's do that, then. Let's take
8 a five-minute break --
9 THE ACCUSED: Thank you.
10 THE COURT: -- and then we'll carry on. Thank you.
11 THE CLERK: Order in court. All rise.
12
13 (PROCEEDINGS ADJOURNED)
14 (PROCEEDINGS RECONVENED)
15
16 THE COURT: Mr. Fox, having had that chance, then, to
17 think about whether you are going to call
18 evidence, what is your intention, then?
19 THE ACCUSED: I have decided not to.
20 THE COURT: Okay, thank you. So, with that in mind,
21 I'm now going to make my decision based upon the
22 evidence that is in front of me. The next
23 question I have, then, is just a procedural or a
24 logistical one, I guess, more properly. We've got
25 10 minutes left in the morning session. We can
26 break now so you can think about your concluding
27 remarks to the court if you like.
28 Often lawyers ask for a bit of time to put
29 their thoughts together. If you'd like that time,
30 sir, I'm satisfied we're in good shape in terms of
31 finishing up with the hearing today, so we can do
32 that. If you would prefer, we can get started
33 now. I think Mr. Johnson's going to go first.
34 So, if you would like, if Mr. Johnson's willing
35 and prepared, he could start now and then you can
36 hear a little bit of what he said and that will
37 give you more time. I'm confident we will not
38 have your closing submissions before we break for
39 lunch if that makes sense, Mr. Johnson, as well
40 from your perspective.
41 CNSL C. JOHNSON: I'm happy to do that, Your Honour.
42 THE COURT: Okay.
43 CNSL C. JOHNSON: I can -- I think I can be very quick.
44 THE COURT: Thank you. Mr. Fox, let's -- I think
45 probably that makes the most sense --
46 THE ACCUSED: Sure.
47 THE COURT: -- and then we'll see where we're at when

Submissions for Crown by Cns1 C. Johnson

1 Mr. Johnson is done and you can decide whether you
2 want to start your submissions and finish them or
3 go until 2 o'clock and then we'll finish up. So,
4 just give me one moment, please. Go ahead, then,
5 Mr. Johnson. Thank you.

SUBMISSIONS FOR CROWN BY CNSL C. JOHNSON:

9 CNSL C. JOHNSON: Your Honour, Mr. Fox faces two counts
10 that are before you. I will say that with respect
11 to Count 1, the Crown has called evidence which I
12 say is direct and relevant towards the proof of
13 that count. With respect to Count 2, I would say
14 that the evidence is more inferential in that
15 regard. And so, most of what I say will address
16 Count 1 as opposed to Count 2. It doesn't mean
17 that I'm not addressing Count 2, but there is a
18 difference in the evidence, and so those two
19 counts overlap.

20 With respect to Count 1, then, the evidence
21 is that, firstly, Mr. Fox -- Crown says that
22 they've proved the essential elements, his
23 identification, the jurisdiction issue, that there
24 is a probation order which bound him at the
25 relevant time, and that the order forbid certain
26 types of conduct and which the Crown says that Mr.
27 Fox has engaged in. And he's chosen not to call
28 evidence and so he hasn't provided the court with
29 a reasonable excuse should the court find that he
30 did engage in that conduct.

31 Specifically, the Crown agrees with Mr. Fox
32 that the Crown hasn't proven when the website
33 www.desicapuano.com was created and that is
34 something that's likely known only to Mr. Fox, but
35 I do say the Crown isn't required to prove that.
36 What the Crown is required to do is that -- is to
37 prove that Mr. Fox was involved in that website or
38 contributed to that website or operated that
39 website in some way while he was on probation.
40 And I do say that the evidence that you've heard
41 leads overwhelmingly to the inference that is, in
42 fact, the case.

