

COURT OF APPEAL

ON APPEAL FROM THE PROVINCIAL COURT OF BRITISH COLUMBIA,
FROM THE JUDGMENT AND SENTENCE OF THE HONOURABLE JUDGE
DENHOFF, PRONOUNCED ON THE 25TH DAY OF FEBRUARY 2022.

REGINA

RESPONDENT

v.

PATRICK FOX

APPELLANT

TRANSCRIPT

BAN ON PUBLICATION 486.5(1) CCC

Ministry of Justice, Solicitors for the Crown (Respondent)
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Appearing on his own behalf

244069-8-B
Vancouver Registry

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

Vancouver, B.C.
February 23, 2022

REGINA

v.

PATRICK HENRY FOX

PROCEEDINGS AT TRIAL & SENTENCE

BAN ON PUBLICATION 486.5(1) CCC

Crown Counsel:

C. Johnson, Q.C.

Appearing on his own behalf:

The Accused

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PROCEEDINGS AT TRIAL

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EXHIBITS

Nil

RULINGS

Nil

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1 Vancouver, B.C.
2 February 23, 2022
3
4 CNSL C. JOHNSON: Good morning, Your Honour, it's Chris
5 Johnson, J-o-h-n-s-o-n. I am appearing on behalf
6 of the Provincial Crown.
7 THE COURT: Yes, thank you.
8 CNSL C. JOHNSON: And I have conduct of the Fox
9 matter. So, I can call number 1 on Your Honour's
10 list, Patrick Fox.
11 THE COURT: Okay. Thank you. Thank you.
12 Good morning, Mr. Fox and just to confirm
13 again, you're representing yourself?
14 THE ACCUSED: Yes, thank you and good morning.
15 THE COURT: Okay. And last day we had talked about
16 some disclosure you were requesting from the Crown
17 and did you receive that disclosure?
18 THE ACCUSED: I did, yes.
19 THE COURT: Okay. Good. So, we're ready to proceed to
20 trial today?
21 CNSL C. JOHNSON: Yes, and just, Your Honour, just say,
22 on the record, I did provide Mr. Fox today with
23 paper copies of all the disclosure for this
24 matter. And in addition, I've provided him with a
25 copy of an information to obtain a search warrant
26 that was engaged in in this matter.
27 THE COURT: Okay.
28 CNSL C. JOHNSON: Just with respect to that, I can
29 advise Your Honour that the Crown is not leading
30 anything that was obtained as a result of that, so
31 there may be some objection to his pursuing that.
32 THE COURT: Right.
33 CNSL C. JOHNSON: And -- and I've advised him of that.
34 And I've also given him a USB stick which contains
35 an interview between him and Detective Constable
36 Dent on a previous file. And Mr. Fox is of the
37 view that that has some relevance and so, I don't
38 necessarily share that view, but in the interests
39 of fairness, I've provided that to him.
40 THE COURT: Okay. Good.
41 CNSL C. JOHNSON: And I intend to call three witnesses
42 today who are Catherine Meiklejohn, who is a -- I
43 believe her title is crime data analyst, or data
44 analyst with the Vancouver police department.
45 THE COURT: Mm-hmm.
46 CNSL C. JOHNSON: Then I intend to call Detective
47 Constable Tanino and she conducted an interview

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1 with Mr. Fox after he was arrested in this matter.
2 And then I intend to call Detective Constable
3 Dent, who arrested Mr. Fox.
4 THE COURT: Okay. Good.
5 All right. So, I know we talked about this
6 at previous appearances, Mr. Fox, but just for
7 your benefit, because you're not represented by
8 legal counsel, it's the prosecution's obligation
9 to prove this case beyond a reasonable doubt. In
10 other words, they need to prove the allegations
11 contained in the information against you beyond a
12 reasonable doubt.
13 You'll have an opportunity, at the end of the
14 Crown's case, to call evidence, but you don't have
15 to call evidence. If you think the Crown has not
16 met the onus of proof, if you think they haven't
17 proven the case beyond a reasonable doubt, you can
18 simply make argument about that. You don't have
19 to call a defence.
20 If you feel that the evidence calls for an
21 answer, or there's information that you want to
22 put before the court for the court to consider,
23 then you'll have the opportunity to call
24 witnesses, or to -- or/and to testify yourself.
25 Is there -- do you have any questions about
26 the process?
27 THE ACCUSED: No, I don't. Thank you.
28 THE COURT: Okay. If you have any questions throughout
29 the trial, just let me know, will you?
30 THE ACCUSED: Okay. Yes.
31 THE COURT: Thank you.
32 Okay. Thank you, Mr. Johnson, you can
33 proceed to lead the Crown's case.
34 CNSL C. JOHNSON: Thank you. Then I will call
35 Catherine Meiklejohn, please.
36 THE COURT: Yes.
37 CNSL C. JOHNSON: I can go and get her then.
38 THE COURT: Oh, okay, thank you. Sometimes the page
39 doesn't work very well.
40 CNSL C. JOHNSON: Ms. Meiklejohn has indicated that she
41 will affirm.
42 THE COURT: Okay. Thank you.

43
44
45
46
47

CATHERINE MEIKLEJOHN

a witness called for the
Crown, affirmed.

Catherine Meiklejohn (for Crown)
in chief by Cnsl C. Johnson
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1 THE CLERK: Please state your name and badge number for
2 -- for the record and spell your last name.

3 A Catherine Meiklejohn, M-e-i-k-l-e-j-o-h-n and I'm
4 a civilian.
5

6 **EXAMINATION IN CHIEF BY CNSL C. JOHNSON:**
7

8 Q Ms. Meiklejohn, I understand that you're a
9 civilian employee of the Vancouver Police
10 Department; is that correct?

11 A Yes.

12 Q And your job title is?

13 A Crime data analyst.

14 Q And how long have you been employed as a crime
15 data analyst by the Vancouver Police Department?

16 A I've been in that position for 10 years. I've
17 been with the department for 25.

18 Q And are you able to just very briefly describe
19 what's involved in your job?

20 A I assist with investigations, do background
21 searches on offenders. Provide statistics for
22 outside agencies. A lot of open source searching,
23 anything that's required.

24 Q And -- and when you say searching, you mean on the
25 internet?

26 A Yes.

27 Q Now, with respect to this matter, you're familiar
28 with the matter of Patrick Fox, are you?

29 A Yes.

30 Q And you received an assignment with respect to
31 this particular case; is that correct?

32 A Yes.

33 Q And could you tell Her Honour what that assignment
34 was?

35 A I was just asked to see if the website
36 desicapuano.com was still online, as well as the
37 website desireecapuano.com.

38 Q And do you have an understanding as to Desi or
39 Desiree Capuano is?

40 A I understand that she is the ex-spouse of the
41 defendant.

42 Q And were you given a -- first of all, are you able
43 to advise us when you were asked to this?

44 A On August 9th, I was asked by Constable Dent.

45 Q And that's August 9th of 2021?

46 A Yes.

47 Q And did Constable Dent indicate to you when it was

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in chief by Cnsl C. Johnson
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1 that he wanted you to check to see if this website
2 was active?
3 A Yes, he asked me to check the dates of August
4 12th, 13th, 14th and 15th, 2021.
5 Q And did you, on August 12th, 13th, 14th and 15th,
6 search the internet, or check the internet to see
7 if either of the websites, desicapuano.com and
8 desireecapuano.com were active?
9 A Yes, I did.
10 Q And could you please tell the court what you
11 found?
12 A I found that the website desicapuano.com was still
13 online and the website desireecapuano.com was no
14 longer online.
15 Q And with respect to the website desicapuano.com,
16 when you say it was still online, can you explain
17 what you mean by that?
18 A So, there was blog posts, historical documents --
19 THE COURT: Sorry, there were?
20 A Blog postings.
21 THE COURT: Oh, blog postings --
22 A Yes.
23 THE COURT: -- yeah.
24 A Court documents from previous trials, photographs
25 of the victim and her family members and friends
26 and the latest -- the last blog post -- let me
27 just check with my -- the last thing --
28 THE COURT: Are you -- just -- just before you do that,
29 are you wanting to check your notes?
30 A Yes.
31 THE COURT: Okay. When did -- I just need to find out,
32 when did you take those notes?
33 A I took them, I believe it was the 16th of August,
34 I -- I wrote my evidence for the detective --
35 THE COURT: All right.
36 A -- and submitted it.
37 THE COURT: And you want to refresh your memory from
38 those notes?
39 A Yes, I just wanted to refresh my memory on the
40 last blog post date.
41 THE COURT: Okay. And you -- you don't have any
42 objection to her looking at her notes --
43 THE ACCUSED: No, I don't.
44 THE COURT: -- Mr. Fox?
45 Okay. Go ahead then, please.
46 A A search -- the last posting made was a blog post
47 called Dear People --

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1 THE COURT: Just -- just a moment. Dear People?
2 A -- CBC and B.C. Government. And it was made on
3 April 12th, 2021.
4 CNSL C. JOHNSON:
5 Q And so, what you could say, I gather, is that,
6 just summing your evidence, is that, on August
7 12th, 13th, 14th and 15th, each of those dates you
8 checked this particular website; is that correct?
9 A That's correct.
10 Q And on each of those dates, this particular
11 website remained active?
12 A That's correct.
13 CNSL C. JOHNSON: Thank you. Those are all the
14 questions I have.
15 THE COURT: Okay. Cross-examination?
16
17 **CROSS-EXAMINATION BY THE ACCUSED:**
18
19 Q How frequently, on each of those days, on the 12th
20 through the 15th of August, how frequently did you
21 check that the website was still online and
22 publicly accessible?
23 A One time each day.
24 Q Okay. And so, in all of the time in between --
25 A Mm-hmm.
26 Q -- the times that you checked, how did you verify
27 that the website remained publicly accessible?
28 A I didn't.
29 Q Okay. Because now, you had stated a few moments
30 ago that the website was still online during all
31 of that time?
32 A Mm-hmm.
33 Q So, saying that it was still online suggests that
34 it remained online continuously, does it not?
35 A Yes.
36 Q But -- but you don't actually have any knowledge
37 that it did remain online continuously during that
38 period of time, do you? You just know at -- at
39 the moment that you accessed the website, one time
40 each day, that at those moments, it was online; is
41 that correct?
42 A That's correct.
43 Q All right. Do you have knowledge or familiarity
44 with administering or maintaining a website?
45 A Not really, no.
46 Q Do you have any idea how long it would take to
47 take a website offline, or to make the content of

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1 the website not publicly accessible?
2 A No.
3 Q Is it possible that at some point after my release
4 from custody and then up to 48 hours after that,
5 which is the time that the probation condition
6 required me to take down the website, is it
7 possible that the website could have been taken
8 offline and then at some later point put back
9 online?
10 A It's possible.
11 Q Hmm. Are you familiar with the probation
12 condition that I'm accused of breaching today?
13 A Yes.
14 Q And what is your understanding that I was required
15 to do?
16 A To take the website --
17 THE COURT: I'm -- I'm not -- I'm -- I'm just wondering
18 how that might be relevant because that's
19 something for me to decide --
20 THE ACCUSED: Okay.
21 THE COURT: -- in terms of what you're required to do.
22 THE ACCUSED: What I was -- what I was getting at with
23 that is on the probation order there are two
24 conditions. One that required me to remove
25 specific content from the internet, or
26 essentially, to take the website offline. And
27 then there was another condition that prohibited
28 me from publishing or disseminating any
29 information about Ms. Capuano. So, what I was
30 getting at with this was I'm only charged with
31 breaching the condition that required me to take
32 the website offline. It seems to me that Ms.
33 Meiklejohn has just testified that she has no
34 knowledge whether or not the website was actually
35 taken offline in that period of time.
36 THE COURT: Right. And --
37 THE ACCUSED: She only knows that -- that --
38 THE COURT: -- so, I'll -- I'll just explain sort of
39 the process to you. So, right now, it's your
40 opportunity to challenge Ms. Meiklejohn's evidence
41 by asking her questions.
42 THE ACCUSED: Right.
43 THE COURT: And it -- at the end of the day, you may
44 have some criticisms of her testimony, or you may
45 feel that there were weaknesses in her testimony
46 that didn't assist the Crown the way the Crown is
47 going to suggest and then you'll be able to make

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1 an argument about that. But she's not able to
2 answer your argument. She can only --
3 THE ACCUSED: Right.
4 THE COURT: -- answer direct questions at this
5 junction.
6 THE ACCUSED: Okay. Thank you.
7 Q You had mentioned that the most recent post that
8 you had seen on the website was from April 12th,
9 2021; is that correct?
10 A Yes.
11 Q And do you know if I was in custody at that time?
12 A I do not.
13 Q Do you know who made that post?
14 A I do not.
15 Q Do you know if I made that post?
16 A I do not.
17 Q Hmm. Okay. Do you happen to know the time of day
18 on August 12th and 13th -- wait, 12th -- 12th,
19 13th and 14th that you had checked the website?
20 Did you record the --
21 A I did, yes, if I can just refer to my notes?
22 THE ACCUSED: Please, yes.
23 THE COURT: Yes, go ahead.
24 A On August 12th, at 12:04 p.m. --
25 THE ACCUSED: Okay.
26 A -- I checked.
27 THE COURT: Just a minute, sorry. August 12th at?
28 A Twelve-o-four p.m.
29 THE COURT: Okay.
30 A And sorry, what was the other date?
31 THE ACCUSED:
32 Q The 13th and 14th.
33 A On August 13th, at 7:41 a.m. and on August 14th,
34 at 6:38 a.m.
35 Q Okay. And so, any other time other than those,
36 you have no knowledge of whether or not the
37 website was taken offline or is that correct?
38 A In that -- in that three-day period?
39 Q Right.
40 A That's correct.
41 THE ACCUSED: Okay. I have no further questions.
42 THE COURT: Okay. Did I understand you to -- I just
43 want to clarify something. Did I understand you
44 to say that you also checked on the 15th of
45 August?
46 A I did, yes.
47 THE COURT: What time did you check on the 15th of

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1 August?
2 A At 6:10 p.m.
3 THE COURT: Okay. Are there any questions arising from
4 my question?
5 THE ACCUSED: Not a question, but I would just clarify,
6 the reason I didn't ask about the 15th is because
7 that was outside of the 48 hours and so, if I
8 hadn't taken down the -- or if the website hadn't
9 been taken down within the 48 hours, then that
10 would have breached the condition beyond that. I
11 -- I didn't think that it was relevant. So, I was
12 only asking about, like, within that 48-hour
13 period.
14 THE COURT: Okay. I just wanted to make sure. Because
15 she only mentioned the three days --
16 THE ACCUSED: Right, right.
17 THE COURT: -- I wasn't sure if I had misheard her
18 about the 15th --
19 THE ACCUSED: Right, right, okay.
20 THE COURT: -- so, I just wanted to clarify whether
21 that was her evidence and it sounds like it was.
22 So, again, that'll be something for you to argue,
23 after all the evidence is heard.
24 THE ACCUSED: Right.
25 THE COURT: And -- and Mr. Johnson, did you have
26 anything arising?
27 CNSL C. JOHNSON: Yes, I do have one question, not from
28 Your Honour's question, but from Mr. Fox's --
29 THE COURT: Yeah.
30 CNSL C. JOHNSON: -- question. He asked Ms. Meiklejohn
31 about the most recent post which was on April the
32 12th of 2021 and she referred to a portion of that
33 post: Dear People, CBC and B.C. Government.
34

RE-EXAMINATION BY CNSL C. JOHNSON:

35
36
37 Q Ms. Meiklejohn, referencing that particular post,
38 did it appear to you that that was authored by Mr.
39 Fox for some reason?
40 A Honestly, I can only remember seeing the title of
41 the post.
42 Q And you don't have any knowledge of the content?
43 A No, I do not.
44 CNSL C. JOHNSON: Thank you.
45 A Okay.
46 THE COURT: Okay. Thank you, you're excused.
47 A Thank you.

