

COURT OF APPEAL

ON APPEAL FROM THE PROVINCIAL COURT OF BRITISH COLUMBIA,
FROM THE JUDGMENT OF THE HONOURABLE JUDGE RIDEOUT,
PRONOUNCED ON THE 26TH DAY OF NOVEMBER 2020, AND FROM THE
SENTENCE PRONOUNCED ON THE 12TH DAY OF APRIL 2021.

REGINA

RESPONDENT

v.

PATRICK HENRY FOX

APPELLANT

TRANSCRIPT

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Appearing on his own behalf

244069-7-B
Vancouver Registry

In the Provincial Court of British Columbia
(BEFORE THE HONOURABLE JUDGE RIDEOUT)

Vancouver, B.C.
November 26, 2020

REGINA

v.

PATRICK HENRY FOX

PROCEEDINGS AT TRIAL

Crown Counsel:

C.S. Johnson, Q.C.

Appearing on his own behalf:

The Accused

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Proceedings

1 Vancouver, B.C.
2 November 26, 2020
3

4 CNSL C. JOHNSON: Chris Johnson, Your Honour, appearing
5 for the Provincial Crown and I've got conduct of
6 number two on Your Honour's list, Patrick Henry
7 Fox.

8 THE COURT: Thank you.

9 CNSL C. JOHNSON: Mr. Fox is in custody and he is
10 unrepresented.

11 THE COURT: I know. So if you can just position
12 yourself, Mr. Fox. I've had you in front of me
13 before on several occasions. I can't recall how
14 many times. It's Judge Rideout presiding.

15 As you know, pursuant to section 7 of the
16 *Canadian Charter of Rights and Freedoms* you have
17 the right to life, liberty and security of the
18 person contained as that, has the right to have
19 legal counsel to represent you. You've acted on
20 your own before but you know you are entitled to
21 have independent legal advice and to have legal
22 counsel represent you; is that correct?

23 THE ACCUSED: That is correct.

24 THE COURT: You're waiving that right in relation to
25 having counsel and you're prepared to act on your
26 own behalf?

27 THE ACCUSED: Yes, I am. Thank you.

28 THE COURT: You have full disclosure from the Crown; is
29 that correct?

30 THE ACCUSED: I don't know if it's full but I do have
31 disclosure.

32 THE COURT: I have to protect your interests. I can't
33 advocate for you but as we go through if there's a
34 problem you can certainly raise your hand and we
35 can hear any objection you might have or concern
36 you may have.

37 Mr. Johnson, as an officer of the court, has
38 an obligation to ensure the trial proceeds in a
39 fair and just manner. The prosecution takes no
40 interest in the result. They remain objective in
41 that regard. You appreciate that?

42 THE ACCUSED: Yes, I do. Thank you.

43 THE COURT: Has he been arraigned, Madam Registrar?

44 THE CLERK: Yes, Your Honour.

45 THE COURT: You obviously know what you're charged
46 with?

47 THE ACCUSED: Yes.

Opening for Crown by Cnsl C. Johnson

1 THE COURT: I'm going to ask Mr. Johnson to give me a
2 brief opening with respect to what this case is
3 about and then I may ask you a question or two
4 with respect to that opening address. But we'll
5 hear from Mr. Johnson first. You've got note
6 paper there and you've got a pen?
7 THE ACCUSED: I don't have a pen. I was going to ask,
8 may I borrow a pen and is there any way of getting
9 any water? My mouth is very dry.
10 CNSL C. JOHNSON: I don't see any water.
11 THE ACCUSED: Last time it's going to be -- get some
12 bottles or something.
13 THE COURT: Yes. Can we email the -- email the
14 Registry, see if we can get some -- I brought my
15 own water up but --
16 THE CLERK: I could run out and just -- I took out a
17 cup in the event that I had to get water.
18 CNSL C. JOHNSON: I think I may have an extra pen.
19 THE COURT: So Maureen, do you want to just dash out
20 and get some water?
21 THE CLERK: Certainly.
22 THE COURT: Thanks.
23 THE ACCUSED: Okay. Thank you.
24 THE COURT: Madam Registrar will get you some water,
25 Mr. Fox.
26 THE ACCUSED: Thank you.
27 CNSL C. JOHNSON: While we're waiting for that, I can
28 proceed, Your Honour, or should I wait?
29 THE COURT: Better wait for Madam Registrar, just in
30 case the record should stop.
31 CNSL C. JOHNSON: Yes.
32 THE COURT: Thanks, Madam Registrar. We have Madam
33 Registrar back. Mr. Johnson, an opening, please.

OPENING FOR CROWN BY CNSL C. JOHNSON:

34
35
36
37 CNSL C. JOHNSON: Yes, Your Honour. Just by way of
38 some background. There's a two count Information
39 before the court. Both of the allegations in it
40 are breach of court order allegations, probation
41 specifically.
42 Mr. Fox -- I actually met with him this
43 morning briefly. The Crown had intended to call a
44 number of witnesses. I did discover two days ago
45 that one of my witnesses is unfortunately
46 attending to his father who is gravely ill in the
47 hospital and not available.

Opening for Crown by Cnsl C. Johnson

1 Mr. Fox has indicated to me that nevertheless
2 he's prepared to admit that on August the 19th he
3 was sentenced to a sentence of time served and
4 probation, and the probation order took effect
5 when he was released on August the 20th. The
6 probation order should be before this court.

7 THE COURT: I've now got it. This is dated August
8 19th, 2020.

9 CNSL C. JOHNSON: And Mr. Fox in that probation order,
10 as well as in a Supreme Court order which is Count
11 2, has been directed to remove a particular
12 website or websites, and the Crown says that he
13 has not done that. That's the gist of the Crown's
14 allegation here.

15 So the way I intend to deal with the case
16 today is that Mr. Fox has also indicated to me
17 that he doesn't take issue with his arrest and the
18 fact that he was provided with his *Charter* rights,
19 and chose not to speak to a lawyer. And then
20 lastly, Mr. Fox agrees that he was interviewed by
21 Detective-Constable Kyle Dent of the Vancouver
22 Police Department. There is an audio recording of
23 that interview which I've provided to Mr. Fox.
24 Mr. Fox has been kind enough to say that we don't
25 need to play the entire recording. And so what I
26 intend to do is produce one witness on this trial
27 who will be Detective-Constable Kyle Dent. He
28 will give evidence about the substance of that
29 interview.

30 THE COURT: Thank you. I'm not going to call on a
31 response from you, Mr. Fox. You've heard the
32 opening. Is that correct that you were
33 interviewed and questioned by Constable Dent?
34 You're not taking issue with that, and that the
35 portion of what was discussed with Detective-
36 Constable Dent, you've received disclosure with
37 respect to that?

38 THE ACCUSED: That is correct.

39 THE COURT: Also with respect to any *Charter* issues,
40 there are no *Charter* issues. I know you're an
41 intelligent man. You are aware of your *Charter*
42 rights under the *Constitution Act of Canada*, and
43 that you're not taking issue with the arrest or
44 any informational component or implementational
45 component with respect to the right to counsel; is
46 that correct?

47 THE ACCUSED: That is correct.

Proceedings

1 THE COURT: Thank you. There will be an order of
2 exclusion -- excluding witnesses. There's only
3 one anyways, but there will be that order.
4 Thanks, Mr. Johnson.

5 CNSL C. JOHNSON: Thank you. Then I will call
6 Detective-Constable Kyle Dent. Oh, Mr. Fox is
7 rising.

8 THE ACCUSED: Yes. I object to the calling of that
9 witness. I've received no notice of it prior to
10 this, and it is my understanding, if I recall
11 correctly, that the Crown does have to provide
12 some amount of notice of the witnesses that he
13 intends to call.

14 I've made multiple requests to the Crown over
15 the past few months for a copy of their witness
16 list, and so far they've provided nothing in that
17 respect.

18 THE COURT: Mr. Johnson.

19 CNSL C. JOHNSON: I did provide Mr. Fox with, of
20 course, full disclosure indicating -- and
21 including the evidence of Detective-Constable --

22 THE COURT: That included the evidence of Detective-
23 Constable Dent?

24 CNSL C. JOHNSON: Yes. And that is, in my view, what
25 the Crown is required to provide.

26 THE COURT: When was the disclosure made or forwarded?

27 CNSL C. JOHNSON: I think there was two components of
28 the disclosure and the first was -- Mr. Fox would
29 be probably more accurate about it, but there was
30 initial disclosure and then there was subsequent
31 disclosure which I believe was disclosed to him on
32 Monday.

33 THE COURT: Normally, Mr. Fox, this is what's called an
34 ambush and it's certainly frowned upon; that if
35 you had disclosure which included the package with
36 the name of Detective-Constable Dent so you knew
37 what was coming. On the day of trial it's usually
38 not well received by a trial judge as the sort of
39 thing that's -- unfortunately it should have been
40 brought in advance of the trial date as an
41 objection. What would happened if the -- the most
42 that would have happened is a judge would have
43 adjourned it to another date to make sure you
44 understand what's going on. It wouldn't defeat
45 the case. It would just simply cause an
46 adjournment, that's all.

47 THE ACCUSED: Okay.

Kyle Dent (for Crown)
in chief by Cnsl C. Johnson

1 THE COURT: Thank you. Detective-Constable Dent,
 2 please, Mr. Sheriff. Stand to your left, to my
 3 right, to be affirmed, please, unless you brought
 4 your own Bible.

5 THE WITNESS: I did not.

6 THE COURT: Okay. You'll be affirmed.

KYLE DENT

a witness called for the
 Crown, affirmed.

12 THE CLERK: Please state your full name and badge
 13 number, for the record, and spell both your first
 14 and last name.