43 Specifically, I'll point to a couple of
44 areas. The letter that Mr. Fox authored which is
45 -- has been marked as Exhibit 1 in these
46 proceedings is dated June the 6th and Mr. Fox has
47 admitted that he did author that letter, a copy of

Submissions for Crown by Cns1 C. Johnson

1 which is before the court, and subsequently
2 Detective Constable Fontana spoke to Mr. Fox about
3 the letter when he again indicated that he was the
4 author of that letter.

5 The letter does not say, as Mr. Fox has
6 pointed out quite fairly, when the website was
7 created, but the letter does say, and I'm looking
8 at page 3 now, the bottom paragraph, as follows
9 [as read in]:

10
11 On the other hand, how do you and the Crown
12 explain not pursuing another criminal
13 harassment charge to the many angry feminists
14 in Canadian news media who adamantly refuse
15 to accept that Capuano is simply an evil
16 person? Particularly, since by publishing
17 the new website I have engaged in exactly the
18 same conduct which Justice Heather Holmes
19 declared formed much of the basis of the
20 guilty verdict in 2017 (at the first criminal
21 harassment trial). I mean, if the website
22 constituted criminal harassment at that
23 point, then it must certainly still
24 constitute criminal harassment now! Right?

25
26 And so, the Crown relies on that portion of the
27 letter which clearly, I say, establishes that
28 after being sentenced to jail and while on
29 probation Mr. Fox published the website of which
30 we've heard in this matter and as a result of
31 that, I say that he's clearly guilty with respect
32 to Count 1.

33 On top of that, I would add the evidence of
34 Detective Constable Fontana in her conversation
35 with Mr. Fox, and I just want to get the words
36 right, where he indicated to her that he had
37 created and updated the website. And certainly,
38 you heard that the material on the website had
39 been up -- or the website had been updated or
40 materials published from the trial at which Mr.
41 Fox was convicted, and the clear inference of that
42 is that those materials were obtained by Mr. Fox
43 and subsequently published on that website.

44 So, given his admissions both orally to the
45 police officer and in writing in the letter, the
46 fact that the website remains in existence and has
47 periodically been checked, that, in my submission,

Submissions for Crown by Cnsl C. Johnson
Submissions by the Accused

1 is a clear contravention of the probation order
2 and as a result of that I say that Mr. Fox should
3 be found guilty.
4 Now, that's with respect to Count 1. Count
5 2, as I've indicated, is more inferential and so
6 from the conduct that I say the Crown has
7 established in Count 1, it would be clear that
8 Mr. Fox would have to access the internet in order
9 to update the website or post materials on the
10 website. And so, the Crown says that looking at
11 Count 2 in that way, the Crown has proven its
12 case.
13 And, Your Honour, those are my submissions.
14 THE COURT: Thank you. Mr. Fox, noting the time, we've
15 got about two minutes left before the lunch break,
16 it's not rigid, but if you think you're going to
17 be more than a few minutes, then I suggest we
18 adjourn and hear from you at 2 o'clock. What is
19 your wish?
20 THE ACCUSED: I agree with adjourning until two.
21 THE COURT: Okay. Thank you. Let's do that. We will
22 reconvene and hear Mr. Fox's closing submissions
23 at 2 o'clock. Thank you.
24 THE CLERK: Order in court. All rise.
25
26 (PROCEEDINGS ADJOURNED FOR NOON RECESS)
27 (PROCEEDINGS RECONVENED)
28
29 THE CLERK: I inquired about the pen -
30 CNSL C. JOHNSON: Okay.
31 THE CLERK: -- and they said they are [indiscernible/
32 not near microphone] going to bring the pen.
33 CNSL C. JOHNSON: Wonderful. Thanks for that.
34 Recalling the Fox matter, Your Honour.
35 THE COURT: Thank you. We'll give Mr. Fox a moment
36 just to get organized. Take your time, sir.
37 THE ACCUSED: Okay.
38 THE COURT: So, closing arguments by Mr. Fox, then, on
39 his own behalf.