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1 THE COURT: Thank you for your evidence.

2

3

(WITNESS EXCUSED)

4

5 THE COURT: Mr. Sheriff, would you be good enough to
6 call for a cleaner to clean the witness box for
7 the next witness?

8 I'll just explain to you, Mr. Fox, that it's
9 part of our process here in the courthouse that
10 each time someone testifies, we clean the witness
11 box for the next witness.

12 THE ACCUSED: Okay. Thank you.

13 THE COURT: So, there's going to be a little bit of a
14 delay between witnesses for that process.

15 THE ACCUSED: Okay.

16 THE COURT: Madam Registrar, could I have the -- do you
17 -- do you have the probation order?

18 CNSL C. JOHNSON: Your Honour, I'll just step out for a
19 moment, just to speak to my next --

20 THE COURT: Sure. I think what we'll do, because
21 sometimes it takes a little bit longer to get the
22 cleaners up here, just so everyone can be at ease,
23 why don't we stand down. I'll remain in -- in the
24 hallway here.

25 A SHERIFF: Your Honour --

26 THE COURT: Just --

27 A SHERIFF: -- he's enroute.

28 THE COURT: -- let -- let me know when they arrive;
29 okay? Thank you.

30 THE CLERK: Order in court.

31 THE ACCUSED: Do I stay in here, or . . .

32

33 (PROCEEDINGS ADJOURNED)

34 (PROCEEDINGS RECONVENED)

35

36 CNSL C. JOHNSON: Thank you, Your Honour. Next, I'm
37 calling Detective Constable Janine Tanino and
38 she's indicated that she wishes to affirm.

39

40

JANINE TANINO

41

a witness called for the
Crown, affirmed.

42

43

44 THE CLERK: Please state your name and badge number for
45 the record and spell your last name?

46 A It's Janine Tanino, 2754 for badge number and my
47 last name is T-a-n-i-n-o.

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1 THE COURT: Okay. Feel free to stand or sit, whichever
2 is your preference.
3 A Thank you, Your Honour.
4 THE COURT: Thank you.
5 Go ahead, Mr. Johnson.
6

7 **EXAMINATION IN CHIEF BY CNSL C. JOHNSON:**
8

9 Q And you are a detective constable with the
10 Vancouver Police Department; is that correct?
11 A Yes, I am.
12 Q And how long have you worked with the Vancouver
13 Police Department?
14 A Thirteen years as a constable.
15 Q And what department of the Vancouver Police
16 Department are you now employed with?
17 A The section I currently work for is domestic
18 violence and criminal harassment.
19 Q And as part of your employment in that section,
20 are you familiar with a person by the name of
21 Patrick Fox?
22 A Yes, I am.
23 Q And you've dealt with Mr. Fox personally, have
24 you?
25 A Yes, I have.
26 Q And are you able to indicate whether he's here in
27 the courtroom today?
28 A Yes, he is.
29 Q And could you indicate where he is or something
30 about his clothing?
31 A He's sitting in all red there.
32 CNSL C. JOHNSON: Noting the indication, Your Honour.
33 THE COURT: Okay.
34 CNSL C. JOHNSON:
35 Q Now, Detective Constable Tanino, you received an
36 assignment related to Mr. Fox in August of 2021;
37 is that correct?
38 A Yes.
39 Q And could you please tell the court what that was?
40 A I was assigned by the lead detective to interview
41 Mr. Fox at the time.
42 Q And the lead detective was Detective Constable
43 Dent; is that correct?
44 A Yes, Kyle Dent.
45 Q And other than interviewing Mr. Fox, did you have
46 any other involvement with this particular case?
47 A After the interview, I was assigned to obtain a

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1 search warrant for the devices seized during the
2 arrest.
3 Q And the devices seized were a laptop and a cell
4 phone; is that correct?
5 A And there was a -- I believe a storage device as
6 well. I'd have to look at my notes, but there was
7 three items in total.
8 THE COURT: Did you make your notes at the time?
9 A I -- I did following, yeah.
10 THE COURT: Okay. Would you be assist --
11 A Well, I refer to Detective Dent's seizure of the
12 items and so, the report was written after the
13 arrest and I referred to those and then --
14 THE COURT: Did you refer to -- it was written by you
15 or -- or Constable Dent?
16 A It was written by Constable Dent. He's the one
17 who seized the items and conducted the arrest and
18 then I was the one who wrote them in the search
19 warrant.
20 THE COURT: Okay. And did you review his report at the
21 time?
22 A Yes, I did, yes.
23 THE COURT: And you agreed with it?
24 A Yes.
25 THE COURT: Are you assisted in your memory by looking
26 at it now?
27 A The report? I could, yes.
28 THE COURT: For the items that the prosecutor's asked
29 you about?
30 A Yes, they're included in the search warrant.
31 THE COURT: Okay. Take a look then.
32 Do you have any objection to her looking at
33 her notes?
34 THE ACCUSED: I don't.
35 THE COURT: Thank you.
36 A Yes, there was three items in total. One was a
37 laptop; one was a smart phone and one was a USB.
38 CNSL C. JOHNSON: And Your Honour, I indicated earlier,
39 but I'll say it again, that the Crown is not
40 relying on any evidence that was obtained as a
41 result of that.
42 THE COURT: Okay.
43 CNSL C. JOHNSON:
44 Q Now, Detective Constable Tanino, you, I gather,
45 were advised that Mr. Fox had been arrested at
46 some point in time?
47 A Yes, I was.

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1 Q And do you recall what date that was?
2 A August 17th.
3 Q And as a result of Mr. Fox being arrested, then
4 your assignment came into play, that is, you
5 interviewed Mr. Fox?
6 A Yes, it -- yes, I did.
7 Q And could you please tell the court how that
8 occurred and where, et cetera?
9 A I conducted the interview at the annex building,
10 so 236 East Cordova.
11 Q And this was on August 17th?
12 A Yes.
13 Q Of 2021?
14 A Yes.
15 CNSL C. JOHNSON: And I'll just say previous -- that
16 previously, Mr. Fox indicated to me that there are
17 not issues with respect to voluntariness, et
18 cetera, and I just want to confirm that is
19 correct.
20 THE COURT: Are you taking any issue with the
21 voluntariness of any statement you're alleged to
22 have made to the constable?
23 A No, I don't.
24 THE COURT: In other words, that no one encouraged you
25 to make the statement, or offered you an -- an
26 incentive to make the statement? No one
27 threatened you to make the statement?
28 A That's correct.
29 THE COURT: Okay. Thank you.
30 CNSL C. JOHNSON:
31 Q And Detective Constable Tanino, you indicated that
32 this interview took place at the annex building of
33 the Vancouver Police Department and are you able
34 to tell us about what time this commenced?
35 A I don't recall the exact time. I'd have to --
36 CNSL C. JOHNSON: If she could refresh her memory by --
37 THE COURT: Yes, you can look at your notes --
38 CNSL C. JOHNSON: Mr. Fox, is that --
39 THE COURT: -- or the transcript of the interview.
40 CNSL C. JOHNSON: -- you're okay with --
41 A The --
42 CNSL C. JOHNSON: -- her looking at her notes?
43 THE ACCUSED: Yeah.
44 A -- the interview began at 7:39 in the morning.
45 THE COURT: At 7:30 --
46 A Seven thirty-nine in the morning.
47 THE COURT: Okay.

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1 CNSL C. JOHNSON:
2 Q And are you able to tell us how long the interview
3 lasted?
4 A Again, I'd have to refer to the end time of the
5 interview for -- via the transcript.
6 THE COURT: Yes.
7 A Eight forty-nine a.m.
8 CNSL C. JOHNSON:
9 Q And so, the interview was about one hour and 10
10 minutes; is that correct?
11 A Yes, that's correct.
12 Q And I'm not going to ask you to read the interview
13 to the court, but I gather you reviewed it today
14 and on other days and there are certain portions
15 of the interview that you wish to refer to; is
16 that correct?
17 A Yes.
18 Q And you've summarized those in a report to Crown
19 counsel which I'll just say for the record has
20 been supplied to Mr. Fox. And so, if I could ask
21 you to advise the court of those portions of the
22 interview?
23 A Sorry, are you referring to the transcript, or are
24 your referring to the TAR, the --
25 Q whichever is easier for you.
26 A Well, the transcript --
27 Q If you have the transcript, then --
28 A -- I do have the transcript, it -- it's almost 40
29 pages. It's 39 pages. So, but in -- in summary,
30 Mr. Fox advised that he had transferred ownership
31 and control of the website to a third party which
32 was not identified during the interview.
33 Q Did Mr. Fox indicate to you that while he'd been
34 out of jail, that is, on the days prior to the
35 17th, that he'd had access to the internet on his
36 phone and laptop?
37 A I believe he did, yes.
38 Q And did he indicate -- I think you've just
39 indicated that he told you that he'd transferred
40 control of the website to a party he would not
41 name; is that correct?
42 A Yes.
43 Q And did he say why he'd done that?
44 A So, that he would not be compelled to take the
45 website down.
46 Q And so, it was his belief that in doing so --
47 THE COURT: Well, don't -- don't lead your witness --

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1 CNSL C. JOHNSON: Thank you.
2 THE COURT: -- please, because this is --
3 CNSL C. JOHNSON: That's --
4 THE COURT: -- critical evidence.
5 CNSL C. JOHNSON: Yes, fair enough, Your Honour, sorry.
6 Thank you, that's all I'll ask about that then.
7 Q Did Mr. Fox indicate to you that he'd made any
8 efforts whatsoever to remove the website?
9 A He did say that he had e-mailed the editor.
10 THE COURT: Sorry, he said that he?
11 A He emailed; he sent an email.
12 THE COURT: To the person in control of the website,
13 the editor. I don't know the exact correct term,
14 but I've used editor.
15 CNSL C. JOHNSON:
16 Q And in referring to a person as an editor, did he
17 give you any details about that person?
18 A I -- I don't recall if he -- he referred to them
19 as the editor. That's the -- my term that I've
20 used. The person in control of the website.
21 He -- he said that he e-mailed them.
22 Q And did you ask him for some evidence of that?
23 A I -- I did ask if he would provide the email.
24 Q And what was his response?
25 A He said that he would, but at a later date, not at
26 that exact time.
27 Q And to your knowledge, has Mr. Fox ever provided
28 that information?
29 A Not -- not that I know of, no.
30 Q Did he indicate that the email that he purported
31 to have sent was sent from a particular type of
32 account?
33 A I -- I don't recall. I -- he might have, in the
34 transcript, I don't recall off the top of my head,
35 no.
36 Q Did Mr. Fox indicate anything to you about
37 something that might happen once his probation had
38 ended?
39 A Yes, I did -- he did. I probably have to refer to
40 my notes for the exact wording that he used.
41 THE COURT: You don't have any objection to her
42 referring to her notes?
43 THE ACCUSED: No, I don't.
44 THE COURT: Okay. Go ahead.
45 A I'm just looking at the transcript. So, we
46 were -- at the time, we were talking about him
47 providing control and ownership to the third party

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1 and so, I said [as read in]:

2
3 So, before you had your probation, you signed
4 over rights to the website, like, access to
5 it, to a third -- to a different party?
6

7 And he said:

8
9 Yeah.

10
11 And I said:

12
13 So that you wouldn't be -- you wouldn't have
14 the authority . . .
15

16 He said:

17
18 Right.

19
20 And then I said:

21
22 . . . to take it down during your probation
23 with the hope that when the probation ends,
24 that's when you'll take it back over. Is --
25 is -- am I understanding that correctly?
26

27 As I was summarizing what he had told me. And he
28 said:

29
30 Yes. And even if -- even if control of it
31 wasn't given back to me after the probation
32 is finished, it would be easy enough to just
33 create another -- another copy of it, or
34 another version because if you have all the
35 source material, you just put up a new
36 website.
37

38 That's directly from the transcript.

39 CNSL C. JOHNSON:

40 Q Was there anything in the -- in your interview
41 about Mr. Fox's belief as to whether the website
42 was harmful or not?

43 A We did speak about it. He -- we spoke about any
44 harm that it could possibly do to himself and the
45 attention it received. It also -- the attention
46 it might receive from anyone employing his ex-
47 wife, but physical harm, no, he did -- he -- we

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1 spoke about it, but he didn't believe that there
2 was any physical harm to her.
3 Q And when you say to her, are you referring to Ms.
4 Capuano?
5 A Yes.
6 THE COURT: Well, again, don't lead your witness,
7 please.
8 CNSL C. JOHNSON: Thank you.
9 Q Did Mr. Fox say anything to you about -- well,
10 first of all, let me ask you this, you're aware
11 that -- are you aware that Mr. Fox -- are you
12 aware that there had been, at some time, more than
13 one website?
14 A I believe we spoke about it in the interview, that
15 -- at the beginning. I can't -- I can't quite
16 recall, but I -- I do remember something about a
17 previous website, but my interview was based off
18 of the current website --
19 Q Right.
20 A -- and I was not involved in previous
21 investigations.
22 Q Did you have a discussion with Mr. Fox about
23 reposting the website?
24 A I -- that's what I just read about creating
25 another version.
26 Q Okay. And I -- I'm -- did you write a summary
27 of your interview and a report to Crown
28 counsel?
29 A I did. I don't have that with me. I just have
30 the transcript.
31 Q Right. Did Mr. Fox, during the course of the
32 interview, indicate to you any goals that he had
33 in maintaining the website?
34 A Any goals he had. I don't recall, no.
35 Q Right. Do you recall any discussion with Mr. Fox
36 where the words -- did Mr. Fox ever advise you
37 that he wanted to be charged with criminal
38 harassment?
39 A I believe we had a discussion in the interview
40 about his previous charges and he gave some
41 background to what had happened in previous cases
42 with regards to that and I believe that was with
43 criminal harassment charge, but we didn't speak at
44 length about it, no.
45 Q Right. I'm going to ask you to review your
46 interview with Mr. Fox, to indicate whether you
47 had any discussion with him about bringing the

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1 administration of justice into disrepute and the
2 context of that discussion.

3 A May I refer to the transcript?

4 THE COURT: Yes, go ahead.

5 A Sorry. Sorry, here. Yes, on page 11, at the
6 bottom, when we were talking about creating a new
7 website with a different URL, Mr. Fox stated [as
8 read in]:

9
10 Now, umm, doing . . .