15 A Kyle Dent, K-y-l-e D-e-n-t, badge number is 2680.

16 THE COURT: Thank you. And you've got paper and a pen
 17 now, Mr. Fox?

18 THE ACCUSED: I do. Thank you.

19 THE COURT: Thank you. Mr. Johnson.

EXAMINATION IN CHIEF BY CNSL C. JOHNSON:

23 Q Detective-Constable Dent, you're a member of the
 24 Vancouver Police Department, are you?

25 A I am.

26 Q And I understand that you've been so employed for
 27 the last eleven years?

28 A Correct.

29 Q And you're currently a member of what's described
 30 as the Domestic Violence and Criminal Harassment
 31 Unit?

32 A That is correct.

33 Q And you have been for the past four months; is
 34 that correct?

35 A Yes.

36 Q And are you aware of an individual by the name of
 37 Patrick Fox?

38 A I am.

39 Q And would you recognize Patrick Fox if you saw him
 40 here in the courtroom?

41 A I would.

42 Q And could you indicate to His Honour if Mr. Fox is
 43 here?

44 A If the gentleman to your right could remove his
 45 mask briefly. Yes, that is, in fact, Mr. Fox.

46 THE COURT: I note the indication.

47 CNSL C. JOHNSON:

Kyle Dent (for Crown)
in chief by Cnsl C. Johnson

1 Q And you're aware that Mr. Fox has been charged
2 with breaches of probation; is that correct?
3 A That is correct.
4 Q And as part of your involvement in this matter you
5 reviewed a probation order which was dated August
6 the 19th; is that correct?
7 A That's correct.
8 Q And you're aware that there's certain conditions
9 of that order?
10 A Yes.
11 Q One of which is to remove certain websites; is
12 that correct?
13 A That is correct.
14 Q And in particular, you investigated a website and
15 I'm going to ask you the name of that website,
16 please?
17 A It was desicapuano.com
18 Q And so that's w-w-w dot d-e-s-i-c-a-p-u-a-n-a dot
19 com? Do I have that right?
20 A No, it's c-a-p --
21 Q Oh, sorry.
22 A -- u-a-n-o dot com.
23 Q Thank you. Now, when were you first asked to be
24 involved in this matter?
25 A On September 15th.
26 Q And who asked you to be involved?
27 A The lead investigator, Detective-Constable Wesley
28 Jordan.
29 Q All right. And what were you asked to do?
30 A Conduct an interview of Patrick Fox.
31 Q All right. And on that day, that is September the
32 15th did you know Mr. Fox at that time?
33 A I did not.
34 Q And did you familiarize yourself with Mr. Fox?
35 A I reviewed parts of the previous file to prepare
36 for the interview.
37 Q And in reviewing parts of the previous file you --
38 well, perhaps I won't ask that. Did you, as part
39 of your investigation, look at or check out a
40 website call -- as you've described?
41 A I did. On the 16th of September I reviewed and
42 printed off the front page of desicapuano.com and
43 I brought it here with me today.
44 Q All right. And the printout that you made is one
45 page?
46 A It's predominantly one page. There's a little
47 footnote on the back page to make it two, but the

Kyle Dent (for Crown)
in chief by Cnsl C. Johnson

1 bulk of the information that I used is on the
2 front page, yes.
3 Q And the website that you reviewed, I take it --
4 well, I'll ask openly, how many pages might exist
5 then if you were to copy the website in its
6 entirety?
7 A I -- countless. I -- I can't put a number on
8 there. There's a number -- if I may refer to the
9 document that I brought, Your Honour.
10 THE COURT: Sure.
11 A Okay. So on the front page here there's an open
12 letter to Mr. David Eby.
13 THE COURT: Pause there. You've got that document, Mr.
14 Fox?
15 THE ACCUSED: Oh, no, no, but I'm familiar with it, I'm
16 looking for something else.
17 THE COURT: Oh. I just want to make sure that you're
18 -- you've got -- you've had disclosure?
19 THE ACCUSED: Oh, yes. Yes.
20 THE COURT: Thank you.
21 CNSL C. JOHNSON: Perhaps if I can just take it from
22 the witness and I'll just verify that with Mr. Fox
23 if I might. Mr. Fox --
24 THE ACCUSED: Mm-hmm. Sure.
25 THE COURT: He's identified the document. Thank you,
26 detective-constable.
27 A Thank you. As I was saying, on the left-hand side
28 of the front page here there are a number of sub-
29 links, links to other articles that I did not look
30 at. Those links are something to the effect of
31 "Ah, Dang! Not this website again," "I haven't
32 taken my kids to the dentist," and some other
33 inappropriate titled items that I would prefer not
34 to disclose.
35 CNSL C. JOHNSON:
36 Q All right. And with respect to the website itself
37 and you're looking at the first page, you
38 indicated that it contained a letter to whom?
39 A David Eby.
40 Q All right. And you're aware that he's -- was then
41 the and is still the Attorney General of British
42 Columbia?
43 A I do, yes.
44 Q And as far as the subject matter of that website
45 could you tell when that information has been
46 posted?
47 A The date on this says August 19th, 2020, at 1:53

Kyle Dent (for Crown)
in chief by Cnsl C. Johnson

1 p.m.
2 Q All right. And when you say the date --
3 THE COURT: What time, please?
4 A Sorry, the date right there, August 19th, 2020,
5 1:53 p.m.
6 CNSL C. JOHNSON: All right.
7 THE COURT: Thank you.
8 A So I don't -- again, I'm not a technical expert,
9 I'm not familiar with how to create or how to
10 update websites or anything, along those lines. I
11 just see a date on the top of the document there.
12 CNSL C. JOHNSON:
13 Q All right. So you can't say that that date and
14 time is --
15 A No, there is a date --
16 Q -- an accurate -- relevant date and time?
17 A -- of August 19th, 2020.
18 Q If I could just see that for a moment.
19 A Of course.
20 Q With respect to that document it refers -- it's
21 written in the first person, I take it; you'd
22 agree with that?
23 A Yes.
24 Q And it's written as a letter to Mr. Eby but it's
25 posted on this website; is that correct?
26 A Yes.
27 Q And amongst the things that it says, and I'm
28 referring to the second paragraph.
29
30 Anyway, on August 19, 2020 I had a trial for
31 a probation violation for putting this
32 website back online (publishing,
33 disseminating information about Capuano).
34 And even though the Crown's (Chris Johnson)
35 only witness (VPD Detective Jennifer Fontana)
36 and Crown himself both admitted they had no
37 knowledge or evidence of when I published the
38 material, etc.
39
40 So you'd agree that it referenced a specific date
41 that had occurred?
42 A It does, yes.
43 Q And so as a result of printing out that website
44 you, I take it, used that document in your
45 subsequent interview of Mr. Fox; is that correct?
46 A I did, yes.
47 Q And sorry, there was just one other thing I wanted

Kyle Dent (for Crown)
in chief by Cnsl C. Johnson

1 to reference which was -- in the third paragraph
2 of this letter you'd agree that it says:
3

4 I told Mr. Johnson all this is doing is
5 showing the world how ineffectual and
6 impotent the Canadian justice system is.
7 They can't even make a little pissant nobody
8 like myself take down a website. They can
9 lock me up for the rest of my life, but I
10 will never take down the website.
11

12 Is that correct?

13 A That's correct.

14 Q And I take it you would reference that to be that
15 the very website, www.desicapuano.com?

16 A That's correct. That website is also in the
17 bottom left-hand corner of the printout.

18 CNSL C. JOHNSON: Thank you. If I could file that as
19 Exhibit 1 on the trial.

20 THE COURT: What I'm going to do, Mr. Fox, is file it
21 -- mark it for identification as Exhibit A. At
22 the conclusion of the Crown's case I'll invite Mr.
23 Johnson to revisit that document to see if it
24 should be marked as an exhibit proper. This
25 protects your interest as well.

26 THE ACCUSED: Okay. Thank you.

27 THE COURT: Exhibit A for identification. Working copy
28 for me.

29 CNSL C. JOHNSON: Well, that would be a good idea,
30 wouldn't it. I wasn't allowed access to the Crown
31 Counsel Office this morning and --

32 THE COURT: Madam Registrar, can you make a copy at the
33 morning break for me, please. Thank you.
34

35 **MARKED A FOR IDENTIFICATION: Documents**
36 **pertaining to website**
37

38 CNSL C. JOHNSON:

39 Q Now, you've indicated that you prepared for an
40 interview with Mr. Fox and did that interview take
41 place?

42 A It did.

43 Q And can you tell the court, please, when that
44 occurred?

45 A On September 17th, 2020.

46 Q And approximately what time on that day?

47 A Approximately 7:45 to 7:50 in the morning.

Kyle Dent (for Crown)
in chief by Cnsl C. Johnson

1 Q All right. And Mr. Fox, I take it, was in custody
2 having been arrested at that time; is that
3 correct?
4 A That is correct.
5 Q And you'd been made aware that he'd been chartered
6 and warned and had declined to speak to a lawyer?
7 A Yes.
8 Q Now, where did this interview take place?
9 A The interview took place at the Police Station
10 located at 236 East Cordova Street. On the ground
11 floor there has been one interview room that has
12 been made COVID friendly with a large Plexiglas
13 pane to separate the people who are in the
14 interview.
15 THE COURT: Mr. Fox, from Mr. Johnson's opening you're
16 not taking issue with the interview, but if you
17 are concerned about that conversation I can
18 declare a voir dire which is a trial within a
19 trial, and Mr. Johnson can continue with it. Then
20 at the conclusion of the voir dire I'll determine
21 whether or not the conversation is admissible.
22 Would you prefer to go that route?
23 THE ACCUSED: No, I have no concerns with it.
24 THE COURT: You're sure of that?
25 THE ACCUSED: Yes.
26 THE COURT: All right. Thank you.
27 CNSL C. JOHNSON: And with respect to the interview,
28 Your Honour, I've already indicated there is an
29 audio version. There is not a transcript version
30 and so Mr. Fox has indicated that I can simply
31 highlight the statement, and then of course, he's
32 entitled to ask any questions he wants about it.
33 THE COURT: Sure. Thanks. So you're admitting that
34 you freely and voluntarily gave that statement to
35 the detective-constable?
36 THE ACCUSED: Yes.
37 THE COURT: Thank you.
38 CNSL C. JOHNSON:
39 Q Now, Detective-Constable Dent, you with respect to
40 this interview that I'm asking you about wrote up
41 a document which is called a Task Action Report;
42 is that correct?
43 A That's correct.
44 CNSL C. JOHNSON: And Your Honour, I can indicate that
45 that Task Action Report was disclosed to Mr. Fox,
46 and I'll just show him a copy of that to verify
47 that.