SUBMISSIONS BY THE ACCUSED:

41
42
43 THE ACCUSED: Thank you. It is my position that the
44 Crown does not only have to prove that I was on
45 probation, but specifically that I was on
46 probation at the time or at the moment that I
47 engaged in the prohibited conduct, and it is my

Submissions by the Accused

1 submission that the Crown has failed to do that.
2 I mean, there's no dispute that I published the
3 website. I've been very open about that.
4 However, there's been absolutely no evidence of
5 when the website was published.
6 And I believe it is commonly accepted, and I
7 believe that everybody here would agree, that any
8 -- if I engaged in the conduct before the
9 probation condition took effect, then it cannot be
10 considered a violation of that probation order.
11 And the fact that the results of engaging in that
12 conduct, in other words the fact that the website
13 continued to be publicly accessible, does not
14 actually violate the conditions that I'm accused
15 of -- or, yeah, does not violate those conditions
16 because the conditions only prohibited me from
17 engaging in specific conduct.
18 And the Crown even admits in his closing
19 arguments that they haven't proven when the
20 website was, as he said it, created, though I
21 believe he also meant when it was published
22 because that's really the important issue here.
23 Now, the court had heard testimony and from
24 the Crown that there's content on the website
25 which came into existence after the 2017 trial and
26 that proves that the website must've been
27 published after that point, and there's no dispute
28 about that. However, all of the content that's on
29 the website which the witness and the Crown
30 referred to all came into existence and came into
31 my possession before my release from Fraser on
32 December 30th.
33 So, the fact that I had it and the fact that
34 it ended up on the website still does not give any
35 indication of whether the website was published
36 before or after the probation order came into
37 effect.
38 It's also my position that the Crown has
39 failed to prove whether I personally uploaded or
40 made any specific content that's on the website
41 publicly available, as opposed to somebody else
42 doing it on my behalf. Now, I've been very open
43 and very frank with everybody that I created the
44 website, and that I published the website, but
45 I've never stated that I published any or uploaded
46 any specific conduct -- or content on the website.
47 So, even if there is specific content on the

Submissions by the Accused
Reply for Crown by Cnsl C. Johnson

1 website which had come into existence after my
2 release from Fraser, I have never admitted that I
3 put that specific content on there. So, again, I
4 believe that the Crown has failed to prove that.
5 And I guess that's -- I guess that's all I
6 would have on it. Thank you.
7 THE COURT: Thank you. Just bear with me for a moment,
8 please.
9 Anything further from the Crown?
10 CNSL C. JOHNSON: I think Mr. Fox might want to say one
11 more --
12 THE COURT: Oh, sorry, I didn't see you standing again,
13 Mr. Fox --
14 THE ACCUSED: I'm short.
15 THE COURT: -- in my peripheral vision. My apologies.
16 THE ACCUSED: I'm sorry, there was one other point --
17 THE COURT: Yeah. Go ahead.
18 THE ACCUSED: -- that I wanted to make, but it wasn't
19 written in my notes here because they won't let me
20 have a pen downstairs. The Crown did bring up
21 Condition 13 which required me to remove from the
22 internet the website or any other content that was
23 up at that time. My position on that is that I'm
24 not charged with violating that condition, and so
25 even if I did do that, the Crown is more than
26 welcome to charge me with that and we can start
27 this whole process over again. Thank you.
28 THE COURT: Thank you. So, I take it nothing further
29 from the Crown?
30

REPLY FOR CROWN BY CNSL C. JOHNSON:

31
32
33 CNSL C. JOHNSON: No, I simply just in response to
34 Mr. Fox, what appears to be his main point, I
35 agree with him, I think I've already said this in
36 any event, that the Crown isn't in a position to
37 establish when --
38 THE COURT: Right.
39 CNSL C. JOHNSON: -- the website was created and/or
40 published, but the Crown does say the part of the
41 letter that I referred to establishes that Mr. Fox
42 participated in publishing things on the website
43 while on probation after being in jail.
44 THE COURT: Thank you.
45 CNSL C. JOHNSON: Thank you.
46 THE COURT: Please bear with me, then, for a few
47 moments, please.