11
12 He -- he stated:

13
14 Now, umm, doing that doesn't violate the
15 probation conditions at all and there's
16 nothing illegal about the website, umm. So,
17 the prosecutor is just trying use the
18 probation conditions as a way to get the
19 website taken down. There's nothing illegal
20 about it though. Umm, and I've been
21 demanding at they prosecute me for criminal
22 harassment based on the current website, umm,
23 because they convicted me of criminal
24 harassment from the -- from the -- based on
25 the original website back in 2017. And if
26 the new website is the exact same thing as
27 the old website and still online, it must
28 still be criminal harassment. But the thing
29 is, it's not criminal harassment and they
30 know it and if they were to prosecute me for
31 that and have another trial, then my ex-wife
32 committed so much perjury and there was so
33 much corruption and collusion that went on at
34 that first trial and there's evidence of all
35 of that and most of that is on the website,
36 umm, so if they were to prosecute me again
37 and have another trial, then I would be able
38 to confront my ex-wife with all of the proof
39 she committed -- all of the perjury and then
40 she would have no credibility, I'd be
41 acquitted and then it would raise issues
42 of . . .

43
44 And then the next entry:

45
46 How could I be convicted of something the
47 first time and do the exact same thing and be

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1 acquitted?

2

3 And then I said:

4

5 Umm . . .

6

7 And then he said:

8

9 Which would bring the justice system into
10 disrepute.

11

12 Q Did Mr. Fox, subsequent to that portion that
13 you've just referred, indicated -- did he say
14 anything about any willingness to go to jail, stay
15 in jail, anything of that sort?

16 A He did talk about the quality of his life and how
17 what has happened has led him to not care if he
18 has to remain in custody.

19 Q Did Mr. Fox, at any time, during the course of the
20 interview, indicate to you that he'd done anything
21 to remove the website other than send one email?

22 A Not that I recall, no, because he said he didn't
23 have ownership or -- or control of it.

24 THE ACCUSED: I'm -- I'm sorry, did you say that I said
25 I did or didn't have?

26 A You -- you said that you did not have ownership of
27 or control -- or control of it.

28 THE ACCUSED: Sorry, I just didn't hear you.

29 A No, that's okay.

30 CNSL C. JOHNSON: Thank you then, those are all the
31 questions I have of this witness.

32 THE COURT: Okay. Cross-examination?

33 THE ACCUSED: Thank you.

34

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

36

37 Q A little while ago, you were asked about if I had
38 said that I had transferred ownership of the
39 website to somebody?

40 A Yes.

41 Q And when we were discussing that, did I say when I
42 had transferred ownership?

43 A I believe you indicated when, but I'd have to
44 refer to my notes. I -- I believe it was before
45 your probation, but I can -- if I can --

46 Q Sure, yeah --

47 A -- refer to my notes?

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1 Q -- go ahead.
2 A Think -- I think I asked about who -- who would
3 have access to that website --
4 Q Mm-hmm.
5 A -- and the you sent -- you said I -- [as read in]:
6
7 Yeah, that, I'm not going to answer.
8
9 And then you said:
10
11 Umm, partially because I can't answer it
12 right now. I don't know and that was done
13 very deliberately before the probation began
14 in 2018 and I've been over all of this
15 before, but before the probation began, I
16 transferred ownership and control to another
17 party, so that way, I couldn't be compelled
18 to take it down or do anything with it, with
19 the understanding that once I'm no longer on
20 probation, then I would take back the
21 website.
22
23 Q Okay.
24 A So, I believe that was -- you indicated there that
25 it was before the probation.
26 Q Right, right. So, would you understand that to
27 mean that if that transfer did occur, it happened
28 before the probation orders took effect? And so,
29 was I -- as far as you would know -- sorry.
30 A That's okay.
31 Q Would I have been on probation at that time?
32 A I -- I don't know exactly when your probation
33 started, but it -- from what you said, you
34 transferred ownership before your probation.
35 Q Right. Okay. And you had also mentioned, on
36 direct, something about me, that I would not name
37 the person who I had transferred ownership to, but
38 just a moment ago, when you were reading from
39 there, I believe as you were reading it, it
40 actually stated that I couldn't; is that correct?
41 Because I don't know who -- sorry --
42 A Yeah, you said, I don't -- I don't have the answer
43 to that.
44 Q Okay. And did I explain why I don't have the
45 answer?
46 A May I refer to my notes Your --
47 THE COURT: Yes.

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1 A -- Your Honour? Thank you. I said [as read in]:
2
3 Okay. And do you -- do -- the -- the
4 desicapuano, do you have access to that
5 website?
6
7 And you said:
8
9 I don't.
10
11 And I said:
12
13 You don't? Who -- who would have access to
14 that website?
15
16 You paused and said:
17
18 Umm. And then to update like you just
19 said . . .
20
21 Because we were talking about how to update the
22 website.
23 Q Mm-hmm.
24 A And you said:
25
26 Yeah, yeah.
27
28 Period.
29
30 That, I'm not going to answer.
31
32 And I said:
33
34 Okay.
35
36 And then you described what I just read, the
37 probation.
38 Q Right. Now, but where I had said that:
39
40 Umm, I'm not going to answer.
41
42 Sorry, would you -- could you tell me what page
43 you're on on there, just so I can --
44 A Yeah, of course, yeah.
45 Q -- find it on here?
46 A It's page 10, I was just going into the very last
47 paragraph, where you were talking about your

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1 probation beginning. And --
2 Q Sorry, I think I'm looking at the wrong one. Oh,
3 that's the arrest.
4 A I don't think on the next page you describe who
5 would have access to it.
6 Q Yeah, sorry, it's just -- all the transcripts are
7 all bundled together here, I just have to find the
8 right one.
9 A Well, I'm just looking through where you --
10 Q Oh, I found it.
11 A Yeah.
12 Q Okay. Yes. So, on page 10, line 29, that's --
13 that's where I continue after I say that I'm not
14 going to answer.
15 A Yes, and then you continue about the probation,
16 but I just saw on page 14, you did -- on line 9,
17 you said [as read in]:
18
19 I emailed, umm, however might be monitoring,
20 the editor@desicapuano email address --
21
22 Q Right.
23 A -- which is right there on the website.
24 Q Right. And we'll get to that in just one moment
25 because I have a note of it here, but getting back
26 to that page --
27 A Oh, we're still on page 10?
28 Q -- 10, line 29.
29 A Line 29, yes.
30 Q So, did I state that the reason that I wouldn't
31 answer that question is because -- is because I
32 don't know, because I don't have that information?
33 A You said:
34
35 Umm, partially because I can't answer it
36 right now. I don't know.
37
38 Q Right. So, is it fair to say then that it's not
39 so much that I wouldn't answer the question, but
40 rather I couldn't answer the question because I
41 didn't have the information? The question that
42 Mr. Johnson had asked was whether I had provided
43 the name of the person that I had transferred
44 ownership to?
45 A Yes, I believe so. Don't have access and I said:
46
47 Who would have access to that website?

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1 And you said you weren't going to answer and then
2 you -- yeah, you continued on to say [as read in]:
3

4 I can't answer right now, I don't know.
5

6 Q Right. And then do you agree -- and then I went
7 on to explain that the reason I don't know is
8 because I deliberately transferred ownership
9 before the probation began to a party that I
10 wouldn't know about, so I couldn't be compelled to
11 take it down. Is that a fair assessment of what I
12 explained next?

13 A I -- I think in here, I -- I was under the
14 standing -- understanding more that you
15 transferred ownership so that you could not be
16 compelled. I didn't really realize at the time
17 that you weren't aware of who that party was.

18 Q Oh, okay. Okay. I see what you're saying, yes.

19 A Just because it was lumped in with that particular
20 explanation, so, I -- at the time, I didn't -- I
21 didn't believe that you didn't know who the person
22 was, just more so that you couldn't do that
23 because of the way you gave up control and
24 ownership.

25 Q Okay. And then you had said -- on page 14, there
26 was a discussion of the email that I had sent; is
27 that correct?

28 A Yeah, I was just trying to see anywhere about this
29 -- this identification of a person, but then on
30 14, you did say:

31 I emailed, umm, whoever might be monitoring
32 the editor@desicapuano.
33

34
35 Q Right.

36 A And -- and you went on to describe more, if you
37 want me to read it verbatim, but --

38 Q Sure, if you could, please.

39 A Emailed, umm, whoever might be monitoring the
40 editor@desicapuano.com email address, which
41 is right there on the website, which you guys
42 could also email those people and ask them to
43 take down the website. They know about the
44 situation, what's going on, because it's been
45 -- been in the news at all -- and all. I
46 haven't heard anything back from them though,
47

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1 but, umm, since the attention of transferring
2 ownership of the website of another party was
3 so that I couldn't be compelled to take it
4 down under any circumstances, uh, it's not
5 likely that they're going to do anything.
6
7 Q Thank you. And let me ask, do you know if anyone
8 from the VPD has tried to contact the current
9 website administrators about taking the website
10 down?
11 A I'm not aware of all the steps taken in the
12 investigation. My role was to interview you at --
13 Q Right.
14 A -- at that time.
15 Q You had stated also, I believe, and correct me if
16 I'm wrong, but you had stated on direct that I had
17 said that I -- that I did have access to the
18 internet on my laptop and my -- my phone prior to
19 my arrest; correct?
20 A I believe you described in here that your release
21 and Belkin provided -- the Belkin House provided
22 access to the internet.
23 THE COURT: Sorry?
24 A I'd -- I'd have to look for my notes, but we -- we
25 discussed about his release and if the place that
26 he was residing provided access to the internet.
27 I don't recall exactly what I said to Mr. Johnson,
28 but I can read through this if you -- if you'd
29 like.
30 THE ACCUSED:
31 Q Sorry, I'm just trying to find the part in the
32 transcript where that was discussed.
33 A I think it's page 7. I just saw the internet
34 here. Yes, line 16 on page 7.
35 Q Right, okay.
36 A I -- I asked you [as read in]:
37
38 Yeah, okay.
39
40 I responded to something you had previously said.
41 And I said:
42
43 Uh, so, since you've been released, have you
44 had any access to the internet?
45
46 And your response was:
47

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1 Of course.
2
3 Q Right. And did I -- shortly after that though,
4 did I point out that I was still under a previous
5 probation order which prohibited me from accessing
6 the internet?
7 A I think you described your conditions and how --
8 what you were allowed access to. It's -- it
9 flowed onto page 8.
10 Q Ah, yes, at the top of page 8, line 2.
11 A Yes. Would you --
12 Q Well, I mean, we can just summarize. Do I explain
13 in there that there's a previous probation order
14 that I was still subject to which has a condition
15 that prohibited me from accessing the internet?
16 A Yeah, it says that it was -- to use internet for
17 employment and sending and receiving personal
18 emails.
19 Q Right.
20 A And then you said [as read in]:
21
22 I'm not going to comment on whether or not I
23 actually accessed the internet since Thursday
24 because if I say that I did access the
25 internet, then I'd be admitting to violating
26 that condition.
27
28 Q Okay. And do you know if anybody verified whether
29 or not my statement there was true, that I was --
30 that there was a probation condition that
31 prohibited me from accessing the internet?
32 A Again, my role was to interview you at the time,
33 that would --
34 THE ACCUSED: Mm-hmm.
35 CNSL C. JOHNSON: I -- I object to that question
36 because there isn't a probation condition that
37 prohibits him from using the internet. It limits
38 his use of internet.
39 THE COURT: She -- she's not able to comment on it in
40 any event, it sounds like.
41 THE ACCUSED:
42 Q And there was some discussion about whether --
43 whether I believe that the website is causing
44 Desiree Capuano physical harm.
45 A Sorry, just to clarify, it was harm. I don't
46 believe he'd indicated physical harm in the
47 question. It was harm and I -- it wasn't physical

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1 harm at the time of the question.
2 Q Okay. Sorry, I had my note written down here as
3 physical harm. Well, do you believe -- hang on,
4 can I ask that? No, no, forget that.
5 At the beginning of the interview, the
6 recording, I believe, it's probably in the
7 transcript as well, you refer to the website as
8 being a quote, hate website, closed quote. Do you
9 -- do you see that there, or do you recall that?
10 CNSL C. JOHNSON: Could Mr. Fox indicate what page and
11 line that's on, please?
12 THE ACCUSED: Oh, I believe -- oh, yes, I do have it
13 written here. Page 1, line 17, in my notes. It
14 was before the interview actually began, or was
15 it? Sorry --
16 A Yes, yeah, it's the introduction.
17 THE ACCUSED:
18 Q Right. Yes, there it is, hate website. Can you
19 clarify, what do you mean by hate website? I
20 mean, what is a hate website?
21 A I believe that was pulled from a previous write-up
22 from either Detective Dent, or a -- an additional
23 report about the website and possibly, like, a
24 previous breach, because at the time, I didn't
25 have any knowledge --
26 Q Mm-hmm.
27 A -- so, I used background from other -- another
28 report.
29 Q Okay. So, am I correct then in assuming that what
30 you're saying is that you don't necessarily,
31 yourself, believe that it is a hate website?
32 A Honestly, I have not seen the website myself, I
33 have not --
34 Q Okay.
35 A -- accessed it and I have not read the content of
36 it to make sure that I was entering into the
37 interview with a clear mind and --
38 Q Sure.
39 A -- listening to what you had to say.
40 Q In RTCC version 1, there is an occurrence
41 report --
42 A Sorry, is this in relation to the interview?
43 THE ACCUSED: Yes, yes. There's a section in that
44 occurrence report called Interview of Fox.
45 THE COURT: Do you have a copy of the occurrence
46 report?
47 A I -- I don't know which RTC he's referring to --

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1 THE ACCUSED: All right.
2 THE COURT: Okay. Would you happen --
3 A -- where it -- where it comes up in the
4 transcript.
5 CNSL C. JOHNSON: Could I just step up and
6 [indiscernible]?
7 THE COURT: I'll just ask Mr. Johnson to verify
8 which . . .
9 THE ACCUSED: Yes, that's it. It's just this looks
10 different from what you have. It's just formatted
11 differently, but it's the same thing, I believe.
12 A What's the -- what's the -- sorry --
13 CNSL C. JOHNSON: So, it's in the report to Crown
14 counsel on page 10.
15 A What's the front page of that looks like? Sorry,
16 just so that I know that file number -- the VPD
17 file number. That's --
18 CNSL C. JOHNSON: This is a report that was prepared by
19 Detective Dent.
20 A I have the occurrence reports.
21 CNSL C. JOHNSON: And I don't believe it was prepared
22 by you.
23 A It was not, no.
24 CNSL C. JOHNSON: There is a portion which summarizes
25 the --
26 A Okay.
27 CNSL C. JOHNSON: Mr. Fox, I'm not -- perhaps you could
28 give --
29 THE COURT: Maybe refer to what you're wondering
30 about --
31 THE ACCUSED: Yes.
32 THE COURT: -- so that the detective --
33 THE ACCUSED:
34 Q So, within that section --
35 THE COURT: -- knows what you're asking.
36 THE ACCUSED:
37 Q -- entitled Interview of Fox, there's a bulleted
38 list that appears to be -- or it actually says [as
39 read in]:
40
41 The following are highlights of the
42 interview.
43
44 And my question was going to be about that
45 bulleted list.
46 THE COURT: Okay. Let her -- let her find --
47 THE ACCUSED: Yeah.