Kyle Dent (for Crown)
in chief by Cnsl C. Johnson

1 THE COURT: Thank you.
2 THE ACCUSED: Sure.
3 CNSL C. JOHNSON: He's indicating yes.
4 THE COURT: Thank you.
5 CNSL C. JOHNSON:
6 Q And with respect to the Task Action Report
7 essentially that acted as your recording for your
8 own purposes and for court purposes of what took
9 place during this interview?
10 A Yes.
11 Q And you, I take it, had with you what's been
12 marked as Exhibit A for identification, a copy of
13 the website; is that correct?
14 A That's correct.
15 Q And during the interview, at the beginning portion
16 of the interview did you advise Mr. Fox it was
17 going to be recorded?
18 A Yes.
19 Q And did Mr. Fox have a response to that?
20 A Yes. He said it is important to have good quality
21 audio and video for him to put on the website
22 later.
23 Q All right. And then did he reference the website
24 with respect to anything that he had put on it or
25 that was on it?
26 A Your Honour, with respect, I'd like to refer to my
27 Task Action Report so that I can provide accurate
28 evidence.
29 THE COURT: That's fine. You can refresh your memory
30 from your notes, thank you, including that
31 document.
32 A Thank you very much. Mr. Fox referenced a number
33 of details on that website, yes. His response was
34 he did not admit to posting anything, but it has
35 been updated by somebody.
36 CNSL C. JOHNSON:
37 Q All right. So his -- his version, I take it, was
38 that he denied that he updated the website and
39 obviously we're talking subsequent to August the
40 19th of this year; is that correct?
41 A Yes.
42 Q He did -- I take it you did ask him about whether
43 he had taken down the website; is that correct?
44 A I did.
45 Q And his response to that, you made reference to in
46 line six of your Task Action Report; is that
47 correct?

Kyle Dent (for Crown)
in chief by Cnsl C. Johnson

- 1 A Yes. That response is [as read in]:
2
3 The reason it hasn't been taken down is
4 because it exposes misconduct and corruption
5 that happens in the criminal justice --
6
- 7 Q Actually -- sorry -- if I could --
8 A Oh.
9 Q -- ask you to go up to the line ahead of that.
10 A Sorry. He was ordered to take down the website
11 and he believes the website itself is not illegal.
12 Q Right. So just on that portion of the interview
13 would it be fair to say that Mr. Fox acknowledged
14 that he'd been ordered to take down the website,
15 but he had a belief that it was not illegal?
16 A Yes.
17 Q And then to go into the next line which was the
18 reason it hadn't been taken down, if you could
19 advise the court of that part of the interview
20 again, please?
21 A Yes. [As read in]:
22
23 The reason it hasn't been taken down is
24 because it exposes misconduct and corruption
25 that happens in the criminal justice system
26 every day, expose corruption and misconduct
27 of jackasses like Mark Myhre and Tony
28 Lagemaat and it exposes a misconduct of evil,
29 horrible cunt of an ex-wife.
30
- 31 Q Now, going onto the second page of your Task
32 Action Report, in the second line of that did Mr.
33 Fox say anything about the police action or lack
34 of action?
35 A Yes. Your Honour, Mr. Fox stated that he was
36 waiting to be arrested by the police and I quote,
37 "Surprised it took this long," end quote.
38 Q All right. And then I think it's the sixth line
39 from the top that it references the City of
40 Vancouver. Do you see that?
41 A Yes.
42 Q Can you explain that portion of the interview,
43 please?
44 A So during the interview Mr. Fox made a statement
45 where he stated he saw the City of Vancouver, RCMP
46 and Province of British Columbia, their IP
47 addresses in the access logs for the website.

Kyle Dent (for Crown)
in chief by Cnsl C. Johnson

- 1 Q And can you tell me or tell the court, please,
2 what that means?
- 3 A What it means to me is that anybody who has the IP
4 access of a website, it's my belief that they have
5 access to the website as a contact creator.
- 6 Q All right. And when persons, for example, who
7 work for the City of Vancouver or the RCMP or the
8 Province of B.C. --
- 9 A Mm-hmm.
- 10 Q -- access this particular website which, again,
11 was www.desicapuano.com --
- 12 A Mm-hmm.
- 13 Q -- their IP address, this is in your
14 understanding, can be seen; is that correct?
- 15 A Yes.
- 16 Q And that part of the interview was a reference,
17 I'm taking it, or I'll ask it in a more general
18 way, did Mr. Fox indicate that he had access to
19 the -- what you've described as access logs for
20 the website? Just reading that sentence.
- 21 A Yeah. Reading that sentence, yes. Again, it's my
22 belief that anybody who has the access logs to a
23 website has access to the website, more than just
24 a person who can click on the website and access
25 it from the internet.
- 26 Q And just to be clear, he did indicate to you, I
27 gather --
- 28 A Mm-hmm.
- 29 Q -- that he had seen those access logs for the
30 website?
- 31 A Yes.
- 32 Q And then next, in the course of this interview Mr.
33 Fox indicated to you what he wanted and by that I
34 take it he was saying what he wanted by posting
35 this website; have I got that right?
- 36 A He -- what he stated was the purpose of the
37 website. I had asked him what it would take for
38 the website to be taken down.
- 39 Q All right. And his answer was what?
- 40 A What he wants is the government to admit
41 everything on his website is true and overturn all
42 his convictions, and for his ex-wife to get throat
43 cancer and die a slow, miserable death.
- 44 Q All right. And then --
- 45 THE COURT: You were a little fast with that. Can you
46 repeat that, please?
- 47 A Yes. Of course, Your Honour. I apologize. His

Kyle Dent (for Crown)
in chief by Cnsl C. Johnson

1 answer when I asked him what it would take for the
2 website to be taken down, he stated he wants the
3 government to admit everything on his website is
4 true and overturn all of his convictions, and for
5 his ex-wife to get throat cancer and die a slow,
6 miserable death.
7 If I may, he went on to say no one --
8 CNSL C. JOHNSON:
9 Q Just hang on one second.
10 A Oh, okay.
11 Q I think His Honour is still recording that.
12 THE COURT: Thank you.
13 CNSL C. JOHNSON:
14 Q And Detective-Constable Dent, you were indicating
15 that he went on to say what?
16 A Yes. He went on to say no one is going to take
17 down anything from the website --
18 Q If you could just pause there for a second.
19 A Mm-hmm.
20 THE COURT: Thank you.
21 A Unless the Provincial Government admits publicly
22 that he didn't commit criminal harassment,
23 overturn his conviction for criminal harassment --
24 THE COURT: Yes.
25 A -- and admit everything on his website is true. I
26 would also like to say, Your Honour, that the
27 statements that I'm providing right now are not
28 direct quotations.
29 THE COURT: Just the gist of what's --
30 A That is correct.
31 THE COURT: -- compressed into --
32 A The transcript when it's done --
33 THE COURT: Into your Task Report. Thank you.
34 A Yes.
35 CNSL C. JOHNSON:
36 Q And did you ask him, in the context of this,
37 whether he would ever take the website down? And
38 I'll ask you to reference about three lines later.
39 A Yeah. I have a note in here, he will never in his
40 life take the website -- take down the website.
41 Q And then did you have some discussion with Mr. Fox
42 about the technicalities of taking down the
43 website or a website?
44 A Yes. Mr. Fox provided great detail on multiple
45 different techniques in order to remove the
46 ability of the website being online anymore.
47 Q All right.

Kyle Dent (for Crown)
in chief by Cnsl C. Johnson

1 THE COURT: He appeared to be informed in that respect?
2 A Yes. Mr. Fox stated in the course of the
3 interview that he is a software engineer, and I
4 got the very distinct impression that he is
5 incredibly intelligent when it comes to the
6 mechanics of anything computer related.
7 CNSL C. JOHNSON:
8 Q And then towards the end of the interview and I'm
9 now on the third page of your Task Action Report.
10 A Yes. Mm-hmm.
11 Q This is, I believe, the fourth line from the top.
12 A Mm-hmm.
13 Q Did Mr. Fox reference additional content for the
14 website?
15 A He did. There's a note here, there's a lot more
16 content that needs to be added and it's going to
17 go up. It's very time-consuming and -- and I
18 quote, "I haven't been the most productive," end
19 quote.
20 THE COURT: Thank you.
21 CNSL C. JOHNSON:
22 Q And then the next line after that, if you could
23 share that with the court, please?
24 A Locking him up in jail isn't going to stop or
25 change anything.
26 Q And then I take it you had some further
27 conversation with Mr. Fox, I'm not going to ask
28 you the details, regarding the Digital Forensic
29 Unit at the Vancouver Police Department --
30 A We did.
31 Q -- etc.?
32 A We did, yes.
33 Q And then you concluded the interview; is that
34 correct?
35 A That's correct.
36 Q And are you able to tell us approximately how long
37 this interview lasted from start to finish?
38 A After reviewing my notes I realized I didn't write
39 it down, but I can recall it lasted approximately
40 an hour and a half.
41 Q And would it be fair to say that Mr. Fox was
42 cooperative with you?
43 A Absolutely.
44 CNSL C. JOHNSON: Thank you. Those are all the
45 questions I have of this witness, Your Honour.
46 THE COURT: So Mr. Fox, this is your opportunity to
47 cross-examine the detective-constable in relation

Kyle Dent (for Crown)
cross-exam by The Accused

1 to his evidence. You should be sticking to the
2 evidence that you've heard today and it's not one
3 of going outside of that scope because it's
4 narrowed down to these allegations of breach.
5 So the idea to cross-examination is to ask
6 probing questions to undermine the reliability and
7 ultimate credibility of this police officer if
8 possible, or that perhaps you can challenge some
9 of the comments or evidence he's given with
10 respect to the conversation itself, but this is
11 your opportunity.