Submissions on Sentence for Crown by Cnsl C. Johnson1 [REASONS FOR JUDGMENT]
2

3 CNSL C. JOHNSON: Thank you, Your Honour. I wish to
4 pass up to you a copy of Mr. Fox's criminal record
5 and I've shown that to him and he's admitted that
6 those are his convictions.

7 THE COURT: Thank you. And that's correct, is it,
8 Mr. Fox?

9 THE ACCUSED: Yes. Yes, it is.

10 THE COURT: Thank you. That will be Exhibit 1 at
11 sentencing.

12
13 **EXHIBIT 1 (on Sentence): JUSTIN conviction**
14 **list re Patrick Henry Fox**
1516 **SUBMISSIONS ON SENTENCE FOR CROWN BY CNSL C. JOHNSON:**
17

18 CNSL C. JOHNSON: And I'll say at the outset, Your
19 Honour, that the Crown seeks a sentence of six
20 months imprisonment, but I will also say that
21 Mr. Fox has done more than that in time credited
22 and I'll get to that in a moment, but you'll see
23 from the record and from various calculations the
24 probation order that was -- that he's just been
25 found guilty of breaching, by my calculation is in
26 effect until December of 2021, so for another year
27 and four months or so.

28 And then more recently in June of this year
29 Mr. Fox was convicted of two breaches, which I was
30 not the Crown on those matters. I understand that
31 that involved allegations of him trying to get
32 into the United States, and on that occasion he
33 received a jail sentence and used up some of the
34 time served, but he also received 18 months
35 probation and that probation order also expires in
36 December of 2021.

37 With respect to this matter, then, I'm
38 seeking a sentence of six months in jail and I
39 will say that on the last trial date, I believe it
40 was July the 6th that we were here, the sheriffs
41 were unable to produce Mr. Fox who wanted to do
42 his trial in person and -- because somebody at the
43 correction centre had, I believe, tested positive
44 for COVID.

45 THE COURT: Okay. Thank you.

46 CNSL C. JOHNSON: So, on that day they were unable to
47 transport him. He then appeared by video is my

Submissions on Sentence for Crown by Cnsl C. Johnson

1 recollection and we were able to get quite an
2 early trial date which is today's date. But the
3 reason I'm raising that is because on that date on
4 July the 6th I did all the calculations and
5 Mr. Fox had -- putting aside the time served that
6 was used for his June matters, he had at that
7 point in time served just over four months with
8 respect to this file to which, if one gives him
9 time and a half, that would've been six months.
10 So, he's now well over that.

11 THE COURT: Okay.

12 CNSL C. JOHNSON: So, I'm still maintaining the same
13 sentencing position, but I'm also going to ask
14 Your Honour to consider a short term of probation
15 for six months and aside from the statutory
16 condition, the only condition I would ask is --
17 and I'm in Your Honour's hands on this, but it
18 seems that Mr. Fox did not get the message that he
19 needs to remove this website, and so I'm going to
20 ask Your Honour to consider a condition very
21 similar to the one that was imposed on his
22 previous order which I believe is --

23 THE COURT: Thirteen?

24 CNSL C. JOHNSON: -- number 13. Unfortunately, I don't
25 -- I now don't have a copy, but --

26 THE COURT: Okay.

27 CNSL C. JOHNSON: -- of course I can't ask that it
28 apply to the person by the name of James Pendleton
29 or S. because neither of those --

30 THE COURT: Okay, yes.

31 CNSL C. JOHNSON: And so, the other thing that occurs
32 to me is that I'd be happy or content if it said
33 48 hours rather than 24 hours.