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1 THE COURT: -- the document.
2 A I have the actual occurrence report from that
3 file, same file number, is it one -- 2021-13224?
4 THE ACCUSED: Yes.
5 CNSL C. JOHNSON: It should be on page 5.
6 A Page 5.
7 CNSL C. JOHNSON: Five out of 6. Is that a six-page --
8 A I -- I have four of -- I have five pages in total.
9 It says Interview of Fox and it says [as read in]:
10
11 Was interviewed by Detective Constable . . .
12
13 CNSL C. JOHNSON: Yes.
14 A
15 . . . Janine Tanino.
16
17 CNSL C. JOHNSON: That is the same document, Your
18 Honour.
19 THE COURT: Okay.
20 THE ACCUSED:
21 Q So, if you look down in the next paragraph, after
22 the one that you were just reading from --
23 A Okay.
24 Q -- you should have a bulleted list there of
25 highlights from the interview?
26 A Yes.
27 Q Those highlights, did you write those, or did
28 somebody else?
29 A I didn't -- I did not author this report.
30 CNSL C. JOHNSON: The --
31 THE ACCUSED: Okay.
32 CNSL C. JOHNSON: -- Mr. Fox, I believe Detective
33 Constable Dent authored this portion.
34 A Yeah.
35 THE ACCUSED: Interesting.
36 Q I understand that Dent -- or Detective Dent wrote
37 the report, but perhaps he might have just copied
38 and pasted this section? I know sometimes that's
39 done, but --
40 A I don't know if he did that --
41 Q Okay. So, you -- you --
42 A -- because I don't have access -- I don't --
43 Q -- you didn't write that; correct?
44 A No, I did not write that.
45 Q Okay. Then I can skip all of that. During the
46 interview, there was some discussion about that
47 email that I said that I could send to

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1 editor@desicapuano.com and I believe I was asked
2 by yourself, or possibly Detective Roberts about
3 when I would be able to provide you a copy of
4 that?
5 A Yeah -- may I refer to the transcript, Your
6 Honour?
7 THE ACCUSED: Yes, yes.
8 THE COURT: Yes. Do you have a reference? A page
9 number maybe and a line?
10 A I think I might have tabbed it.
11 THE COURT: Okay.
12 A Well, yes, I think I have it here. I -- possibly
13 on page 29. Yeah, I think Detective --
14 THE ACCUSED: Oh, yes, yes, mm-hmm.
15 A -- Roberts says [as read in]:
16
17 I think you -- you circled back to the --
18 that talking about the email and when that
19 was received and sent about taking it down.
20
21 THE ACCUSED: Right.
22 A And I said:
23
24 You said that probably Thursday or Friday,
25 you might be able to get us a copy of that.
26
27 THE ACCUSED:
28 Q Oh, sorry, I believe -- and correct me if I'm
29 wrong, but I believe I had said that I had sent
30 the email on Thursday or Friday.
31 A Yeah, there's a comma after it --
32 Q Yeah.
33 A -- so, maybe I just didn't pause enough there, but
34 it says:
35
36 Probably Thursday or Friday . . .
37
38 As it -- it seemed like you were indicating that
39 it was sent on those days.
40 Q Correct.
41 A And then you might be able to get us a copy of
42 that, of you e-mailing the editor and that email
43 address on that website. And your response was:
44
45 I will be able to be forward you a copy of
46 it, umm, once I'm released from custody in
47 three years or so. I don't have access to my

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1 email in jail, so . . .
2
3 Dot, dot, dot.
4 THE COURT: Sorry, in three --
5 A Three years.
6 THE COURT: -- three years.
7 A Three years, or so.
8 THE ACCUSED:
9 Q Right, right. So, it seems -- it seems pretty
10 clear to me and please tell me if you understand
11 this the same way, that what I'm saying there is
12 in jail, I don't have access to email and that's
13 why I won't be able to provide a copy of that to
14 the police until after I'm released from custody;
15 is that --
16 A I don't know what your mind was --
17 Q Fair enough.
18 A -- at the time of that.
19 Q Is that how you understood it?
20 A I don't know how I understood it at the time.
21 I -- I don't recall. I -- I believed that -- you
22 said you had emailed --
23 Q Mm-hmm.
24 A -- I wasn't -- I wasn't actually quite sure if it
25 was about the email itself and providing it
26 because you don't have access to it in jail, or
27 if it was because of what we had spoken about
28 during the interview, about your life and how it
29 has been affected by this. And so, I wasn't quite
30 sure if it was you wanting to remain in custody
31 and got to court on these charges, or if it was
32 because you didn't have access to it and wouldn't
33 -- wouldn't be able to provide it. I was -- I
34 was unsure of that still at the end of the
35 interview.
36 Q Okay. You agree that I did claim that I sent an
37 email to editor@desicapuano.com, requesting that
38 they take down the website until my probation is
39 complete?
40 A You indicated that you did send an email --
41 Q Mm-hmm.
42 A -- but I don't know what the contents of the email
43 was. I don't know exactly the wording, I don't
44 know --
45 Q Okay.
46 A -- said in the email, but you did indicate that
47 you did send an email to the editor.

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1 Q Right. And did you, yourself, or Detective
2 Roberts, ask me for a copy of that email?
3 A I think I just read that portion, yes.
4 THE ACCUSED: Right, right. And -- well . . .
5 I don't believe that I have any further
6 questions.
7 THE COURT: Okay. Anything arising?
8 CNSL C. JOHNSON: Yes, I have two brief questions.
9

10 **RE-EXAMINATION BY CNSL C. JOHNSON:**
11

12 Q Detective Constable Tanino, on that page that you
13 were just looking at, did Mr. Fox say, with
14 respect to this email that he may have -- might
15 have sent, did he say what type of account he sent
16 it [indiscernible/voice trails off]?

17 A Sorry, I'm just getting that page again, here.
18 After he said about the three years or so, I don't
19 have access to my email in jail, so . . .
20

21 And I said [as read in]:
22

23 Okay, but if --
24

25 And then Detective Roberts said:
26

27 Okay. I mean, if we're, like, 'cause we're
28 obviously going to do an investigation and
29 try and find that email so we can prove
30 whether or not you did comply --
31

32 And Fox said:
33

34 Mm-hmm.
35

36 And then Detective Roberts continued and said:
37

38 -- or not. So, if we're looking for that
39 email, where are we going to look? Is it,
40 like, a Gmail account? Is it your -- like,
41 your personal account?
42

43 And Fox replied:
44

45 Gmail.
46

47 Q Thank you. And if Mr. Fox had offered to provide

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1 you with that email during the course of the
2 interview, you would -- would you have allowed him
3 to do that?

4 A Yes.

5 THE COURT: Well, I mean, that's a hypothetical
6 question.

7 CNSL C. JOHNSON: It is.

8 Q But it was -- it was open to Mr. Fox, during the
9 course of his interview --

10 A Well, we -- we posed the question, would you be
11 willing to provide that email? I don't know, I --
12 like, the hypothetical would be how, exactly he
13 would provide that, at that exact moment, but we
14 would obviously try and -- try and collect that
15 evidence if we could.

16 CNSL C. JOHNSON: Thank you.

17 Those are all the questions I have, Your
18 Honour.

19 THE COURT: Anything arising, sir?

20 THE ACCUSED: No, no.

21 THE COURT: No?

22 Okay. Thank you, you're excused.

23 A Thank you, Your Honour.

24

25 (WITNESS EXCUSED)

26

27 THE COURT: It might make sense, Mr. Johnson, because
28 we have to call the cleaner again, to just take a
29 little bit of an earlier morning break, then we
30 can combine that activity with the morning break.

31 CNSL C. JOHNSON: Yes.

32 THE COURT: Okay. All right. So, Madam Registrar,
33 would you just call me when people are ready?

34 THE CLERK: Yes, Your Honour.

35 THE COURT: So, just take the time you need and we'll
36 resume after the morning break. Thank you.

37 A SHERIFF: Order in court.

38

39 (PROCEEDINGS ADJOURNED FOR MORNING RECESS)

40 (PROCEEDINGS RECONVENED)

41

42 CNSL C. JOHNSON: Thank you, Your Honour. The next and
43 last witness the Crown is calling is Detective
44 Constable Kyle Dent.

45 And he wishes to affirm, Madam Clerk.

46 THE COURT: Okay.

47

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1 **KYLE DENT**
2 a witness called for the
3 Crown, affirmed.
4
5 THE CLERK: Please state your name and badge number for
6 the record and spell your last name.
7 A Yeah, it's Kyle Dent, D-e-n-t and my badge number
8 is 2680.
9 THE COURT: Feel free to stand or sit, whichever you
10 prefer.
11 A Thank you, Your Honour, I'll sit.
12 THE COURT: Thank you.
13 Mr. Johnson?
14 CNSL C. JOHNSON: Thank you, Your Honour.
15
16 **EXAMINATION IN CHIEF BY CNSL C. JOHNSON:**
17
18 Q Detective Constable Dent, you are employed with
19 the Vancouver Police Department; is that correct?
20 A That is correct.
21 Q And how long have you been so employed?
22 A Approximately 14 years.
23 Q And what department do you currently work in?
24 A I'm currently assigned to the domestic violence
25 and criminal harassment section.
26 Q And were you in that section in August of 2021?
27 A I was.
28 Q And in August of 2021, were you assigned an
29 investigation with respect to Patrick Fox?
30 A I was.
31 Q And do you recall the date of that?
32 A I was assigned on August 5th, 2021.
33 Q All right. And are you able to tell the court why
34 there was this assignment?
35 A On August 3rd, I understand our domestic violence
36 section, so, one of the sergeants, or staff
37 sergeants, was informed was that Mr. Fox had sent
38 an affidavit to the courthouse, either an appeal
39 or -- I'm not exactly sure what was in the
40 affidavit, but in the affidavit, he said he was
41 not going to be taking down the website and they
42 requested that we monitor Mr. Fox, to see if he
43 would abide by his court-ordered conditions.
44 Q And you, I take it, or I'll ask you, actually,
45 were you aware as to whether, on August the 5th,
46 Mr. Fox was in jail or not?
47 A Yes, so, when I was assigned the file, I confirmed

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1 that Mr. Fox was at Fraser Regional. I contacted
2 them directly to ascertain what his release date
3 was and I learned that it was August 12th, 2021.
4 Q And what did you do next to further this
5 investigation?
6 A To further the investigation, I tasked another
7 detective in our office to conduct surveillance --
8 or sorry, to liaise with a surveillance team of
9 Mr. Fox, as we had no additional information as to
10 what his release plan was. And what I mean by
11 that is we didn't know where he would be staying,
12 who he would be associating to and if the
13 investigation revealed that Mr. Fox was not in
14 compliance with his conditions, we would attempt
15 to effect an arrest. In order to do, his location
16 was required. So, my next order of business was,
17 I assigned a detective to liaise with
18 surveillance, who sent a surveillance package to
19 the team, which included Mr. Fox's photograph, so
20 that on August 12th, they could be at Fraser
21 Regional upon his release and conduct surveillance
22 on him in order to learn where he would be
23 staying.
24 Q And to your knowledge, did that occur?
25 A Yes, it did.
26 Q And did it come to your knowledge that Mr. Fox
27 was, in fact, released?
28 A Yes, so, he was released in the morning and he was
29 surveilled by the team for the duration of the
30 day and in that time, he was observed at a
31 Starbucks -- I believe it was a Starbucks coffee
32 shop where somebody who has frequented Starbucks,
33 I'm aware that they offer free Wi-Fi and he was
34 observed in that location on a digital device.
35 Surveillance was conducted throughout the day,
36 where he ultimately ended attending the Belkin
37 House, downtown Vancouver.
38 Q And your understanding is that Belkin House is a
39 residence?
40 A Yes, Belkin House is a residence for people of no
41 fixed address.
42 Q And did you come to learn that Mr. Fox actually
43 moved to Belkin House and was staying there?
44 A We believed that he was staying there as that was
45 the last place in the previous occasion that Mr.
46 Fox was released from custody, that he resided at.
47 And when he attended there and -- at the evening,

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1 that confirmed our belief that that is where, in
2 fact, he was residing again.
3 Q Now, you mentioned, a few moments ago, that you
4 were tasked with ascertaining whether he was in
5 compliance with his probation?
6 A Yes.
7 Q And your understanding of that was what?
8 A So, I reviewed his CPIC, his conditions that were
9 listed and to summarize, it stated that Mr. Fox
10 had to take all reasonable steps to remove the
11 website that he's been convicted of having control
12 of -- over, within 48 hours of his release. I can
13 read it verbatim if the court would like me to. I
14 have it written in my statement here. I'd have to
15 refer to it.
16 Q That's fine.
17 A Okay.
18 Q And so, with that understanding, you continued
19 this investigation; is that correct?
20 A Yes. So, in order to do so, I tasked our crime
21 analyst, Catherine Meiklejohn, to monitor the
22 website over the weekend, to ascertain if it was
23 still accessible to the general public and see if,
24 at any point that she could observe, that it was
25 taken down.
26 Q And at some point, did Catherine Meiklejohn report
27 back to you?
28 A Yeah, the following Monday. So, Mr. Fox is
29 released on the 12th and so, on the following
30 days, Catherine reviewed his website and she
31 reported back to me on the -- I want to say the
32 15th of August, that the website was, in fact,
33 still operational.
34 Q All right. And were you aware -- I think you
35 might have said this, but just in case you didn't,
36 but were you aware as to what the court-imposed
37 timeline was --
38 A It --
39 Q -- for Mr. Fox to --
40 A -- yes, it was 48 hours.
41 Q And as a result of getting that report from
42 Catherine Meiklejohn, what did you do next?
43 A Formed the belief that after the weekend of her
44 observing that the website was still operational
45 and even in addition to the surveillance members
46 observing Mr. Fox in a place commonly known to
47 have free access to the internet on a digital

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1 device, we formed the belief that he was
2 arrestable for breaching his conditions.
3 Q All right. And at some point in time, did you
4 then take steps to effective an arrest?
5 A Yes, on August 17th, myself and another detective
6 in the domestic violence unit attended to Belkin
7 House in the morning, as we are aware that Belkin
8 House has rules that tenants have to be out in
9 certain point of the day. So, we attended the
10 Belkin House in the morning and shortly after
11 arriving there, we observed Mr. Fox in the hallway
12 and we approached him and I arrested him for
13 failure to comply with probation.
14 Q And after you arrested him, did you have a plan as
15 to what was going to happen?
16 A Yes, the plan was, after Mr. Fox was arrested, he
17 was going to be transported to the police annex,
18 just across the street here, where he was going to
19 be interviewed by Detective Janine Tanino.
20 Q And did that occur, to your knowledge?
21 A Yes, it did.
22 Q Did it ever come to your attention, during this
23 period of time, and I'll say between August 12th
24 and 17, that Mr. Fox had taken any steps
25 whatsoever to remove the website?
26 A The only information I learned was during the
27 interview with Constable -- sorry, Detective
28 Tanino, that Mr. Fox stated that he emailed
29 somebody. The contents of that email are unknown.
30 I know that Detective Tanino asked Mr. Fox for the
31 email, or access to, like, pull it up, or any
32 information at all to produce this email and none
33 was provided.
34 CNSL C. JOHNSON: Thank you. Those are all the
35 questions I have of this witness, Your Honour.
36 THE COURT: Okay. Cross-examination?
37 THE ACCUSED: Thank you.