12 THE ACCUSED: Thank you.

13

14 **CROSS-EXAMINATION BY THE ACCUSED:**

15

16 Q Detective Dent, could you tell me when was the
17 first time that you ever went to the website?

18 A The first time I went to the website was on the
19 16th.

20 Q Of which month?

21 A Of September.

22 Q Okay. And did you visit the website at all or try
23 to access the website between the times of eight
24 p.m. on August 20th through eight p.m. on August
25 22nd?

26 A I did not.

27 Q And who is the registered owner of the website?

28 A I don't have that information.

29 Q Who was the registered owner of the website on
30 August 20th through 22nd?

31 A I don't have that information.

32 Q Who has administrative access to the website?

33 A I don't have that information.

34 Q Have you in the course of -- oh, well -- other
35 than the interview and preparing for the interview
36 with me have you done any investigation into this
37 matter?

38 A No.

39 Q So is it fair to assume that you have not
40 contacted the hosting provider?

41 A No.

42 Q Was the website taken offline between eight p.m.
43 on August 20th and eight p.m. on August 22nd?

44 A I don't have that information.

45 Q Who wrote the blog post that you were referring to
46 earlier, "Dear David Eby"?

47 A At the bottom of that post is a signature block

Kyle Dent (for Crown)
cross-exam by The Accused

1 with Patrick Fox's name written on it.
2 Q Mm-hmm. So the person who wrote that post, were
3 they under any moral or legal obligation to put a
4 specific name there, or could they have put any
5 name?
6 A Your -- I don't know if I can answer that
7 question. You're asking me the morality of
8 somebody else.
9 Q Okay. Forget the moral aspect of it then. Was it
10 possible that the person who wrote that post could
11 have put whatever they wanted for the name?
12 A Again, you're asking me what somebody else --
13 Q Okay.
14 A -- could or could not do. I remember during our
15 interview we talked about this --
16 Q Mm-hmm.
17 A -- and you mentioned that perhaps Desi Capuano
18 herself could have written your name down there.
19 Q Did she? Did Desiree Capuano herself write that
20 post?
21 A Again, I --
22 Q Okay. Was that post written and put on the
23 website before I was released from custody on
24 August 20th, to the best of your knowledge?
25 A I don't have any knowledge in regards to that.
26 Q Okay. Does that post and the contents in that
27 post have any relevance or significance to whether
28 or not the website was taken offline within forty-
29 eight hours after my release from custody?
30 A The only relevance that I observed on that was a
31 sentence stating that I will never take this
32 website down.
33 Q Okay. And of course, that would only be relevant
34 if I actually wrote and posted that post, right?
35 THE COURT: Well --
36 THE ACCUSED: Sorry.
37 THE COURT: -- he can't answer that.
38 THE ACCUSED: Right, right.
39 Q Did I at any point in my interaction with you
40 state that after August 20th -- well -- okay, yes
41 -- that after August 20th that I still own or
42 control the website?
43 A In our conversation you would make statements to
44 the effect of I have more information to put on
45 and then stop yourself and correct yourself saying
46 something to the effect of and by I, referring to
47 yourself

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cross-exam by The Accused

1 Q Mm-hmm.
2 A -- I mean somebody.
3 THE COURT: And what I'll say, Mr. Fox, I'm entitled to
4 draw certain inferences from the evidence to put
5 together the factual pattern for the offences. If
6 this officer had a discreet interaction with
7 you --
8 THE ACCUSED: Mm-hmm.
9 THE COURT: -- he wouldn't have much information with
10 respect to all of the background of details --
11 THE ACCUSED: Right.
12 THE COURT: -- but it was from this interview that this
13 evidence is now being entered in by Mr. Johnson.
14 THE ACCUSED: Right.
15 Q In response to -- sorry, I'm asking -- moving --
16 so the comment that you had just made about
17 statements that I had made that I have more
18 information or evidence that I intend to publish
19 on there, let me ask you this. Once the current
20 probation orders against me expire and I return to
21 my country of origin am I under any legal
22 obligation to not post anything on the website?
23 THE COURT: That's something that he cannot answer.
24 That's something you get legal advice on.
25 THE ACCUSED: Right. Well, I know what the answer is.
26 THE COURT: I'm just saying he can't answer that but a
27 lawyer could certainly help you out.
28 THE ACCUSED: Right, right. The reason for that
29 question was --
30 THE COURT: That's good.
31 THE ACCUSED: Okay.
32 Q So in our conversation did I state that I had
33 transferred ownership or control of the website to
34 another party at some point?
35 A The only comment that I can recall --
36 Q Mm-hmm.
37 A -- in relation to that and I'm just going to refer
38 to my Task Action Report here, was on the second
39 page, approximately in the middle, I can count
40 lines if you'd like, you wrote if some -- or
41 sorry, I wrote -- if somebody was assisting with
42 the website it would be somebody outside of
43 Canada.
44 Q Okay. So I'm not sure that really answers my
45 question though. My question was did I make a
46 particular statement or admission to you, that
47 being that I had transferred ownership or control

Kyle Dent (for Crown)
cross-exam by The Accused

1 of the website to another party?
2 A I don't recall.
3 Q Okay. I believe that you had mentioned earlier or
4 made reference to a statement that I had made that
5 I would never take down the website. Do you
6 recall testifying about that a few moments ago?
7 A Yes.
8 Q Okay. So -- give me a moment while I try to think
9 of how I can phrase this. Would you say that that
10 statement on my part would be reasonable if, in
11 fact, I don't own the website? In the probation
12 order --
13 A Mm-hmm.
14 Q -- you may notice it explicitly states, blah-blah-
15 blah, including the website's published under the
16 domain dub-dub-dub dot -- or
17 www.desireecapuano.com and www.desicapuano.com.
18 Do you agree it mentions both or --
19 A Yes.
20 Q -- it states both of those domains?
21 A Yes.
22 Q Who owns the domain name w -- desireecapuano.com?
23 A I don't know that information.
24 Q Would it surprise you to know that Desiree Yvonne
25 Capuano, my ex-wife --
26 THE COURT: What you're now doing is essentially giving
27 evidence, and that's not proper cross.
28 THE ACCUSED: Okay.
29 THE COURT: You may want to take the witness box and
30 I'll discuss that with you in due course.
31 THE ACCUSED: Right.
32 THE COURT: But I know where you're going with that
33 question. He's not -- he's not going to be able
34 to answer that question.
35 THE ACCUSED: Oh. But the question was would it
36 surprise him to know that?
37 THE COURT: But that's --
38 THE ACCUSED: Okay.
39 THE COURT: -- essentially giving evidence.
40 THE ACCUSED:
41 Q With respect to the access logs that you had
42 mentioned earlier, I had stated that I had seen
43 certain IP addresses within the access logs?
44 A That's correct.
45 Q Are those access logs publicly accessible? And
46 I'm not speaking generally are they, but
47 specifically for that website. Have they been

Kyle Dent (for Crown)
cross-exam by The Accused

1 made publicly accessible so that anybody can
2 access them?
3 A I don't have that information.
4 Q The -- well, okay. Did I at any point state to
5 you that I did not take down the website between
6 August 20 -- 20th and 22nd?
7 THE COURT: Sorry, what's the question?
8 THE ACCUSED:
9 Q Oh. Did I state to the detective in our
10 interaction --
11 THE COURT: Right.
12 THE ACCUSED:
13 Q -- in our interview that I did not take down the
14 website between August 20th and 22nd, during the
15 period that's relevant to the probation order, the
16 forty-eight hours after my release?
17 A Your Honour, the only notation I have in relation
18 -- remotely to that question is I have noted down
19 here, again, on the second page down about three-
20 quarters of the way down. If you had taken down
21 the website within forty-eight hours and then put
22 it back up you would have complied.
23 Q Sorry, you're saying that's a statement that I had
24 made?
25 A Yes.
26 Q If I had taken it down and put it right back up I
27 would have complied?
28 A Yes. That's the statement that you made during
29 the interview, yes.
30 Q Okay. But that's not really stating that I didn't
31 take it down?
32 A Again, I don't have that information.
33 Q Okay. Did you ask me if I had taken the website
34 down within forty-eight hours of my release from
35 custody?
36 A I don't recall if I asked you that or not.
37 Q Would you like to check your notes?
38 A I -- I referred to my notes here.
39 Q If you had asked me that I would think that would
40 be a very significant thing and it would be in
41 your notes. Sorry, that's just a suggestion.
42 THE COURT: And you've now refreshed your memory and
43 looked at the notes, any reference with respect to
44 the question being asked?
45 A Other than that last comment I made. I don't see
46 anything in here about me directly asking you if
47 you had taken down the website.