34 THE COURT: Okay, thank you.

35 CNSL C. JOHNSON: And those are my submissions.

36 THE COURT: Thank you. Just bear with me a moment,
37 then, please.

38 CNSL C. JOHNSON: But I wouldn't -- I'll say I'm not
39 asking for reporting or anything of that nature.

40 THE COURT: Good. Okay, thank you. Mr. Fox, if you'd
41 stand, then, again, sir? With respect, then, I'm
42 now to sentence you on Count 1 on the information.
43 You've heard the prosecutor reference your
44 criminal record which has been put before me at
45 this sentencing hearing. Let me just ask you some
46 questions. If you like, you can say anything you
47 want about the criminal record. You don't have

Submissions on Sentence by the Accused

1 to. It's kind of a document that probably speaks
2 for itself. You can if you want.

3 But if there's anything else you'd like to
4 say to the court before I sentence you of a
5 personal nature or about the circumstances, what
6 you say would be an appropriate sentence, this is
7 your opportunity to do that.
8

9 **SUBMISSIONS ON SENTENCE BY THE ACCUSED:**

10
11 THE ACCUSED: Okay. First, I oppose the Crown seeking
12 six months.

13 THE COURT: Okay.

14 THE ACCUSED: It baffles me that I would be sentenced
15 to 12 months for the first probation violation and
16 then for a subsequent probation violation I would
17 get half as much time.

18 THE COURT: Okay.

19 THE ACCUSED: I find that very troubling. Since I've
20 already been convicted of violating probation once
21 before and sentenced to 12 months, it seems to me
22 that I should be sentenced to at least 12 months
23 this time, shouldn't I? I mean, clearly I'm not
24 learning my lesson.

25 I'm not saying this to be sarcastic or to
26 make light of the situation. I'm just trying to
27 keep things consistent. I guess we could argue
28 that on the first probation violation there was
29 two counts and now there's only one count and
30 maybe that's why it's six months, but regardless.

31 And with respect to the probation condition
32 about taking down the website, with all due
33 respect to everybody who is here there is
34 absolutely no way the website is going to come
35 down on my release from custody, and I don't
36 expect to be released from custody before the end
37 of December 2021, end of the probation.

38 But on my release from custody, I intend to
39 return to the United States, and so I don't see
40 how any probation conditions imposed here at this
41 time are going to make any difference at that
42 point. So, regardless of what the decision is on
43 that, the website's not going to come down. It's
44 not going to go away. If I need to transfer
45 ownership of the website to another party so that
46 I technically don't own it at the time, so be it,
47 but that's all.

Reply on Sentence for Crown by Cnsl C. Johnson
Submissions on Sentence by the Accused

1 THE COURT: Okay.
2 THE ACCUSED: And I know I just shot myself in the foot
3 and said all the wrong stuff and made everybody
4 upset, but ...
5 THE COURT: Thank you. Just bear with me a moment,
6 then, please.
7 THE ACCUSED: Sure.
8 CNSL C. JOHNSON: Your Honour, would it be of any
9 assistance for you to have the reasons for
10 sentence from Madam Justice Holmes?
11 THE COURT: It may be that I should read those before I
12 pronounce my sentence.
13 CNSL C. JOHNSON: They're not too lengthy, but --
14 THE COURT: Thank you. Just give me one moment, please.
15

REPLY ON SENTENCE FOR CROWN BY CNSL C. JOHNSON:

16
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18 CNSL C. JOHNSON: And just in response to Mr. Fox's
19 comments, every offence and every offender are, of
20 course, unique and I was assigned this file and I
21 made the determination as to what sentence I would
22 seek and the other file was conducted by other
23 individuals and the facts were different. So --
24 THE COURT: Thank you. Was there something else you
25 wanted to add, Mr. Fox? Go ahead if you do.
26

SUBMISSIONS ON SENTENCE BY THE ACCUSED, CONTINUING:

27
28
29 THE ACCUSED: Yes, I just wanted to point out that with
30 the previous probation conditions that I was
31 accused of violating, there was nobody that was
32 supposedly being harmed by that violation whereas
33 in this case it could be argued that Count 1
34 [indiscernible] --
35 THE COURT: Okay.
36 THE ACCUSED: -- being harmed by the website being
37 online, so I think that this is a much more
38 serious one than the previous one.
39 There was another thing that Mr. Johnson just
40 -- I can't remember now, that I wanted to respond
41 to.
42

REPLY ON SENTENCE FOR CROWN BY CNSL C. JOHNSON,
CONTINUING:

43
44
45
46 CNSL C. JOHNSON: Sorry, Your Honour, just -- I hate to
47 keep doing this. I'll endeavour that this will be

Reply on Sentence for Crown by Cnsl C. Johnson
Submissions on Sentence by Accused

1 the last occasion, but Mr. Fox did say that he
2 anticipates being in custody until December. I'm
3 not quite sure why that is because he -- if Your
4 Honour accepts my sentencing submission, he would
5 be released today.
6 THE COURT: Oh, okay. Thank you for clarifying that.
7 CNSL C. JOHNSON: Because there's no other
8 outstanding --
9 THE ACCUSED: No, no. I'm being held on another --
10 CNSL C. JOHNSON: There was an allegation in Port
11 Coquitlam.
12 THE ACCUSED: There still is.
13 CNSL C. JOHNSON: The Crown has indicated to me some
14 weeks ago that they were staying that.
15 THE ACCUSED: Yeah, but that hasn't happened yet.
16 CNSL C. JOHNSON: Oh, that may not --
17 THE COURT: Oh, okay. Thank you for that information,
18 both Mr. Johnson and Mr. Fox. Just give me one
19 moment, then, please.
20 THE ACCUSED: Yes, I go back on -- oh, last week we had
21 a status conference. They kept trying to talk me
22 into applying for bail and I said no, I'm just
23 going to stay here until December and that's how
24 we left it there. As far as I know it's going to
25 continue in December, but --
26 CNSL C. JOHNSON: Sorry, Your Honour, there is just a
27 -- there is a charge in Port Coquitlam. I've been
28 advised by the Crown that they will not be
29 proceeding on that. That I gather from Mr. Fox
30 hasn't happened yet, so he may still be in custody
31 for some period of time.
32 THE ACCUSED: Yeah. The reason that I think I'm still
33 going to be in custody from --
34 THE COURT: What I'm going to do, then, is just take
35 five minutes --
36 THE ACCUSED: Sure.
37 THE COURT: -- to read Justice Holmes' decision. I'm
38 just going to stand down. Mr. Registrar, I'll
39 just be outside here. Just come and get me in
40 five minutes. Thank you. Sorry, Mr. Fox?

SUBMISSIONS ON SENTENCE BY THE ACCUSED, CONTINUING:

42
43
44 THE ACCUSED: I do remember what I wanted to mention.
45 With respect to Justice Holmes' reasons for
46 sentencing there --
47 THE COURT: Yes.

Proceedings

1 THE ACCUSED: -- bear in mind the transcripts and the
2 recordings of all of those sentencing proceedings
3 have also been published and they clearly prove
4 that what she's saying in there does not
5 correspond to what was said in the court and the
6 evidence that was presented.

7 THE COURT: Okay. And I think the difficulty, Mr. Fox,
8 with that is this is not an appeal to my
9 understanding, so that's the decision I rely upon,
10 yes. If you dispute the evidence, the route is an
11 appeal at that point. Thank you.

12
13 (PROCEEDINGS ADJOURNED)
14 (PROCEEDINGS RECONVENED)
15

16 THE COURT: Thank you.

17
18 [REASONS FOR SENTENCE]
19

20 CNSL C. JOHNSON: Thank you, Your Honour.

21 THE COURT: Mr. Registrar can assist if there's any
22 further work we can do. Thank you.

23
24 (PROCEEDINGS CONCLUDED)
25
26
27

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



S. Houde
Court Transcriber