CROSS-EXAMINATION BY THE ACCUSED:

40
41 Q You had made a reference to an affidavit that you
42 were informed by the Crown, I think you said, that
43 I stated in an affidavit that I would not take
44 down the website?
45 A That is the information that I received, yes.
46 Q Have you read or reviewed that affidavit yourself?
47 A I have not.

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1 Q So, do you actually have any knowledge of whether
2 or not I actually said that in that affidavit?
3 A I do not. I'm relying on the information that I
4 received from my sergeant, who received it from
5 Deputy Crown, I believe it was Patty Tomlinson
6 [phonetic].
7 Q Okay. And you had stated that on August 15th,
8 Officer Meiklejohn had informed you that the
9 website was still operational; is that correct?
10 A If I may refer to my notes just to confirm that
11 date -- that specific date?
12 THE COURT: Yes.
13 Do you have any objection to him looking
14 at --
15 THE ACCUSED: No, no, no objection.
16 THE COURT: Go ahead.
17 A Okay. Yes, I have written down in my evidence
18 here, as of the evening of August 15th, 2021, the
19 website www.desicapuano.com was still active.
20 THE ACCUSED:
21 Q And was -- was that the only source of information
22 that you had regarding whether or not the website
23 was operational following my release from custody?
24 A Yes.
25 Q So, it's my understanding that Officer Meiklejohn
26 had checked the website once each day for those
27 four days; is that your understanding as well?
28 A Yes, it is.
29 Q Okay. So, do you have any evidence about whether
30 or not the website was actually taken offline, or
31 taken down in that period of time and then it may
32 have been put back up?
33 A I do not.
34 Q Okay. You're familiar with the probation
35 condition that I'm accused of breaching, I
36 understand?
37 A Yes.
38 Q Can you tell me, in your words, or verbatim, I
39 don't care, what does that condition require me to
40 do?
41 A I'll -- verbatim [as read in]:
42
43 Within 48 hours of your release, take all
44 necessary steps to ensure any website, social
45 media page or any other publication which you
46 have authored, created, maintained, or
47 contributed to, which contains information,

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1 statements, comments, videos, pictures which
2 refer to . . .
3
4 Or depissit [sic] -- sorry, yeah.
5
6 . . . by name or description Desiree Capuano,
7 her friends, relatives, employers, co-
8 workers, including websites published under
9 domain www.desireecapuano.com and
10 www.desicapuano.com are no longer available
11 via the internet or any other means.
12
13 Q Okay. And so, if I or somebody else had taken
14 down the website within the 48 hours following my
15 release from custody, would I have been in
16 compliance with that?
17 THE COURT: Well, that's a legal question --
18 A I was going to say --
19 THE ACCUSED: Okay, sorry.
20 A -- that's not for me to determine.
21 THE COURT: -- which I'm going to have answer at some
22 point.
23 THE ACCUSED:
24 Q If the website had been taken down in that period
25 of time, would you have come and arrested me?
26 A If we had evidence that the website had been taken
27 down, that you would have -- then you would have
28 complied with your conditions. So, no, we would
29 have had no reason to come and arrest you.
30 Q Okay. Do you have any evidence about whether or
31 not the website was actually taken down?
32 A The evidence that we have states that the website
33 was still active and operational.
34 Q Well, the web -- the evidence that you -- states
35 that the website was active and operational at
36 those four precise times that Officer Meiklejohn
37 checked it.
38 A Yes.
39 Q But the probation condition that you just read
40 required me to take steps to take the website
41 down.
42 A Mm-hmm.
43 Q That condition did not prohibit me from putting
44 the website right back up five minutes later, did
45 it?
46 THE COURT: Well, I think, in fairness, if you read the
47 condition, it says [as read in]:

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1 . . . are no longer available via the
2 internet, or any other means.

3
4 So, there was an obligation, take it down,
5 including the website and it says that [as read
6 in]:

7
8 . . . that you must ensure that any
9 website . . .

10
11 So, on and so, forth.

12
13 . . . are no longer available via the
14 internet or any other means.

15
16 THE ACCUSED: Right.

17 THE COURT: So, just not to mislead the officer.

18 THE ACCUSED:

19 Q Are you aware of the other conditions on that
20 probation order?

21 A I am aware that there are other conditions. I
22 don't have them readily in front of me, as this
23 was the condition that we arrested you on.

24 Q Are you aware that -- the one that we're talking
25 about right now is condition 6, according to what
26 I have here. Are you aware that there is a
27 condition 5 that essentially prohibits me from
28 publishing or disseminating any information about
29 Capuano and her associates?

30 A Yes, that's in the condition that I read as well.

31 Q Okay. So, is it fair to say then that there's one
32 condition that prohibits me from publishing and
33 disseminating information and then there's a
34 separate, distinct condition that required me to
35 remove any previously published -- or any
36 information that was published or disseminated at
37 the time of my release?

38 A I'm aware that you have multiple conditions, yes.

39 Q Have you ever lied on the witness stand?

40 A No.

41 Q Have you ever committed perjury?

42 A No.

43 Q Have you provided testimony that you knew to be
44 false?

45 A No.

46 Q Did you testify at a trial against me -- or
47 regarding me on November 26th, 2020?

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1 A I did.
2 Q Do you remember what you had stated in that
3 testimony? I mean --
4 A Not specifically, no --
5 Q Okay.
6 A -- I'm sorry.
7 Q Page 11, line 42. Do recall if, at that time, in
8 that testimony, you were asked, by the Crown, on
9 direct, whether or not you had asked me whether I
10 had taken down the website?
11 A I -- I'll be honest, I don't recall.
12 Q Okay.
13 A That was a significant amount of time ago.
14 THE ACCUSED: I have a bit of a dilemma here then, Your
15 Honour, I have transcripts of prior testimony
16 which the witness reasonably does not recall
17 clearly and that's -- that's entirely
18 understandable because it's going --
19 THE COURT: Well, you can show him the transcript
20 and --
21 THE ACCUSED: Right.
22 THE COURT: -- and give him an opportunity to read it
23 and then you can ask him questions about it.
24 Like, for example, is it true, Officer, that, you
25 know, on page 4, line whatever --
26 THE ACCUSED: Right.
27 THE COURT: -- you answered the Crown as follows?
28 THE ACCUSED: Okay. And so, I just have the one master
29 copy here.
30 THE COURT: Okay.
31 THE ACCUSED: The Crown --
32 THE COURT: Crown --
33 THE ACCUSED: -- had provided me copies of some of
34 these transcripts as well, but --
35 THE COURT: -- would you happen to --
36 THE ACCUSED: -- the page and line numbering doesn't
37 line up with what I have.
38 THE COURT: Okay.
39 CNSL C. JOHNSON: I think what he's referring to is
40 transcripts that were prepared for an appeal that
41 he's doing --
42 THE COURT: Ah, and you -- do you --
43 CNSL C. JOHNSON: -- and --
44 THE COURT: -- copies of those here?
45 CNSL C. JOHNSON: -- I don't have copies of them.
46 THE COURT: You do?
47 CNSL C. JOHNSON: I don't.

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1 THE COURT: You don't? So, would you be all right with
2 sharing your copy with the witness? That's
3 probably the best.
4 CNSL C. JOHNSON: I'm -- I'm okay with him, if he wants
5 to ask questions about the transcript, as long as
6 it's clear what the portions are, et cetera --
7 THE COURT: Right. But the --
8 CNSL C. JOHNSON: -- if I can look at it.
9 THE ACCUSED: Yes.
10 THE COURT: -- officer needs to know --
11 CNSL C. JOHNSON: Yes.
12 THE COURT: -- he needs to refresh his memory from the
13 transcript. So, you can share it with him.
14 THE ACCUSED: Right.
15 CNSL C. JOHNSON: Could I look at that book just for a
16 moment? I won't lose your --
17 THE ACCUSED: Sure.
18 CNSL C. JOHNSON: -- place.
19 THE ACCUSED: I have a bit of a concern that if we just
20 have the one copy, passing it back and forth so
21 much is going to get very tedious or it might
22 complicate things, I think.
23 THE COURT: Well, I'll tell you what, that if you're
24 concerned about that, I'll allow you to read the
25 portion out to him --
26 THE ACCUSED: Mm-hmm.
27 THE COURT: -- and then to ask questions. But if -- if
28 it appears that there's a further context to his
29 answer, then he must be allowed to read the
30 portion before and after that specific answer, so
31 he understands the context --
32 THE ACCUSED: Right. And --
33 THE COURT: -- all right?
34 THE ACCUSED: -- I'm perfectly okay with that. What I
35 was hoping -- I mean, ideally, I would have access
36 to a photocopier at the jail and I could have
37 photocopies of these, but unfortunately, I don't.
38 THE COURT: Okay. Do you have very many of those that
39 you'll be referring to?
40 THE ACCUSED: Well, honestly, it kind of depends how
41 things go --
42 THE COURT: Okay.
43 THE ACCUSED: -- with the questioning.
44 THE COURT: Well, why don't we proceed this way, you
45 can read out the portion that you want to ask him
46 about --
47 THE ACCUSED: Okay.

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1 THE COURT: -- and then, so, you'll read out, you know,
2 question by the Crown, so and so --
3 THE ACCUSED: Sure.
4 THE COURT: -- answer by you, such and such. And then
5 you can ask him a question, did -- were you asked
6 that question by the Crown? Did you give that
7 answer? He might recall it from you just saying
8 it to him, or he might need to confirm it in the
9 transcript.
10 THE ACCUSED: Okay.
11 Q So, then, let's see, in the transcript here, the
12 Crown had asked [as read in]:
13
14 I take it you did ask him about whether he
15 had taken down the website; is that correct?
16
17 And your response -- you responded:
18
19 I did.
20
21 And I guess I should ask, do you wish to take a
22 moment to look at any of this? Unfortunately, I'm
23 going to be jumping around a bit.
24 CNSL C. JOHNSON: Perhaps, Mr. Fox, you could just read
25 the entire portion that you want to refer to at
26 this point. Go ahead.
27 THE ACCUSED: Okay.
28 Q So, at that point, on direct, you had stated that
29 you did.
30 A Yeah.
31 THE COURT: So, just to pause for a moment, he's put to
32 you what he says is a transcript of your testimony
33 on November the 6th of 2020; is that correct?
34 THE ACCUSED: November 26th, 2020, correct.
35 THE COURT: November 26th, 2020.
36 THE ACCUSED: Oh, sorry, yes.
37 THE COURT: Is it 6 or 26?
38 THE ACCUSED: Twenty-six.
39 THE COURT: November 26th, 2020 and it relates to a
40 question by the Crown and your answer. Are you
41 able to respond whether or not you recall that
42 question and answer?
43 A Again, that was a year and almost a couple months
44 ago. I can recall that I was cross-examined and I
45 did testify on that day, but the exact semantics
46 of how I answered the questions, in what context,
47 I'm sorry, like, I -- I'm not sure I would be able

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1 to definitely say, just due to the time of, like,
2 that it's been, the year.
3 THE COURT: Okay. Do you have a question about that
4 question and answer --
5 A Yeah.
6 THE COURT: -- that you want to ask him?
7 THE ACCUSED: Well, my only question, at this point,
8 would be did he state that? And --
9 THE COURT: Okay.
10 THE ACCUSED: -- I mean, it's here in the transcripts.
11 THE COURT: Then you -- then you need to let him look
12 at the transcript, so he can satisfy himself that
13 that's an accurate transcription of what he said
14 on that date. So, he'll need to look at the
15 booklet, so he can look at the front of it and --
16 THE ACCUSED: Mm-hmm.
17 THE COURT: -- see what it refers to. Maybe Mr.
18 Johnson can assist him.
19 CNSL C. JOHNSON: Which portion?
20 THE ACCUSED: Lines 42 -- right here is the question
21 and then the answer, I did.
22 CNSL C. JOHNSON: Okay. And just for the record, this
23 is a transcript of a trial that was before Judge
24 Rideout on November 26th of 2020.
25 THE COURT: Okay.
26 CNSL C. JOHNSON: And the reference that Mr. Fox is
27 referring to is on page 11 of this particular
28 transcript and it's --
29 THE ACCUSED: Line 42.
30 CNSL C. JOHNSON: -- line 42 to 44. So --
31 A Sorry, which lines here?
32 CNSL C. JOHNSON: Forty-two to 44.
33 A Okay.
34 CNSL C. JOHNSON: There's a question and an answer.
35 THE COURT: Are you able to say whether you were asked
36 that question and gave that answer?
37 A This does look like an answer that I gave, yes.
38 THE COURT: Okay. So, give it back to Mr. Johnson.
39 I'm going to suggest everybody use their hand
40 sanitizer as they're passing the document back and
41 forth. You have some there --
42 A Thank you, Your Honour.
43 THE COURT: -- Constable, and I think there's some
44 available for both Mr. Johnson and Mr. Fox.
45 THE ACCUSED:
46 Q And I'm sorry, I probably should have asked this
47 before I got into the transcript, but does the

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1 Crown or the witness have any objection or
2 concerns about the authenticity or -- of this
3 document?
4 CNSL C. JOHNSON: No, I believe Mr. Layton, who appears
5 for the Crown, has conduct of this proceeding in
6 the Court of Appeal and he's confirmed to me that
7 Mr. Fox has transcripts.
8 THE COURT: Okay. So, there's an acknowledgement by
9 the Crown this is an authentic transcript?
10 CNSL C. JOHNSON: Yes.
11 THE COURT: All right.
12 THE ACCUSED:
13 Q And then, on that same -- oh, sorry, sorry. When
14 you gave that response to the Crown, were you
15 referring to your notes?
16 A I don't remember if I was referring to my notes or
17 not at that time.
18 Q Would you like to check?
19 THE COURT: Does it make a mention of referring to his
20 notes?
21 THE ACCUSED: Yeah, in here, the --
22 THE COURT: Okay.
23 THE ACCUSED: -- court advises him --
24 THE COURT: All right.
25 THE ACCUSED: -- that he could check his notes to
26 refresh his memory if he needs it.
27 CNSL C. JOHNSON: And so, just -- I -- would Your
28 Honour like me to read this --
29 THE COURT: Sure.
30 CNSL C. JOHNSON: -- question and answer? So, there's
31 a question from the court, this is on page 11,
32 line 29 [as read in]:
33
34 THE COURT: You can refresh your memory from
35 your notes, thank you, including that
36 document.
37 A Thank you very much. Mr. Fox referenced
38 a number of details on that website,
39 yes. His response was he did not admit
40 to posting anything, but it has been
41 updated by somebody.
42
43 Is that what you wanted to . . .
44 A This one? Court?
45 CNSL C. JOHNSON: Where it says the court.
46 A Yeah. Okay. So, I -- I did have access to my
47 notes.