Kyle Dent (for Crown)
cross-exam by The Accused

1 THE ACCUSED:
2 Q Okay.
3 CNSL C. JOHNSON: On those dates.
4 A On those dates.
5 THE ACCUSED:
6 Q Well, I can --
7 A Specifically on those dates.
8 Q -- I can even broaden the question and say
9 regardless of those dates, did I state that I did
10 not -- actually did I say that I did or did not
11 take down the website at any time? Did that topic
12 even come up? Was it even asked of me?
13 A I recall that the website was still up at the time
14 of the interview.
15 Q Okay.
16 A And the day before. And so to answer your
17 question I don't believe I asked you if you had
18 taken down the website because I had knowledge
19 that it was still active and up.
20 Q Okay. I want to ask you about that a bit because
21 consistently all of the officers involved in this
22 had been saying that the website was still, and
23 I'm putting air quotes around still, still up as
24 of September 15th and 17th. The use of the word
25 "still" suggests that it was up continuously from
26 some point up until that point; that it had never
27 gone down, but you've already admitted that you
28 have no knowledge about whether or not the website
29 was actually taken down at some point.
30 So is it fair to say that you can't actually
31 claim that the website was still up. You can
32 claim that it was up on that day --
33 A Mm-hmm.
34 Q -- but do you have any knowledge or any evidence
35 that it had been up continuously for that whole
36 time?
37 A I have no knowledge. My involvement in this file
38 was to interview you.
39 Q Right. Okay. Then given that the charge against
40 me is that I failed to take down the website
41 within forty-eight hours of my release from
42 custody, is it reasonable to say that you have
43 absolutely no evidence at all as to whether or not
44 that actually happened?
45 A My involvement in this file was to interview you.
46 Q Mm-hmm.
47 A I did not review the file. I did not look into

Kyle Dent (for Crown)
cross-exam by The Accused
re-exam by Cnsl C. Johnson

1 anything beyond preparing for interview with your
 2 -- oh, sorry -- preparing for an interview with
 3 yourself. So I have no knowledge of the
 4 intricacies of the file. I did not look into
 5 anything about the website being up or down --
 6 Q Mm-hmm.
 7 A -- active or not. I reviewed the website on
 8 September 16th. I printed off the front page to
 9 present in our interview which I've shown to the
 10 court, and that is my knowledge.
 11 Q Okay. So then I think maybe I just have one more
 12 question here. Given that it seems to me the only
 13 question that's relevant to this trial is did I or
 14 did I not take the website down within forty-eight
 15 hours of my release from custody on August 20 --
 16 between eight p.m. on August 20th through eight
 17 p.m. on August 22nd.
 18 If that is the only question that's relevant
 19 then isn't it fair to say that you really have no
 20 relevant evidence to provide here?
 21 A I cannot --
 22 Q Can you state -- okay.
 23 A -- answer that question.
 24 THE ACCUSED: All right. I believe -- let me just do a
 25 double-check here to make sure.
 26 THE COURT: Sure.
 27 THE ACCUSED: Sorry, VPD or B.C. Corrections have lost
 28 my glasses so everything's a little bit blurry so
 29 I'm moving a little slowly.
 30 Yes, I believe that would be all the
 31 questions I would have.
 32 THE COURT: Re-examination, Mr. Johnson?

RE-EXAMINATION BY CNSL C. JOHNSON:

36 Q Yes, just one question Detective-Constable Dent.
 37 You were asked by Mr. Fox whether you had asked
 38 him whether he had taken down the website
 39 initially between -- I think he said August 20th
 40 and 22nd and then just generally.
 41 A Mm-hmm.
 42 Q Do you recall that?
 43 A I remember him asking that question, yes.
 44 Q And just in response. I've already asked you
 45 about this, but I'll draw your attention, if I
 46 might, to page 2 of your Task Action Report.
 47 A Mm-hmm.

Kyle Dent (for Crown)
re-exam by Cnsl C. Johnson

1 Q To the fifteenth line from the top and it seems to
2 -- here I can -- it seems to be an answer to that
3 type of question.
4 A Yes.
5 Q But can you tell the court what he said about
6 taking down the website?
7 A Again, he will never in his life take down the
8 website.
9 CNSL C. JOHNSON: Thank you, Your Honour. That's the
10 only question I have.
11 THE COURT: Thank you. I have no questions, detective-
12 constable. You're excused and free to go.
13 A Thank you, Your Honour.
14
15 (WITNESS EXCUSED)
16
17 THE COURT: So with respect to Exhibit A for -- is that
18 the case for the Crown?
19 CNSL C. JOHNSON: Yes. The Crown is making an
20 application to have Exhibit A marked as Exhibit 1
21 in this trial.
22 THE COURT: Any issue with respect to Exhibit A for
23 identification?
24 THE ACCUSED: Wait -- with respect to for
25 identification?
26 THE COURT: With respect to its admissibility into the
27 trial proper.
28 THE ACCUSED: Well, I would object only on the grounds
29 that I don't see how it's relevant.
30 THE COURT: That would be for argument.
31 THE ACCUSED: Right.
32 THE COURT: Right. Exhibit A for identification, Madam
33 Registrar, will become Exhibit 1 in this trial.
34 THE CLERK: Thank you, Your Honour.
35

**EXHIBIT 1: Documents pertaining to website
(was A for identification)**

36
37
38
39 CNSL C. JOHNSON: Now, Your Honour, I did indicate to
40 Mr. Fox, in fairness, at the beginning that if
41 there was other -- because I'd been unable to call
42 a couple of witnesses, I've finished calling my
43 case. He indicated that he may or may not want
44 further evidence. So if I can just canvass that
45 with him for a moment.
46 THE COURT: Sure. I'll stand down. You can talk to
47 Mr. Fox. Actually why don't we take the morning

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1 break. It's a little early but we'll take the
2 morning break.

3 After Mr. Johnson speaks to you, Mr. Fox, I
4 will be asking whether or not you intend to
5 testify. Keep in mind that the onus throughout
6 rests with the Crown to establish that the case on
7 -- beyond a reasonable doubt which is a high
8 threshold, as you can appreciate, so it's up the
9 Crown to establish that threshold. You don't have
10 to take the stand. Of course once you take the
11 witness stand and give your evidence you will be
12 subject to cross-examination as well. So please
13 keep that in mind. We'll take 20 minutes and
14 Madam Registrar, if you can get me a copy of
15 Exhibit 1.

16 THE CLERK: Yes, Your Honour.

17 THE COURT: And I'll have my intern come back to join
18 me in the hallway. Thank you.

19

20 (PROCEEDINGS ADJOURNED FOR MORNING RECESS)

21 (PROCEEDINGS RECONVENED)

22

23 THE COURT: And just so it's clear to me, Mr. Johnson.
24 Count 1 and Count 2 are live counts; is that
25 correct?

26 CNSL C. JOHNSON: Yes, that's correct.

27 THE COURT: Mr. Johnson spoke to you, Mr. Fox. I don't
28 know what that discussion is and unless you want
29 to bring it to my attention, otherwise it's
30 between you and Mr. Johnson. The Crown has closed
31 its case. This is your opportunity to make any --
32 no evidence or insufficient evidence motion. I
33 can't, again, advocate for you with respect to
34 that, or you can take the stand and give some
35 evidence. You're not compelled to take the stand.
36 That's entirely your call. Do you understand
37 that?

38 THE ACCUSED: I do. Thank you.

39 CNSL C. JOHNSON: Sorry, Your Honour, just before we
40 get to that. I did confirm with Mr. Fox before
41 the break that he's not requiring me to call any
42 further evidence. That is, there's nothing
43 further that he wanted to explore.

44 THE COURT: Thanks, Mr. Johnson. So it's what -- it's
45 your election at this time as to what you would
46 like to do with respect to these two allegations
47 because I asked -- they're both live allegations.

Proceedings

1 They're somewhat different in a nuanced way, but
2 in particular, Count 2 has got a different
3 timeline you can see that to Count 1.
4 THE ACCUSED: Sorry, let me find the indictment here.
5 I did have some issue with one of the counts
6 THE COURT: Hypothetically, Mr. Johnson, if I was to
7 find him guilty of either or it would be a
8 *Kienapple* situation?
9 CNSL C. JOHNSON: Yes. I -- actually I think what I'll
10 do is I'll assist the court and Mr. Fox by saying
11 that the Crown is proceeding on Count 1 and not
12 Count 2. I think that would be the fair thing to
13 do.
14 THE ACCUSED: In that case then I have no issue with
15 Count 2. That was the one I was going to have
16 issue with. I can't seem to find the indictment.
17 I think I don't have a copy of it only -- but
18 anyway it's not relevant if the Crown's not
19 proceeding with Count 2.
20 THE COURT: Well, it's quite important --
21 CNSL C. JOHNSON: I can show Mr. Fox my copy.
22 THE ACCUSED: Oh, here it is. I've got -- I've got it.
23 THE COURT: So it's Count 1 you're proceeding on, Mr.
24 Johnson?
25 CNSL C. JOHNSON: Yes. Count 1 relates to the
26 probation order that Mr. Fox has admitted to in
27 any event, and Count 2 is a Supreme Court --
28 THE COURT: Seemed to be appropriate.
29 THE ACCUSED: Okay. I don't believe that I intend to
30 call any evidence.
31 THE COURT: You're waiving the right to take the
32 witness box. That is your right, of course, to
33 give evidence in your own defence. You're not --
34 you don't have to. The obligation is upon the
35 Crown to establish all essential elements. You're
36 aware of that. You're an intelligent man. And
37 that it would be up to Mr. Johnson to convince me
38 based upon the admissible evidence whether or not
39 the case has been made out.
40 So at this particular stage you have no
41 motions with respect to this matter. I take it
42 you're not going to give evidence but I take it
43 it's your submission that this case falls short of
44 establishing proof beyond a reasonable doubt of
45 the offence that -- I think that's your position;
46 am I right?
47 THE ACCUSED: That is correct, yes.

Submissions for Crown by Cnsl C. Johnson

1 THE COURT: All right. I'm going to hear from -- as an
2 officer of the court I'm going to hear from Mr.
3 Johnson first and then hear from you with respect
4 to your approach to Count 1, okay?
5 THE ACCUSED: Okay, thank you.
6

SUBMISSIONS FOR CROWN BY CNSL C. JOHNSON:

7
8
9 CNSL C. JOHNSON: I can say very simply, Your Honour,
10 that first of all with respect to Count 1, Mr. Fox
11 made the admission that he was on that probation
12 order pronounced by Judge Phillips on August the
13 19th. There is no issue that that order requires
14 him to remove the website, www.desicapuano.com.

15 I don't disagree with Mr. Fox that there is
16 no evidence before the court to enable the court
17 to conclude who owns that website. But there is,
18 I say, clear evidence that Mr. Fox was able to
19 comply with the order and refused to do that. And
20 that comes from the interview that Your Honour
21 heard about with Detective-Constable Dent in
22 September.

23 The Crown says that Mr. Fox wasn't required
24 to remove the website within the first forty-eight
25 hours. He's simply required to remove the
26 website. And so the evidence is that the website
27 was up on September the 16th.