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1 THE ACCUSED: Mm-hmm.

2 Q And then, do you recall, on cross-examination, I
3 asked you and we discussed this a little bit
4 further, about -- how can I say it? Well, how
5 about if I just read you what it says here? So, I
6 say [as read in]:
7

8 Well, I can -- I can even broaden the
9 question and say, regardless of those dates,
10 did I state that I did not -- actually, did I
11 say that I did or did not take down the
12 website at any time? Did that topic even
13 come up? Was it even asked of me?
14

15 And then you had responded:
16

17 I recall that the website was still up at the
18 time of the interview.
19

20 And then down a little bit -- ah, okay. And then
21 you go on to say:
22

23 And the day before -- and so, to answer your
24 question, I don't believe I asked you if you
25 had taken down the website because I had
26 knowledge that it was still active and up.
27

28 Do you recall stating that?

29 A Again, I don't recall anything specific that I
30 said, however, I think we've said that the
31 transcript is accurate, so . . .

32 Q Okay. So, is it fair to say then that on direct
33 you had quite unequivocally stated that you did
34 ask me if I had taken down the website, but then
35 on cross, you stated that you don't believe that
36 you had asked me that?

37 A It sounds like -- again, when I was asked that
38 question directly, yes, I responded that. When
39 you asked me on cross, I stated that I may not
40 have asked you that question directly. What I had
41 been asking you is what would it take for you to
42 take down the website? To which your responses
43 were unequivocally, you would never take it down,
44 or your ex-wife would have to get throat cancer
45 and die.

46 Q Okay. Well, that was some discussion that came
47 later --

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1 A Yes.
2 Q -- but -- but on this -- I mean, correct me if I'm
3 wrong, but the question seems pretty clear to me.
4 I say [as read in]:
5
6 . . . did I say that I did or did not take
7 down the website at any time? Did that topic
8 even come up? Was it even asked of me?
9
10 And your response then was:
11
12 . . . and so, to answer your question, I
13 don't believe I asked you if you had taken
14 down the website . . .
15
16 A So, I may not have asked you directly, did you
17 take down the website.
18 Q Mm-hmm.
19 A I believe I asked you a numerous times who has
20 operation of the website and everything, because
21 again, my role in that file was just to interview
22 you. I had no file knowledge. I was not involved
23 in the actual investigation component of the file.
24 I was simply asked to interview you. So, my
25 knowledge of the semantics, or anything in
26 relation to the actual investigation were nothing,
27 to be honest. All I was asked to do was to
28 interview you.
29 Q Right.
30 A So, I didn't actually have any knowledge --
31 Q Right.
32 A -- of what investigative steps had been taken or
33 had not. So, in the interview, my -- my role and
34 my purpose was to have a conversation about the
35 website, who has access to the website, why it
36 hasn't been taken down and from the get-go, I was
37 under the impression that you were never going to
38 say directly that you had taken down the website.
39 So, I may not have asked you specifically the
40 words: Did you take down the website? But my
41 belief at the time was that you were in charge of
42 the website, based on, again, information that I
43 can recite from the transcript of you having
44 operational knowledge of that website, such as
45 being able to identify who had access to the
46 website. When you told me that you had seen IP
47 addresses from Vancouver, the RCMP and other

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1 people monitoring, which, as a normal citizen who
2 operates the internet, I've never had that access
3 before. So, again, to -- to answer your question,
4 to that Crown counsel asked me did I ask you
5 directly? I told him yes. You're absolutely
6 right. I probably should not have answered that
7 yes. I did believe that I had asked you that
8 question, maybe not directly, using those exact
9 words, however, I did satisfy to myself that I had
10 asked that questions based on your answers
11 throughout the entirety of the interview.
12 Q Okay. So, if I understand this correctly,
13 from everything that you've just said, are you
14 saying then that when the Crown asked you if you
15 had asked me about whether or not I had taken down
16 the website and then you responded I did, are
17 you now saying that that response was not
18 correct?
19 A I'm saying that my response to Crown was I had
20 asked you if you had taken down the website --
21 Q Mm-hmm.
22 A -- not using those exact words, not verbatim
23 saying that, but again, I can refer to the
24 transcript of that interview --
25 Q Mm-hmm.
26 A -- where I asked multiple times, who has operation
27 of it? Tell me about it. How would I take it
28 down?
29 Q We -- we have that here and we are going to get
30 into that.
31 A Okay.
32 Q So, on page 20 -- hmm. Let's see here, at line
33 33, I ask [as read in]:
34
35 Did you ask me if I had taken the website
36 down with 48 hours of my release from
37 custody?
38
39 And you respond:
40
41 I don't recall if I had asked you that or
42 not.
43
44 I say to you then:
45
46 Would you like to check your notes?
47

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1 And you responded:

2
3 I refer to my notes here.

4
5 So, that's not -- you're not quite saying you did
6 or you didn't, but you're saying that you did
7 refer to your notes.

8 If you respond to -- if, when you responded
9 to Crown counsel, your response was based on what
10 was in your notes as well, are you saying that
11 your notes changed between when the Crown counsel
12 asked you the question and when I asked you the
13 question? Because you were referring to the same
14 notes, were you not?

15 A My notes did not change.

16 Q I mean, you had your notes with you while you were
17 on the witness stand and when the Crown asked you
18 about if you had asked me if I had taken down the
19 website, you said that you did and you were -- you
20 had -- just before that, there was the interaction
21 about you referring to your notes. So, I assume
22 that your response there was based on what was in
23 your notes. But then later, on direct, you became
24 very evasive on the topic and again and when I
25 said to you, would you like to refer to your
26 notes, you said that you were referring to your
27 notes.

28 Perhaps we'll move alone.

29 Have you -- have you ever testified about the
30 facts of a matter pretending or leading the court
31 to believe you had knowledge of those facts when,
32 in reality, you actually had absolutely no
33 knowledge of those facts?

34 A I'm sorry, I don't understand your question.

35 Q I'm asking you, have you ever, when giving
36 testimony, gave responses, or even came right out
37 and stated in your testimony that you had
38 particular knowledge of a -- the subject matter,
39 when in reality, you actually had no knowledge of
40 the subject matter?

41 A Again, I don't know how I can --

42 Q All right. Let me --

43 A -- answer that question without --

44 Q -- give you a concrete example here.

45 A Yes, please.

46 Q So, this comes just after where you had stated --
47 or actually, right around the same point where we

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1 were talking about earlier about when I was cross-
2 examining you and in response to my question to
3 you about whether or not the topic had even come
4 up about you asking me if I had taken down the
5 website, at one point, you respond [as read in]:
6

7 And the day before -- and so, to answer your
8 question, I don't believe I asked you if you
9 had taken down the website because I had
10 knowledge that it was . . .
11

12 Still up --

13
14 . . . still active and up.
15

16 A Yes.

17 Q Okay. So, you stated there that you had knowledge
18 that it was still active and up.

19 A That the website was still operational, yes.

20 Q Right. And then do you recall what followed was
21 some discussion about your use of the word
22 "still," much like how it did earlier today?
23 So, directly responding to what you had just
24 said, I had said:

25
26 Okay. I want to ask you about that a bit
27 because consistently, all of the officers
28 involved in this had been saying that the
29 website was still -- and I'm putting air
30 quotes around still -- still up as of
31 September 15th and 17th. The use of the word
32 "still" suggests that it was up continuously
33 from some point up until that point, that it
34 had never gone down. But you've already
35 admitted that you have no knowledge about
36 whether or not the website was actually taken
37 down at some point. So, is it fair to say
38 that you actually -- that you can't actually
39 claim that the website was still up? You can
40 claim that it was u p on that day, but you
41 have no . . .
42

43 But you have no knowledge or any evidence --
44 sorry.
45

46 . . . but do you have any knowledge or any
47 evidence that it had been up continuously for

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1 that whole time?
2
3 And then you respond [as read in]:
4
5 I have no knowledge. My involvement in this
6 file was to interview you.
7
8 Do you -- do you agree with that? I mean, the
9 accuracy of what I just read there?
10 A Yes.
11 Q Okay. So, on page 21, at line 18, you say:
12
13 Because I had knowledge that it was still
14 active and up.
15
16 Then on that same page, at line 37, you say:
17
18 I have no knowledge.
19
20 A Mm-hmm.
21 Q So, did you or did you not have knowledge of --
22 CNSL C. JOHNSON: I -- I am going to object to this
23 because in -- in my submission, it's misleading.
24 It's comparing apples and oranges. So, on the one
25 occasion, there's evidence that he said he was
26 aware it was up and on the other occasion, I think
27 Mr. Fox is relying on his questioning about still
28 up and these are two different things.
29 THE COURT: Well, I mean, I will say this, it's not
30 that persuasive. I -- I understand the point
31 you're making, that he said it was still up and
32 when you questioned him a little more closely, he
33 acknowledged he couldn't say if it was
34 continuously up.
35 THE ACCUSED: But actually, what I'm focusing on here
36 is his first claim that he had knowledge of a
37 particular subject matter, the subject matter in
38 this case being whether or not the website was up,
39 but that's -- that's not what I'm focusing on.
40 What I'm focusing on is his claim that he had
41 knowledge of it and then later, after further
42 cross-examination, he acknowledged, or he admitted
43 that he didn't have knowledge of it.
44 THE COURT: Well, he used a word -- he used the
45 qualifier "still." He said that I don't believe I
46 asked you if you took down the website because it
47 was still up and operational. And then you asked

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1 him whether he knew if it was continuously up and
2 operational and he said, no, he had no knowledge
3 about that. So, it's, in my view, an occasion
4 where you honed in, as people do when they're
5 cross-examining, a little more closely on the
6 testimony and the officer admitted that he
7 couldn't say that it was continuously up, but he
8 had used the words it was still up.

9 THE ACCUSED: Right. But if we put aside for a moment
10 the issue about the use of the word "still" and
11 whether or not the website was still up, and if we
12 look only at his statement that he had knowledge
13 of some particular thing and I'm not concerned
14 with what that particular thing was at this point,
15 but the point that I'm trying to get to is that
16 this shows that on the one hand he claimed he had
17 knowledge of the particular subject matter, but on
18 further questioning, it was determined that he, in
19 fact, didn't have knowledge of that particular
20 matter.

21 THE COURT: I'm -- I'm not sure -- you'll have to take
22 me back to those portions. I don't -- I didn't
23 glean that from what you read out to him. So,
24 maybe read it out again, where you say --

25 THE ACCUSED: Sure.

26 THE COURT: -- the contradiction is.

27 THE ACCUSED: Okay. Line 16 -- 16 to 19, it reads [as
28 read in]:

29
30 And the day before -- and so, to answer
31 your question, I don't believe I asked you if
32 you had taken down the website because I
33 had knowledge that it was still active and
34 up.

35
36 And so, I'm concerned that at that point he's
37 claiming he had knowledge of some particular
38 thing.

39 THE COURT: Right.

40 THE ACCUSED: But then later, he admits, he says, at
41 line 37, I have no knowledge. So, he's admitting
42 then --

43 THE COURT: He says:

44
45 I have no knowledge if it was continuously
46 up.

47

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1 Is what I thought he said. But maybe I misheard
2 that. Where he says I have no knowledge, tell me
3 what he said.

4 THE ACCUSED: Well, he just says [as read in]:

5
6 I have no knowledge. My involvement in this
7 file was to interview you.

8
9 So, he's --

10 THE COURT: Okay. What was the question to which he
11 answered?

12 THE ACCUSED:

13
14 But do you have any knowledge or any evidence
15 that it had been up continuously for that
16 whole time?

17
18 THE COURT: Right. I -- I -- I'm sorry, Mr. Fox, I
19 just don't follow along. I don't see the
20 significance.

21 THE ACCUSED: Okay.

22 THE COURT: He was -- he was asked whether he asked you
23 whether you'd took down that website and he said,
24 I -- to answer your question, I don't believe I
25 asked you if you took down the website because it
26 was still active and up.

27 And then later, he acknowledged that he
28 couldn't say whether it has been continuously
29 active up, but at the time that it was checked, it
30 was still active and up.

31 THE ACCUSED: Okay.

32 Q Have you ever deliberately misrepresented facts
33 about a defendant or an accused while giving sworn
34 testimony on the witness stand?

35 A No.

36 Q When you gave testimony at my previous trial, was
37 your testimony related primarily or almost
38 completely to the statements that I had made to
39 you during the interview that you had conducted of
40 me in that matter?

41 A I'm sorry, can you repeat the question?

42 Q When you gave testimony at my previous trial --

43 A Yes.

44 Q -- was your testimony, for the most part, if not
45 completely, related to statements that I had made
46 in the interview to you in that same matter? When
47 you had --

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1 A My testimony was in relation to the interview that
2 I conducted.
3 Q Right. So, is it -- is it fair to say -- do you
4 agree that your testimony was, for the most part,
5 about my statements to you?
6 A Yes.
7 Q Okay. Do you remember if, when you were giving
8 that testimony, you, at any point, mentioned that
9 many or the overwhelming majority of those
10 statements were made sarcastically or jokingly?
11 A During my testimony?
12 Q Yes.
13 A I don't recall, I'm sorry.
14 Q Okay. Well --
15 A I know that during the interview, there was a
16 portion of sarcasm, yes.
17 Q Right. And when you were giving testimony, did
18 you -- do you characterize or represent my
19 statements to you that you were testifying about
20 as being serious or sincere?
21 THE COURT: Well, you need to -- you need to read out
22 to him the portions because he's looking back a
23 year and a half --
24 THE ACCUSED: Right.
25 THE COURT: -- and for him to pinpoint specific
26 portions of his testimony would be extremely
27 difficult.
28 THE ACCUSED: Right. I understand. Sorry, I'm just
29 looking for --
30 THE COURT: No, take your time.
31 THE ACCUSED: -- certain notes that I had made here
32 that I'm having difficulty finding at this moment.
33 THE COURT: Of course.
34 CNSL C. JOHNSON: Happens to all of us, Mr. Fox.
35 THE ACCUSED: Ah, I think I found them.
36 A Excuse me, Your Honour, is there any chance that I
37 might be able to grab one of those water bottles?
38 THE COURT: Yes, Madam Registrar, would you assist --
39 THE CLERK: You as well?
40 THE COURT: -- the detective? Sure, if there's one
41 available.
42 THE CLERK: There is.
43 THE COURT: Mr. Fox, would you like some water?
44 A Thank you so much.
45 THE ACCUSED: Oh, no, thank you, I still have --
46 THE COURT: Okay. Mr. Johnson?
47 CNSL C. JOHNSON: I have some, thank you.

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1 THE COURT: Okay. Good.
2 Thank you, Madam Registrar.
3 A Thank you.
4 THE COURT: Yes, of course.
5 THE ACCUSED:
6 Q When you were giving the testimony, it says in
7 here, in the transcript, page 11, line 20, he
8 said, is it -- [as read in]:
9
10 It is important to have good quality and
11 audio and video for him to put on the website
12 later.
13
14 Do you remember --
15 A I recall that, yes.
16 Q -- saying that? Okay. And when you presented
17 that to the court, when you testified about that,
18 did you -- did you state that there was any
19 element of sarcasm, or that you took it to be
20 sarcastic, or you thought maybe I was being
21 sarcastic?
22 A No.
23 Q So, thinking back to the actual interview, when I
24 made that statement, or the statement similar to
25 that to you, was I -- was I being sarcastic?
26 A Mr. Fox, I don't -- sorry, Your Honour, I don't
27 think I can accurately tell --
28 Q Right.
29 A -- the court what you are saying or feeling or
30 anything during the interview, as those are your
31 emotions. I can say that at the time of your
32 arrest, an arrest script was written and you were
33 informed at all times you're going to be audio and
34 video recorded and I mentioned that at the
35 beginning of the interview.
36 Q Right.
37 A So, I'm unable to accurately tell the court what
38 you are feeling or how you were saying anything at
39 the time. I can only reiterate what was said
40 during the interview.
41 Q Okay. Let me ask you this question then. Would
42 it help -- no, before I get to that, do you
43 believe that you would be able tell if a person is
44 being sarcastic, for example, by certain gestures
45 -- hand gestures, or if they're flailing their
46 arms, or if they ended their statement by saying,
47 and of course, I'm being sarcastic. Would those

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1 be indicators to you that the person is not really
2 being serious about what he's saying?
3 A Again, Your -- Your Honour, like, the -- I can say
4 for some people, may -- perhaps yes, but you're
5 asking me globally and I -- I can't --
6 Q I'm asking about you --
7 A -- say --
8 Q -- specifically.
9 A About -- so, your -- your interview? I would --
10 can say, if somebody said, at the end of their
11 interview, I'm being sarcastic --
12 Q Mm-hmm.
13 A -- then yes, I can infer that they are being
14 sarcastic.
15 Q Okay. Although I don't think at that point it
16 would necessarily be an inference --
17 A Yeah.
18 Q -- if they're clearly stating it.
19 A Yeah.
20 Q Let me ask you, would it help you to refresh your
21 memory if you were to review the video of that
22 interview? And I'm not suggesting --
23 THE COURT: So --
24 THE ACCUSED: -- that we do that at this point, I'm
25 just asking him.
26 THE COURT: -- I'm just wondering what the nature of
27 your question is. So, he -- he was -- at line --
28 at page 11, line 20 --
29 THE ACCUSED: Yes, he testified about a specific
30 statement that I had made in the interview.
31 THE COURT: Right. And he said you made a statement to
32 the effect that it's important to have good audio
33 and video to put it on the website. That was the
34 nature of his --
35 THE ACCUSED: Right.
36 THE COURT: -- repetition of your comment. And what
37 you're suggesting is that he didn't tell the court
38 that you were being sarcastic?
39 THE ACCUSED: Yes.
40 THE COURT: You can ask him whether he thought you were
41 being sarcastic when you said that and you can
42 challenge him as to why he should have known you
43 were being sarcastic, if you like.
44 THE ACCUSED: Okay.
45 Q Do you believe that when I made that statement to
46 you in the interview that I was being sarcastic?
47 A Again, I can only refer to, sorry, the transcript

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1 of where that was said. Whether or not you were
2 being sarcastic is up, ultimately, I believe, to
3 yourself.
4 Q So, does that mean --
5 A I can't tell you if you're being sarcastic or not.
6 THE COURT: It -- it's a little bit difficult for me
7 because I don't really under the context. For
8 some reason, you think he should have told the
9 court some additional information. I don't know
10 what was asked before that, or --
11 THE ACCUSED: Right. Well --
12 THE COURT: -- what the lead up to it was.
13 THE ACCUSED: -- where I'm going with this whole line
14 of questioning about misrepresenting facts about a
15 defendant or an accused is that when I had had the
16 interview that the witness had conducted --
17 THE COURT: Okay. I'm just going to stop you for a
18 minute.
19 THE ACCUSED: Sure.
20 THE COURT: I'm just going to ask you to step out in
21 the hallway for a moment and just, I know that
22 you're aware of this, but I'll just remind you,
23 you are under cross-examination, so, please don't
24 discuss the case with anyone.
25 A Absolutely. I don't actually believe anybody's
26 left.
27 THE COURT: Okay.
28 A So --
29 THE COURT: All right. So, just stay close by.
30 A Absolutely. I'll just be in the hallway.
31 THE COURT: We'll call you back in in a minute.
32 A Thank you, Your Honour.
33
34 (WITNESS STOOD DOWN)
35
36 THE COURT: I just didn't want our discussion to
37 perhaps impact --
38 THE ACCUSED: Right.
39 THE COURT: -- his testimony, not intentionally, but
40 sometimes, unintentionally, people are affected by
41 discussions about their testimony.
42 THE ACCUSED: Of course.
43 THE COURT: So, I understand the path that you're going
44 down and if you had some concrete examples of the
45 officer being knowingly untruthful, because
46 sometimes people say things and then later, they
47 change their mind, because they have a further

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1 recall, they've recognized their mistake and --
2 and so on, but unless you have a concrete example
3 of him being untruthful, I'm not sure that this
4 evidence is helpful. Particularly because he had
5 very little interaction with you in this
6 investigation. He arrested you, he assigned
7 someone to -- to interview you. He didn't
8 interview him -- you himself. I haven't heard
9 anything -- I mean, maybe you have a lot more to
10 ask him about, but I -- I haven't heard any
11 glaring examples of where he was knowingly
12 untruthful that would affect his credibility or
13 might suggest that he had a vendetta of some
14 description, but it seems here that it was the
15 Crown that initiated the request for an
16 investigation that was prompted by some
17 communication that you're alleged to have sent to
18 the registry. So, it wasn't as if Constable Dent
19 initiated this investigation. It was requested by
20 the Crown and he had some involvement in assigning
21 people to certain tasks and then, along with
22 someone else, arresting you once the report came
23 back from other people -- once reports came back
24 from other people. So, just in order to guide you
25 a little bit, as I say, unless you have some
26 concrete examples of him being untruthful, the
27 fact that he may have been mistaken in his
28 testimony, or that he failed to tell the court
29 that you may have been sarcastic when you said
30 something, I'm not sure that that's all that
31 helpful for me --

32 THE ACCUSED: Well --

33 THE COURT: -- in assessing the witness.

34 THE ACCUSED: Right. Well, where I'm going or trying
35 to go with this is the interview that he had
36 conducted related to that matter. Almost the
37 entire interview was sarcastic and joking. There
38 was very little serious responses or answers that
39 are going on there and it's very clear, when a
40 person reviews the video. It's very, very clear
41 that both --

42 THE COURT: But --

43 THE ACCUSED: -- he and I are --

44 THE COURT: -- you --

45 THE ACCUSED: -- being very sarcastic.

46 THE COURT: -- you could have put that before the judge
47 as a response to his testimony about what you

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1 said. I mean, he's reporting what you said.
2 THE ACCUSED: Yes, and --
3 THE COURT: Sometimes people say I'm being sarcastic,
4 but they don't really mean to be sarcastic.
5 THE ACCUSED: Right.
6 THE COURT: They say it as an excuse for what they've
7 said, so, I -- I don't know --
8 THE ACCUSED: The issue --
9 THE COURT: -- what his assessment was, but --
10 THE ACCUSED: -- the issue about putting that before
11 the judge, that's actually still on appeal --
12 THE COURT: All right.
13 THE ACCUSED: -- that's what these are for because
14 there was some disclosure issues with that. I
15 hadn't received the video and such until three
16 days before the trial, but that's a whole other
17 issue.
18 And what I'm trying to show here is that even
19 though he knew -- he even that admits himself, in
20 the interview, so, he knew that it was not
21 serious, but then when he testified about it at
22 court, he presented it to the court as though he
23 believed that the statements were serious.
24 THE COURT: Okay. Well, I'll let you inquire a little
25 bit more. If he said --
26 THE ACCUSED: Sure.
27 THE COURT: -- in the interview that he acknowledged
28 you were being sarcastic, then that's something
29 you can put to him.
30 THE ACCUSED: Okay.
31 THE COURT: And -- and if you suggest that he's being
32 misleading by telling you, on the one hand, he
33 knew you were being sarcastic and then not telling
34 the court -- I don't know whether you asked him in
35 cross-examination, isn't it true that I told you I
36 was being sarcastic?
37 THE ACCUSED: No, we didn't get into that at all
38 because --
39 THE COURT: And if he said no, but in the interview he
40 said, I realize you're being sarcastic, that may
41 be somewhat persuasive, but otherwise, I'm not
42 sure how helpful it is. But I'll let you go a
43 little bit further if you have some concrete
44 examples of him acknowledging that you were being
45 sarcastic in your interview and then not
46 acknowledging it in court.
47 THE ACCUSED: Okay.

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1 THE COURT: So, we'll call -- do you mind assisting,
2 Mr. Johnson, just calling the officer back into
3 the courtroom, please?
4 CNSL C. JOHNSON: Not at all.

5
6 **KYLE DENT**
7 a witness called for the
8 Crown, recalled.
9

10 THE COURT: Thank you, Constable, for allowing us to
11 have that legal discussion and I'll invite Mr. Fox
12 to continue asking you some questions.

13 A Thank you, Your Honour.

14 THE COURT: Go ahead, Mr. Fox, whenever you're ready.
15 Let me ask you this, Mr. Fox, do you have
16 more than one transcript of the constable's
17 testimony that you want to question him about?
18 Like, is there -- do you have more than one book
19 of transcripts? Or are you always referring to
20 the same book?

21 THE ACCUSED: Well, his testimony is all contained
22 within this one book. These transcripts are still
23 related to the same case, but not specifically --

24 THE COURT: Okay.

25 THE ACCUSED: -- the detective's testimony.

26 THE COURT: So, you're only going to be questioning him
27 about testimony that's in that one book?

28 THE ACCUSED: Yes.

29 THE COURT: Okay. I'm wondering if it's helpful,
30 I'm -- I'm going to ask Madam Registrar if she
31 might be good enough -- it doesn't look like a
32 very big booklet, I wonder if she might be good
33 enough just to photocopy that at the lunch break,
34 so that a -- the witness can have a copy of it and
35 then we'll destroy it afterwards so we don't worry
36 about copyright infringement, things of that
37 nature because I know the reporters want to get
38 their payment for it.

39 Unless you have a copy close by in an office
40 here, do you?

41 CNSL C. JOHNSON: I don't.

42 THE COURT: No, okay, that's fine. So, why don't we
43 take -- we'll take an early lunch break and I'm
44 going to ask -- would you be able to do that,
45 Madam Registrar?

46 THE CLERK: Yes, Your Honour.

47 THE COURT: Okay. And I'll ask Madam Registrar to do

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1 it now, so that she can give it back to you, so
2 that you can use it over the lunch hour to further
3 prepare your cross-examination, but that way, you
4 don't have to be passing it back and forth.
5 THE ACCUSED: Right.
6 THE COURT: When you cross-examination someone on a
7 prior statement, whether it's a written statement
8 or an oral statement, or a transcript of evidence,
9 fairness requires that they be allowed to read
10 that statement because we all recognize it's very
11 difficult to remember precisely what we've said on
12 a previous occasion. So, it makes sense for the
13 constable to have that transcript before him. I'm
14 going to ask that it not be given to him until we
15 return at two o'clock. So, Madam Registrar is
16 going to make a copy and then she'll bring it
17 back. Would you be able to stay with Mr. Fox here
18 for about 10 minutes?
19 It'd take about 10 minutes, do you think, to
20 make the copy, or?
21 THE CLERK: Yes.
22 THE COURT: Okay. And then she'll bring it back and
23 then he can have it over the lunch hour to prepare
24 his cross.
25 A SHERIFF: Absolutely, Your Honour.
26 THE COURT: And then -- but I'll excuse you now,
27 Constable --
28 A Okay.
29 THE COURT: -- with the same caution, of course, please
30 don't discuss your evidence --
31 A Of course.
32 THE COURT: -- because you're under cross-examination.
33 A Exactly.
34 THE COURT: And then I'll ask you to come back at two
35 o'clock.
36 If you need a little bit longer for
37 preparation, once you get the transcript back,
38 just let Madam Registrar know and you can have a
39 little bit longer to prepare. We've got all --
40 THE ACCUSED: Okay.
41 THE COURT: -- day tomorrow as well, so -- or, Friday,
42 rather. Okay? So, I think that might make it
43 easier.
44 Are there any other statements that you're
45 going to be putting to the constable, like, the
46 interview itself, for example? Because we may as
47 well get everything done at the same time.

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1 Do you have a copy of the interview, Mr.
2 Johnson?
3 CNSL C. JOHNSON: Of the interview of this case?
4 THE COURT: This previous interview that happened in
5 relation --
6 CNSL C. JOHNSON: No, I do not.
7 THE COURT: -- to the court case in November of 2020?
8 No? Okay.
9 THE ACCUSED: Well, I believe it -- it would be
10 beneficial to have a transcript -- or for
11 the witness to have a transcript of the
12 interview --
13 THE COURT: Okay.
14 THE ACCUSED: -- from 2020, although, really, because
15 the problem with the transcripts is they only
16 contain the words that were stated. And in this
17 particular instance, what's important is the
18 mannerisms and the conduct between the parties.
19 THE COURT: Okay. Do you have that transcript?
20 THE ACCUSED: Well, I have a -- the transcript in the
21 disclosure material.
22 THE COURT: I mean of the interview.
23 THE ACCUSED: Oh, yes, the -- well, I have the
24 recording of the interview, like, the --
25 THE COURT: Yeah.
26 THE ACCUSED: -- audio/video recording --
27 THE COURT: And do you have the transcript as well?
28 THE ACCUSED: Yes.
29 THE COURT: Okay. And how long is it?
30 THE ACCUSED: Oh, the --
31 THE COURT: You don't have a copy of it, Mr. Johnson?
32 A Your Honour --
33 THE ACCUSED: I believe it was about --
34 THE COURT: Oh --
35 THE ACCUSED: -- I do.
36 THE ACCUSED: -- 54 minutes.
37 THE COURT: -- you have a copy of it? Oh, the
38 officer's already got a copy, so --
39 THE ACCUSED: Oh, okay.
40 THE COURT: -- don't worry about that.
41 THE ACCUSED: Right. To be clear though, we're talking
42 about the --
43 A 2020.
44 THE ACCUSED: Right. Okay.
45 THE COURT: 2020 interview. You've got a copy.
46 A When I conducted the interview with Mr. Fox.
47 THE COURT: Yeah, okay. Good.