28 Mr. Fox in his statement to the police
29 indicated that he will never remove the website.
30 He also made a number of statements the result of
31 which I say lead the court to the clear inference
32 that the Crown has proven Mr. Fox's failure to
33 comply beyond a reasonable doubt.

34 So the evidence, much of which wasn't
35 challenged from Detective-Constable Dent,
36 indicated that at the outset of the interview Mr.
37 Fox said that it was important to have good
38 quality audio and video for him to put it on the
39 website. He also indicated that he wasn't going
40 to admit that he had put it up or taken it down,
41 but he did indicate that he was well aware that he
42 had been ordered to take it down, but nevertheless
43 he had a belief that the website was not illegal.

44 He also provided an explanation as to why he
45 hasn't taken it down which was given to you by
46 Detective-Constable Dent. And Mr. Fox indicated
47 that he had not taken it down because it exposed

Submissions for Crown by Cnsl C. Johnson

1 misconduct and corruption that happens in the
2 criminal justice system every day, etc., and named
3 a few names of people who he felt were corrupt.

4 He did also indicate that he had been able to
5 have access in some way to the access logs for the
6 website. So in other words, he was able to
7 determine that people from the City of Vancouver,
8 the RCMP and Province of B.C. had access to the
9 website or viewed it. That is another part of the
10 evidence that I say leads to the inexorable
11 conclusion that Mr. Fox did not take down the
12 website and had the *mens rea* required for that.

13 He also indicated that he will never in his
14 life take down the website, and in my submission,
15 that in and of itself, having been directed to,
16 again, leads to the inexorable conclusion that Mr.
17 Fox is guilty here.

18 And then lastly, it's important for the court
19 to take into account the evidence of Detective-
20 Constable Dent that Mr. Fox indicated that he had
21 a -- I'm not sure that he used the word -- but a
22 vast body of knowledge as to how to take down a
23 website. And he indicated in his statement that
24 he -- I'm just looking for that -- he indicated
25 that, quote, "There's a lot more content that
26 needs to be added and it's going to go up, it's
27 very time consuming. I haven't been the most
28 productive." And he also indicated to Detective-
29 Constable Dent that he had knowledge of several
30 different ways as to how the website could be
31 removed.

32 So in all of those circumstances given that
33 Mr. Fox didn't deny having said those things to
34 Detective-Constable Dent, or in fact, that they
35 were not true, the Crown says that it has been
36 proven beyond a reasonable doubt that Mr. Fox was
37 ordered by this court to take steps to remove the
38 website, www.desicapuano.com, and is steadfast in
39 refusing to do that, and as a result of that the
40 Crown says guilt is proven beyond a reasonable
41 doubt.

42 THE COURT: Thank you. Mr. Fox, this is your
43 opportunity to make submissions in response to
44 those submissions of Mr. Johnson.

45 THE ACCUSED: Okay. Sorry, just one moment, please.

46 THE COURT: Sure, take your time.

47

Submissions by The Accused**SUBMISSIONS BY THE ACCUSED:**

THE ACCUSED: Okay. It would be my position at this point that the Crown has failed to prove certain critical or fundamental aspects of their case.

The first is the issue of ownership or control of the website. In order for me to be able to take down a website I would have to have ownership or control of that website. And by the witness' own admission the VPD has no knowledge of who owns the website. I never stated that I did. I never stated that I didn't either because that topic simply didn't come up in the conversation with Detective Dent.

There's also no evidence at all presented that the website was or wasn't taken offline or taken down, if you want to call it that, at any time between when I was released from custody and then when I was arrested again. And as I had said to Detective Dent, as long as the website did get taken down or did come down, probably within the forty-eight hours, then I would have been in compliance with the probation order. If somebody else then went and put the website back online I would still be in compliance with the order.

Also, it's significant to point out that the probation order does not have a condition that would prohibit me or anyone else for that matter from putting the website back online after it was taken down. And I think that that is significant because in the original probation order on the criminal harassment charge that order actually had two conditions. One that required me to take the website down and then another one that prohibited me from publishing more information; whereas this one only has the one condition to take the website down.

With respect to the access logs. They are, in fact, publicly available on the internet. Anybody can go and view the access logs. That was done deliberately I'm sure. Well, it would have to be done deliberately. And with respect to any comments that I may have made to Detective Dent about having more material that I intend to publish, I believe it is significant to note that when the probation orders expire and I return to my country of origin my intention to continue

Submissions by The Accused

1 maintaining the websites at that point would not
2 be a violation of any Canadian law or any
3 probation orders because I would no longer be on
4 probation or in Canada.

5 THE COURT: Yes. There's no -- I don't have any
6 evidence what your country of origin is in this
7 trial. I know what it is from past dealings --

8 THE ACCUSED: Right.

9 THE COURT: -- but so I'll simply have to leave it at
10 that, but your plan is to leave Canada at some
11 point --

12 THE ACCUSED: Yes.

13 THE COURT: -- to go to another country?

14 THE ACCUSED: Yes. Once I'm legally able to do so.
15 And I believe it's also significant to point out
16 that in my statements to Detective Dent I never
17 once stated that I was the person who was
18 maintaining or publishing anything on the website.
19 For that matter again, I wasn't asked if I was the
20 person who was doing it.

21 And finally, I think it is very important to
22 point out that the probation order, in addition to
23 requiring me to take down the website located at
24 www.desicapuano.com it also requires me to take
25 down the website located at www.desireecapuano.com
26 which is, in fact, a domain and website owned by
27 my ex-wife, the complainant, in these matters. I
28 clearly -- well, I think it's clear that I could
29 not possibly comply with that. And the fact that
30 the order was attempting to require me to take
31 down a website that I clearly do not own goes to
32 show that it is entirely reasonable to conclude
33 that I also do not own the desicapuano.com
34 website.

35 And finally, I would like to -- oh, did I
36 already -- yes, I would like to emphasize again
37 that there was absolutely no evidence presented
38 that the website was ever taken down or offline.
39 All it was -- the only evidence that was presented
40 was that on September 15th I believe it was the
41 website was online again.

42 I believe it is entirely reasonable to
43 conclude that at some point in that four week
44 period the website was taken offline, but there
45 was no evidence presented to show that one way or
46 the other. And I believe that's all I have.
47 Thank you.

Reply for Crown by Cnsl C. Johnson

1 THE COURT: Thanks, Mr. Fox.

2

3 **REPLY FOR CROWN BY CNSL C. JOHNSON:**

4

5 CNSL C. JOHNSON: Just very briefly in reply, Your
6 Honour. I do point out that in the Crown's
7 submission it is entirely speculative to suggest
8 that someone else put up the website after it was
9 taken down and there is no evidence in fact that
10 it was ever taken down, and there is no evidence
11 that someone else controlled the website. I say
12 that that's speculative, particularly given the
13 admissions made by Mr. Fox in the interview, and
14 the website itself which is written in the first
15 person in the name of Mr. Fox.

16 THE COURT: Thanks, Mr. Johnson.

17

18 [REASONS FOR JUDGMENT]

19

20 CNSL C. JOHNSON: With respect to sentencing, Your
21 Honour, there are some -- there's a judgment from
22 the Supreme Court that I filed on the last
23 occasion and I just want to inquire with --

24 THE COURT: Is this from a -- Madam Justice Heather
25 Holmes.

26 CNSL C. JOHNSON: Yes.

27 THE COURT: I read it before when it was posted on the
28 Supreme Court website but I haven't seen it
29 recently.

30 CNSL C. JOHNSON: What I'm going to suggest, Your
31 Honour, is that -- I am seeking a lengthy jail
32 term given that this is a multiplicity of breaches
33 that have occurred. But I'm prepared to do that
34 either at twelve o'clock. I want to give Your
35 Honour the opportunity to read that decision
36 because it contains much of the background, and I
37 also want to be able to provide the court and Mr.
38 Fox with an updated copy of his record which I --
39 the copy that I have is missing an entry.

40 THE COURT: Mr. Fox, you're facing potentially a long
41 jail sentence. However, have you ever talked to a
42 psychiatrist about your -- you're a bright fellow.
43 Would you be prepared to talk to a psychiatrist
44 about your feelings and emotions and that sort of
45 thing? It could potentially help you. You don't
46 have to but -- because you're in jail anyways.

47 THE ACCUSED: Mm-hmm.

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1 THE COURT: You are going to get out at some point.
2 It's not like you're not getting out. But if we
3 had someone speak to you, would you be prepared to
4 cooperate with a psychiatrist?
5 THE ACCUSED: I would cooperate fully only if it's
6 recorded and I can publish those recordings which
7 I know they're going to say no to. They already
8 have before. I have had --
9 THE COURT: Well, there's -- there's patient-client
10 privilege.
11 THE ACCUSED: Which is to protect the patient and so if
12 the patient waives that right, it's up to the
13 patient.
14 THE COURT: I mean, what you do with the report is your
15 business --
16 THE ACCUSED: Mm-hmm.
17 THE COURT: -- but there may be requirements on a
18 probation order that you not publish certain
19 things. However, as you say, if you go back to
20 your country of origin, you may or may not be in
21 compliance with their law with respect to any
22 information. But I just want to know if you would
23 cooperate with a psychiatrist and I'll decide what
24 to do with the report, but you will be getting a
25 copy of that report.
26 THE ACCUSED: I think in these cases, I've dealt with
27 Forensic Psychiatric Services before. I had a
28 psych assessment before, it was recorded and it
29 was published. But I have a pretty good idea of
30 how those types of agencies and departments
31 function.
32 I've spoken with many other people in custody
33 as well who have had PSRs and who have spoken with
34 them.
35 THE COURT: We're not going to get a PSR here.
36 THE ACCUSED: Right. Right. And I can say that there
37 is absolutely no way that I would cooperate with
38 any -- any dealings with a psychiatrist provided
39 by the court or the government unless it's
40 recorded and a copy of the recording is provided
41 to me.
42 THE COURT: You say there is a prior psychiatric
43 report?
44 THE ACCUSED: Yeah. And I was found to be perfectly
45 fine.
46 THE COURT: When was that report done?
47 THE ACCUSED: That was -- I spoke with the psychiatrist

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1 January 2019.
2 THE COURT: And it was contained in the court file
3 somewhere?
4 THE ACCUSED: That I have no idea. It was a
5 requirement of the probation.
6 CNSL C. JOHNSON: I don't have a copy of that. I
7 thought that Justice Holmes referenced -- that
8 when she sentenced him -- a psychiatric report but
9 that would have been before the date that Mr. Fox
10 mentioned.
11 THE COURT: Right. Yes.
12 THE ACCUSED: The Crown at that time -- at that
13 sentencing was pushing for a psych assessment and
14 it wasn't done but then it was added to the
15 probation. So after my release from custody in
16 December of 2018 then I had to have that one.
17 CNSL C. JOHNSON: I don't -- that doesn't sound like an
18 actual report though, Mr. Fox. That sounds like
19 you were required to see one.
20 THE ACCUSED: Yes, an intake assessment or something,
21 and then they did a report and I have a copy of
22 the report that I got through Freedom of
23 Information which hasn't been published yet
24 because there just hasn't been time. But I do
25 have it in paper format.
26 THE COURT: Because I'd certainly like some collateral
27 information as to what's going on.
28 THE ACCUSED: I can tell you what's going on in my
29 head. My ex-wife took off when our son was a year
30 and a half. I raised him by myself for nine
31 years. I had no contact from her at all and then
32 she shows up after nine years, grabs him, runs off
33 to another State, tells a bunch of lies to the
34 Family Court to try to get emergency custody. The
35 court sees through her lies, orders her to return
36 him to me after three months, but then she spends
37 the next year and a half trying to cause all kinds
38 of problems for me while I was living in Los
39 Angeles.
40 I ended up getting deported to this country
41 that I don't really want to be in in the first
42 place, but I stay here for a while and everything
43 was going fine, and then when I decided to go back
44 to the U.S. then I get charged with this criminal
45 harassment nonsense, and since then it's just been
46 this going on and on.
47 THE COURT: I know. It's gone on and on too long.

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1 THE ACCUSED: Now, as far as why I hate my ex-wife so
2 much and why I want her to get throat cancer and
3 die, a person cannot abandon a child and then come
4 back nine years later, grab the child and run off
5 to another State and tell a bunch of lies about
6 how the father's been hiding the child for nine
7 years and expect that she can just cry in the
8 court and get everything she wants. That's why I
9 created the website to show everybody that she's
10 not this sweet, caring, innocent person. She's an
11 evil, manipulative sociopath.

12 THE COURT: And that's why -- it's my opinion only --

13 THE ACCUSED: Mm-hmm.

14 THE COURT: -- not as a person but as the trial judge
15 that you have certain obsessive overtones and
16 that's why --

17 THE ACCUSED: Yes. I have not had any contact --

18 THE COURT: Let me finish.

19 THE ACCUSED: Sorry, go ahead.

20 THE COURT: Right. And I'm concerned about this
21 obsessive behaviour and that perhaps if you spoke
22 to a psychiatrist that would give me some insight
23 and you some insight into what's going on with
24 what I call with these triggers that get you
25 going.

26 THE ACCUSED: These triggers. Well, the last time that
27 I had any contact with my son was two days before
28 I was arrested in 2016.

29 THE COURT: How old is your son now?

30 THE ACCUSED: Just turned twenty a couple of months
31 ago.

32 THE COURT: I mean time's ticking by and pretty soon
33 he's going to --

34 THE ACCUSED: My life is over, man. Come on. I was a
35 software engineer. I had a fine life. I had a
36 good career. I had my son. Everything was fine.
37 And then this psycho comes back into my life.
38 Everybody believes every word she says. She never
39 has to show any proof of anything, but then I just
40 try to defend myself.

41 THE COURT: It's court orders that are important and
42 require compliance and I'm just concerned -- not
43 just, I am very concerned about your obsessive
44 behaviours and would it not -- I mean I can order
45 that there be a psych -- is the FPI-- I used to be
46 defence counsel, Mr. Johnson knows, he does a lot
47 of defence work. I did lots of big --

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1 THE ACCUSED: Yes.
2 THE COURT: -- defence cases, murders and so on where I
3 had clients being seen by psychiatrists. There --
4 there are really good psychiatrists up here.
5 THE ACCUSED: Uh-huh.
6 THE COURT: They are highly trained and you know that
7 they're part of the Royal College.
8 THE ACCUSED: Yes. I have no doubt about their
9 competency, but if their purpose, if their goal is
10 to aid the court or aid the Crown and not me --
11 just like what the lawyers here --
12 THE COURT: Their purpose --
13 THE ACCUSED: I'm representing myself.
14 THE COURT: The purpose would be to aid me and to aid
15 you, not the Crown.
16 THE ACCUSED: Okay.
17 THE COURT: It's an aid for me.
18 THE ACCUSED: If they're fair and objective then there
19 would be no reason in my mind why they would
20 object to having it recorded and published. But
21 let me give --
22 THE COURT: That would be my call but I just need to --
23 because if we're going to go that route, we'll go
24 that route because Mr. Johnson's going to be
25 seeking a fairly significant jail sentence.
26 THE ACCUSED: He can seek five years, I don't care.
27 THE COURT: But hold it -- it's me and you.
28 THE ACCUSED: Sorry, sorry.
29 THE COURT: Right. Don't worry about Mr. Johnson, it's
30 me and you that are discussing this. I could
31 benefit a lot, but potentially you could benefit
32 from a psychiatric assessment. It's not to say
33 you're not fit or anything -- it's got nothing --
34 you are fit. You understand the process here,
35 you're a bright guy. Is to see where I can go
36 with you that might assist you. Because if
37 there's going to be future probation, a probation
38 order is supposed to be rehabilitative.
39 THE ACCUSED: But -- okay.
40 THE COURT: Not punitive. It can have punitive aspects
41 but it's mostly for your rehabilitation.
42 THE ACCUSED: I under -- understand that, but the court
43 keeps ignoring this fact that there's case law to
44 support this as well, that if a person has no
45 status in Canada and they're ultimately going to
46 be deported or leave Canada it's stupid and
47 pointless to put resources into trying to

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1 rehabilitate them with probation which is why CBSA
2 is supposed to deport people.
3 CNSL C. JOHNSON: I wonder if I could just interject,
4 Your Honour. Mr. Fox is entitled to obviously
5 make submissions. It is in dispute that he -- he
6 maintains that he's an American citizen. The
7 evidence that the Crown has is that he's a
8 Canadian citizen.
9 THE COURT: I'm trying to remember.
10 CNSL C. JOHNSON: Just to --
11 THE COURT: I've dealt with him before and I --
12 CNSL C. JOHNSON: Just to alert the court.
13 THE COURT: I did a bail hearing with you a long time
14 ago.
15 THE ACCUSED: Yes. The evidence that the Crown has is
16 allegations from U.S. authorities. The evidence
17 that I have is documents from IRCC that say I was
18 not born in Canada. I mean that's evidence.
19 Allegations from --
20 THE COURT: I mean that's something -- certainly you
21 can benefit, telling the psychiatrist for example.
22 THE ACCUSED: Right. Right.
23 THE COURT: Do you see what I'm driving at?
24 THE ACCUSED: Yes. But again, I have no objection to
25 speaking with a psychiatrist as long as it's
26 recorded. Because here's what happens.
27 THE COURT: They don't ever -- sometimes they record,
28 they take notes.
29 THE ACCUSED: Yes, I understand that.
30 THE COURT: And then they prepare a report for
31 presentation to the court.
32 THE ACCUSED: Here's been my experience and this
33 happened with Justice Holmes with the sentencing,
34 the reasons for sentencing. I provided all this
35 evidence. It should have been mitigating. Yet
36 none of it shows up in her reasons for sentencing.
37 It's the same thing that the psychiatrist would do
38 as well. They'll ignore everything that's not
39 consistent with what they want to.
40 THE COURT: I can absolutely assure you, sir, I would
41 not ignore a psychiatric opinion. It's the weight
42 I would attach to it. I would not ignore it.
43 You'd get a copy of that.
44 THE ACCUSED: Right.
45 THE COURT: The Crown would get a copy of that. It's a
46 -- opinion evidence is designed to assist the
47 court. It's my decision that's final, not the

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1 opinion of the psychiatrist and that's a -- what's
2 called a NCRMD case, not criminally responsible,
3 and that's not applicable here.

4 THE ACCUSED: Right.

5 THE COURT: So it's opinion evidence and I can either
6 accept it or reject it, but it's my opinion that
7 finally counts with respect to the imposition of a
8 sentence.

9 THE ACCUSED: And I'm not suggesting that you would
10 ignore stuff that would be in the report. I'm
11 suggesting that the psychiatrist would ignore
12 these signature evidence that I provide that isn't
13 consistent with what he's trying to present to the
14 court. That's been my experience so far. And
15 these are not just vague allegations that I'm
16 making. They're all documented on the website,
17 specific instances of me providing evidence --

18 THE COURT: No, you're still dancing around a bit with
19 this. I take it you're not that keen to talk to a
20 psychiatrist?

21 THE ACCUSED: No. I will speak with a psychiatrist as
22 long as it's recorded and a copy of the recordings
23 are provided to me. Preferably video but audio
24 would be fine.

25 THE COURT: Well, normally they record. They have a
26 tape recorder. They'll record some of that.

27 THE ACCUSED: Mm-hmm.

28 THE COURT: Right now we're dealing with COVID-19 so
29 they may be doing that by way of a telephone or MS
30 Team, what's called Microsoft Team.

31 THE ACCUSED: Mm-hmm.

32 THE COURT: A psychiatrist -- I would want him or her
33 to observe you to -- and then you could see the
34 psychiatrist as well. It builds a patient-doctor
35 trust.

36 THE ACCUSED: Okay.

37 THE COURT: Now, the information that would -- I'm
38 going to direct, for the purposes of the sentence,
39 that on an expedited basis, Mr. Johnson, that a
40 psychiatrist assess Mr. Fox in relation to
41 obsessive compulsive situational factors.

42 THE ACCUSED: Could I -- could I make one more point to
43 respond what you were saying earlier about my
44 obsessive behaviour.

45 THE COURT: And recommendations for treatment for Mr.
46 Fox. A copy today, Madam Registrar, of these
47 proceedings. It is to be prepared on an expedited

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1 basis of everything that's happened in this
2 courtroom, and to be provided through Mr.
3 Johnson's office to the psychiatrist who is going
4 to be dealing with the assessment, and a copy for
5 Mr. Fox as well at North Fraser -- you're at North
6 Fraser, right?

7 THE ACCUSED: I am, yes.

8 THE COURT: Okay. I'm going to make sure you get a
9 copy of these proceedings as well. So it's all
10 open.

11 THE ACCUSED: Right. Well, I'm going to appeal it
12 anyway so I'm getting a copy from here too.

13 THE COURT: No, that's fine. I'm just saying what I'm
14 going to do.

15 THE ACCUSED: Sure.

16 THE COURT: And I'll have to have you back, and just so
17 you know and I'm not holding Mr. Johnson to this
18 'cause you've got probably what's called time on
19 remand. Mr. Johnson, what range of sentence and
20 -- range doesn't straightjacket a court, it's just
21 simply a guideline. What range of sentence would
22 you be considering?

23 CNSL C. JOHNSON: Eighteen months to two years in jail.

24 THE COURT: Thank you. Which would mean, Mr. Fox,
25 either way a probation order could be pronounced
26 and a psychiatric opinion could assist the court
27 with respect to conditions of probation.

28 I'm going to urge that, as well, in the
29 communication -- keep in mind Mr. Johnson is an
30 officer of the court, he'll follow court
31 directions, I know that; that whoever is the
32 assisting psychiatrist that if he or she is able
33 to tape record what's taking place or take
34 thorough notes, that will be done. You're not
35 going to be cross-examining the psychiatrist. The
36 psychiatrist there is to assist, and it could be
37 extremely helpful to me, and I think helpful to
38 you.

39 THE ACCUSED: Given --

40 THE COURT: It may mitigate the sentence.

41 THE ACCUSED: Well, given that the Crown is talking
42 about eighteen to twenty-four months, and given
43 that I have that original probation order, I'm
44 stuck here in Canada until December -- the end of
45 December of next year anyway, I'm going to have no
46 objection to just agreeing to that and moving
47 along with this. If we could just sentence me to

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1 twenty-four months with no probation so that way
2 when that's finished then I can leave the country
3 because it seems ridiculous to me to try to keep a
4 foreign national here in the country so you can
5 continue to squeeze me and do all this stuff.
6 THE COURT: I can't do that. I've now directed a
7 preparation of a psychiatric report.
8 THE ACCUSED: Okay. Now, bear in mind I'm only going
9 to speak to them if they record it and provide a
10 copy of the recording to me.
11 THE COURT: I'm going to have -- I'm going to have --
12 we're going to get going on this.
13 THE ACCUSED: Sure.
14 THE COURT: And have you back -- back in front of me in
15 pretty quick order to see if this is going to work
16 or not work. If it doesn't work that's
17 unfortunate because it could be quite a useful aid
18 for me and we can get on with the sentencing
19 process.
20 I don't think Mr. Johnson's position is going
21 to stray much from his position today or in
22 January when we're going to come back, because
23 you're going to come back in front of me -- Madam
24 Registrar, can we email the JCM, I think Carolina
25 Marcher [phonetic] is in her office.
26 THE CLERK: Yes, Your Honour.
27 THE COURT: My availability for the week of January the
28 18th for 20 minutes or so. It won't be for
29 sentence, it's just for -- I'm going to call it as
30 a call date with Mr. Fox to see where we are with
31 respect to a psychiatric assessment.
32 CNSL C. JOHNSON: Just with respect to that week, Your
33 Honour, I'm in Kelowna the beginning of that week,
34 and so the days I can be available are the 21st
35 and 22nd.
36 THE COURT: If I'm available the 21st and/or the 22nd
37 for 20 minutes or so with Mr. Fox, subject to
38 protocols coming in by video link. Maybe we'll
39 have a vaccine --
40 THE CLERK: Thank you, Your Honour. So your
41 availability January 21st or 22nd for 20 minutes?
42 THE COURT: Yes, please.
43 THE CLERK: Thank you.
44 THE COURT: And I can double-book myself. Well, I
45 can't, the JCMs can.
46 CNSL C. JOHNSON: Could we -- this is for the -- an
47 appearance --

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1 THE COURT: Just to see where we're at.
2 CNSL C. JOHNSON: And so I'll suggest the 21st if
3 that's suitable, that's the earlier of the two
4 days and I can be available the morning or the
5 afternoon that day.
6 THE COURT: Okay.
7 THE CLERK: One moment, Your Honour.
8 THE COURT: Sure. And a copy of the transcript to me
9 as well, please.
10 CNSL C. JOHNSON: Could I provide Madam Clerk with my
11 email address for the transcript.
12 THE COURT: The transcript can be sent to me
13 electronically. Do you want it sent to you
14 electronically as well, Mr. Johnson?
15 CNSL C. JOHNSON: Yes, please. And I will -- once I
16 receive it I will print it and send it to Mr. Fox.
17 THE ACCUSED: Could I receive it electronically as
18 well? I mean --
19 THE COURT: Can you print it out at North Fraser?
20 THE ACCUSED: I can have pages printed out if I need or
21 have the entire thing printed out. It's just that
22 overtime I started amassing more and more paper
23 and the amount of stuff that gets onto a single
24 CD, it's much easier to keep in my cell or to --
25 THE COURT: It's much easier?
26 THE ACCUSED: Well, yeah. I mean, previously I had
27 literally four legal boxes of material.
28 THE COURT: Do you want Mr. Johnson to -- it could be
29 pressed to disk.
30 CNSL C. JOHNSON: I can have that sent to Mr. Fox
31 electronically in the normal way that the Crown
32 discloses evidence to Mr. Fox. Is that -- would
33 you --
34 THE ACCUSED: Can I get it on a CD? I mean this is not
35 disclosure material so it's not like there's some
36 big secret or something like that, right?
37 THE COURT: I don't know what Mr. Johnson's capacity at
38 his office -- he's got some younger -- I shouldn't
39 say younger lawyers -- he's got some associate
40 lawyers --
41 THE ACCUSED: Yeah.
42 THE COURT: -- that may know how to do that. If it can
43 be done electronically, burn to disk and send it,
44 Mr. Johnson, let's do that.
45 THE ACCUSED: They often provide things on CD or DVD.
46 THE COURT: So we'll see what we can do to accommodate
47 you.

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1 THE ACCUSED: Thank you.
2 CNSL C. JOHNSON: If I'm able to do that. I should say
3 the Crown has a protocol for how they deal with
4 giving information to Mr. Fox.
5 THE COURT: He's holding a disk there.
6 CNSL C. JOHNSON: If we can give him a disk I'm happy
7 to do that.
8 THE COURT: Madam Registrar?
9 THE CLERK: Yes, I apologize, Your Honour. I was
10 online with the JCM and I don't know if I missed
11 anything that I need to advise the transcript
12 people know.
13 THE COURT: Just that it's to be sent -- I don't need
14 the paper -- it's to be sent to me electronically.
15 THE CLERK: Electronically.
16 THE COURT: And electronically to Mr. Johnson. He will
17 then take care of getting something electronically
18 to Mr. Fox, and then he can also electronically
19 get it to whoever the psychiatrist is.
20 THE CLERK: Okay. Thank you, Your Honour. And
21 Carolina Marcher indicates that you are -- she
22 said that either date would work. You are in a
23 trial court, she didn't know which one at this
24 point so if we could just adjourn it to the JCM
25 list.
26 THE COURT: To the JCM list, return date 21st of
27 January 2021 by video link. My preference is,
28 Madam Registrar, that I be -- I can do it at 9:30
29 in a courtroom such as 101 or 102. It won't take
30 very long. It's just to see where we're at and
31 then I can go back to my trial court.
32 CNSL C. JOHNSON: Thank you, Your Honour.
33 THE ACCUSED: Umm --
34 THE COURT: Mr. Fox?
35 THE ACCUSED: But I would like to state one last thing
36 with respect to my apparently obsessive behaviour.
37 In addition to all of the other stuff that Capuano
38 has done to me and to our son over the years, it
39 has resulted in me being up here. Now, I am up
40 here and I'm stuck up here so I continue to be
41 subjected to her actions and she continues to be
42 completely unaffected by this website and all.
43 I mean, consider if you will, this
44 desicapuano website has been online for, what,
45 about two years now. She has done absolutely
46 nothing to get it take offline. She's done
47 nothing in Arizona. It's hosted in Arizona.

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1 THE COURT: I don't know.
2 THE ACCUSED: She's not affected by any of this. And
3 so how am I supposed to put this behind me and
4 move on when my life continues to be, like,
5 compressed because of her conduct. It's not like
6 it's over and I can move on and get back with my
7 son or have a new life or something. I'm still
8 going through it.
9 THE COURT: Mm-hmm.
10 THE ACCUSED: So that's why I'm apparently obsessed
11 about this.
12 THE COURT: Okay. We'll go over to that date and place
13 then, please, at 9:30 in the morning. Thank you,
14 Mr. Fox. Thank you, Mr. Johnson.
15 CNSL C. JOHNSON: Thank you, Your Honour.
16 THE COURT: Madam Registrar, can you advise the JCM
17 that I'm available to take on some other matters
18 if need be.
19 THE CLERK: Yes, Your Honour.
20 THE COURT: Thank you.

21
22 (PROCEEDINGS ADJOURNED TO JANUARY 21, 2021,
23 AT 9:30 A.M.)
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26 Transcriber: J. Murao
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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.



J. Murao
Court Transcriber