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1 So, those are the only documents that you're
2 going to put to him; is that fair?
3 THE ACCUSED: There's going to be some questions
4 related to -- or there may be anyway, some
5 questions related to the interview that Officer --
6 or Detective Tanino conducted, the one in this
7 matter.
8 THE COURT: Okay. Well, I -- I don't know that he can
9 answer that.
10 THE ACCUSED: Sorry --
11 THE COURT: I don't think it's -- I know that was quite
12 a big document. So, I'll -- I'll leave it to you
13 to ask those questions and then we might have to
14 share that transcript --
15 THE ACCUSED: Sure.
16 THE COURT: -- but he wasn't there, as far as I know.
17 Were you there for the interview?
18 A I was not.
19 THE COURT: No, okay.
20

CROSS-EXAMINATION BY THE ACCUSED, CONTINUING:

21
22
23 Q Oh, okay, so you weren't observing? It was my
24 understanding that you were --
25 A No, I wasn't.
26 Q -- out observing. Okay.
27 A No.
28 Q Then --
29 A It was --
30 Q -- in that case, those questions would --
31 A -- Detective --
32 THE COURT: Okay.
33 A -- Tanino and her partner.
34 THE ACCUSED: Okay.
35 A I was compiling the report to Crown counsel.
36 THE COURT: Okay. So, you can be excused now. You can
37 take your documents --
38 A All right.
39 THE COURT: -- with you. I'll ask you to return at two
40 o'clock, please.
41 A Two o'clock? Okay.
42

43 (WITNESS STOOD DOWN)

44
45 THE COURT: Please, yeah. And then I'll stand down
46 now. I'll come back at two o'clock and Madam
47 Registrar is going to go now, if you don't mind,

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1 just to make a copy of that small transcript, the
2 red one.
3 CNSL C. JOHNSON: Just before Your Honour leaves, I'm
4 wondering --
5 THE COURT: Yes?
6 CNSL C. JOHNSON: -- if I could ask Madam Registrar to
7 make two copies --
8 THE COURT: Okay --
9 CNSL C. JOHNSON: -- so that I could have a copy.
10 THE COURT: -- could you make a copy for Mr. Johnson --
11 THE CLERK: Okay.
12 THE COURT: -- so he can follow along?
13 Okay. And now she's going to bring it back
14 to you. Mr. Sheriff is going to wait here in the
15 courtroom with you. She'll bring it back to you,
16 so that you'll have it back in your hands before
17 the lunch hour.
18 THE ACCUSED: Thank you.
19 THE COURT: Okay? Thank you.
20 A SHERIFF: Order in court.
21
22 (PROCEEDINGS ADJOURNED FOR NOON RECESS)
23 (PROCEEDINGS RECONVENED)
24
25 CNSL C. JOHNSON: Good afternoon, Your Honour. Chris
26 Johnson appearing for the Provincial Crown. I can
27 recall the Fox matter.
28
29 **KYLE DENT**
30 a witness called for the
31 Crown, recalled.
32
33 THE COURT: Yes, thank you. Were you able to receive a
34 copy of the transcript, Mr. Johnson?
35 CNSL C. JOHNSON: Yes, I did, thank you very much.
36 THE COURT: Okay. Good.
37 THE ACCUSED: Over the lunch break though, I decided
38 that there are some other questions that I want to
39 get out of the way first and so, I'm going to put
40 that aside for the time being --
41 THE COURT: Of course.
42 THE ACCUSED: -- and get back to it.
43 THE COURT: Yeah.
44
45 **CROSS-EXAMINATION BY THE ACCUSED, CONTINUING:**
46
47 Q Detective Dent, who -- who owns the

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1 desicapuano.com website?
2 A I don't know.
3 Q Okay. Who has administrative access to it, or
4 control over it?
5 A I don't know.
6 Q Okay. Do I own it or have access --
7 administrative access or control over it?
8 A I don't know.
9 Q Okay. And I understand you're the lead
10 investigator on this case; is that correct?
11 A Yes.
12 Q Okay. So --
13 A On this file, yes.
14 Q Right, right. And so, have you been in contact
15 with the hosting provider to verify whether or not
16 I have anything at all to do with the website or
17 with the hosting account?
18 A I have not.
19 Q Can you tell me why not?
20 A Pardon me?
21 Q Can you tell me why not?
22 A Because the purpose of this investigation was to
23 investigate the breach that the website is still
24 active --
25 Q Mm-hmm.
26 A -- and not to prove who has ownership or anything
27 along those lines. So, the breach in question was
28 that you, who's already been established to have
29 access and operational capacity of the website and
30 published on the website be -- take down the
31 website within 48 hours of your release in
32 custody. By monitoring that website for over 48
33 hours and it still being operational, you were in
34 breach of the court order, thus you were arrested.
35 Q So, you just stated though that it's already been
36 established that I had access to the website, or I
37 can't remember the exact wording you used just a
38 moment ago.
39 A I believe you were convicted originally, which is
40 what the conditions stem from. So, the purpose of
41 the investigation is not to establish the original
42 investigation, it's the fact that you are in
43 breach of your conditions.
44 Q Okay. But wouldn't it be relevant, if not
45 critical, to the charge -- yes, to the charge, to
46 establish that I even have the ability to do what
47 is required by the probation condition?

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1 A Yes.
2 Q Okay. If -- If I don't own, or control, or have
3 administrative access to the website, then how
4 would I have the ability to do what's required by
5 the probation condition?
6 A So, based on the interview that you and I
7 conducted in the last trial --
8 Q Sure.
9 A -- okay? You made a number of statements, not
10 necessarily directly stating that it was your
11 website any longer, but you made multiple
12 statements and I can refer to them if you'd like,
13 that you have transferred access from the website
14 to a person who you refused to identify.
15 Q Mm-hmm.
16 A That alone indicates that at one time you had
17 access to the website and were continuing. You
18 also made numerous statements about regaining
19 access and control, as well as monitoring it and
20 in fact, you told me that you were aware that the
21 police were specifically monitoring the website as
22 you could see IP addresses of people who had
23 logged on to that website. So, as -- again, I'm
24 not a very technical, like, savvy person, Your
25 Honour, however, I have the ability to go on the
26 web -- internet and look at websites and I've
27 never seen IP addresses of people who access that
28 same website as me. So, to me, you telling --
29 giving me this information in the last interview
30 indicates that you still do have access to the
31 website in order to monitor who is coming and
32 going and what traffic is on that website.
33 Q Okay. Two points I'd like to make -- or questions
34 I'd like to present --
35 A Yeah.
36 Q -- based on what you just said. The first is, it
37 seems to me that a lot of your belief then is
38 based merely on assumption, or inferences that you
39 made from statements that I had said at a previous
40 interview; is that correct? I mean, you said that
41 I never actually stated it directly myself --
42 A Yes.
43 Q -- but rather I had made other statements that
44 might have alluded to something.
45 A Yes.
46 Q Okay. The other question I would have is that
47 interview occurred in November -- no, September

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1 2020; correct?
2 A Yes.
3 Q And I was then arrested on this matter in August
4 of 2021.
5 A Yes.
6 Q There's, what, nine months or so in between there.
7 A Yes.
8 Q Even if -- even if I had had -- and I'm not saying
9 that I did, but --
10 A Of course.
11 Q -- even if I had had access to the website at the
12 time that you interviewed me in 2020, does that
13 automatically mean that I must still have access
14 to it nine months later?
15 A Again, based on this investigation --
16 Q Uh-huh.
17 A -- of the website still being up after 48 hours,
18 we arrested you on that condition. Subsequent to
19 that, with your interview with Detective Tanino,
20 she provided me with a very brief summary in which
21 case you, again, reiterated that if you had --
22 sorry, that you had sent an email to somebody --
23 Q Mm-hmm.
24 A -- as well as -- and if I may refer to my notes
25 here, so that I don't misquote myself here --
26 THE COURT: Do you have any objection to him looking at
27 his notes?
28 THE ACCUSED: Oh, I don't object, no, go ahead.
29 THE COURT: Go ahead.
30 A You had, again, transferred control of the website
31 to a party you would not name, so that they would
32 never be compelled to take the website down. And
33 what is it, you also planned on resuming control
34 of the website once your probation was over.
35 THE ACCUSED:
36 Q Okay. And the information you were just referring
37 to, is that the section entitled Interview of Fox
38 from RTCC version 1 from the occurrence report?
39 A I don't have the same document. I have my
40 narrative that I wrote in relation to police file
41 2021-132224.
42 Q Right. And --
43 A Yes.
44 Q -- I believe you were just reading from the
45 section that's headed Interview --
46 A Yes.
47 Q -- with Fox and --

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1 A That is a brief summary of Detective Tanino's
2 interview.
3 Q So, you say that was a summary of Detective
4 Tanino's interview, but these bullet points in
5 here, did she write those, or did you write those?
6 A She provided me with a summary and I put that into
7 my report --
8 Q Okay. So --
9 A -- but I believe I also wrote in there, if I may,
10 please refer to task number 6, which is her
11 interview, for full details of the interview.
12 Q Yes, yes. And I have some concern about task
13 number 6 because that was never disclosed to me.
14 But that's another issue. But these bullet points
15 in this list --
16 A Yes.
17 Q -- I -- I'm a bit concerned about the origin of
18 those. Like --
19 A Okay.
20 Q -- did Detective Tanino write these points, or
21 provide this information, or --
22 A I wrote the narrative.
23 Q Okay. But specifically you wrote this --
24 A I read her task action report --
25 Q Right.
26 A -- Your Honour, and I took those bullet points
27 from her task action report, which is why I say
28 please refer to her task action number 6 --
29 Q Uh-huh.
30 A -- and I put them in there.
31 Q Okay. So, if I had questions about what's in this
32 list --
33 A Yes.
34 Q -- I would have to address those to her; is that
35 what --
36 A Yes.
37 Q -- you're saying? That's very disturbing because
38 when she was on the witness stand earlier, I had
39 asked her about these and she didn't write those
40 and --
41 A No.
42 Q -- well, she didn't type in them in; right? And
43 so, that's why I -- I had asked her, perhaps it
44 was copied and pasted from something that she had
45 done.
46 A No.
47 Q Okay.

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1 A So, Mr. Fox, if -- if I can clarify, please, Your
2 Honour?
3 Q Yes, please.
4 A She wrote a task action report.
5 Q Yes.
6 A I reviewed the task action report and I put the
7 bullet points from that task action report, a very
8 brief synopsis of those, into my narrative. She
9 did not write this. I wrote the --
10 Q Right.
11 A -- narrative, I'm responsible for this document.
12 Does that clarify your -- your question there?
13 Q I understand that you wrote the narrative, it's
14 your name --
15 A Okay.
16 Q -- at the -- at the top of it.
17 A Yes.
18 Q But I do have questions about the wording of some
19 of these points and so, I was going to cross-
20 examine her on it, but then she said that she
21 never --
22 A Yeah.
23 Q -- wrote those and that apparently, I believe she
24 said that you had written them.
25 A Which I just said I did write these.
26 Q Okay. But then you had just said also that if I
27 had questions about them, I would have to address
28 them to her and I --
29 A If you wanted more details.
30 THE COURT: You can ask him --
31 THE ACCUSED: Right.
32 THE COURT: -- where he got his bullet points. To show
33 you in the report where he got his information, if
34 you like.
35 THE ACCUSED: Okay.
36 Q So, we're going to be getting to that shortly.
37 All right. So, I understand that you have not
38 been in contact with the hosting provider and you
39 have made no efforts to verify that I have
40 anything at all to do with the website, but you
41 believe that I have administrative access to the
42 website, based on some previous indirect
43 information?
44 A Yes, based on the information from our interview
45 and again, based on some of the information from
46 the interview that you conducted with --
47 Q Right.

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1 A -- Detective Tanino.
2 Q Right. But not a direct statement that I had made
3 to you that I had --
4 A No.
5 Q Right. Do you have any knowledge of anybody from
6 VPD in any of the previous cases related to this
7 website -- well, related to the breaches, relating
8 to the website, contacting GoDaddy to try to
9 verify or determine that I have any involvement in
10 this website?
11 A I have no knowledge.
12 Q Okay.
13 A At the time of the interview, I had only been in
14 the domestic violence section approximately three
15 weeks.
16 Q All right. But even at this point, you're saying
17 you have no knowledge of that?
18 A No.
19 Q Okay. And so, I understand that you're saying
20 that you have no knowledge of Detective Quantana's
21 [sic] previous contact with GoDaddy in this
22 matter?
23 A I have no knowledge of it.
24 Q Okay. When you testified on November 26th, 2020,
25 you had said that you reviewed parts of the
26 previous file; do you want me to go to any
27 specific parts, or is that sufficient? So, like,
28 you recall saying that?
29 A I would need to see --
30 THE COURT: Just refer him in the transcript to where
31 you're speaking about.
32 THE ACCUSED:
33 Q Okay. In my notes, it says page 6, lines 34 to
34 36.
35 A I don't have a copy, Your Honour.
36 THE COURT: Oh, did we not -- could you provide a copy?
37 THE CLERK: [Indiscernible].
38 THE COURT: Thank you.
39 A Okay. Thank you.
40 THE COURT: Did you get a copy, Mr. Johnson?
41 CNSL C. JOHNSON: Thank you.
42 THE COURT: So, that's page 6, line 34, I think. Was
43 it, Mr. Fox?
44 THE ACCUSED: Yes, 34 to 36.
45 CNSL C. JOHNSON: And just for the record, Your Honour,
46 this is me asking this witness questions on the
47 previous trial.

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1 THE COURT: Oh, it's a question by the prosecutor.
2 Okay.
3 A Okay. Yeah, I read -- I see that.
4 THE ACCUSED:
5 Q Okay. And so, the file that you're referring to
6 there --
7 A Yes.
8 Q -- which file would that be? Because at -- at the
9 time of -- when you were -- when you did the
10 interview and you testified on this matter --
11 A Yes.
12 Q -- there was only one previous breach case related
13 to this website.
14 A So, what I'm saying here --
15 Q Mm-hmm.
16 A -- the previous file is, in fact, this file and
17 honestly, all I -- I reviewed was the narrative
18 that Detective Jordan [phonetic] had made. So,
19 the previous file, like, this file --
20 Q Yeah.
21 A -- I didn't review the original file where
22 Detective Fontana was the lead, as it was quite
23 large and I only had short amount of time to
24 prepare for the interview.
25 Q Interesting. So, do I understand this then to
26 mean that when you say I reviewed parts of the
27 previous file --
28 A Yes.
29 Q -- by previous, you meant the current file?
30 A Yes, like, I apologize for my -- my misword there
31 but previous file meant that file --
32 Q All right.
33 A -- like . . .
34 Q Do you have any knowledge of anyone in the VPD
35 taking any steps or putting any effort into
36 getting a U.S. court order to get the website
37 taken down?
38 A I have no knowledge of anybody doing that.
39 Q Okay. Can you tell me if there's any reason why
40 that's not -- hasn't been done? Because, you see,
41 in 2020 -- August 2020, Detective Fontana
42 testified that that was something that was still
43 being looked into or considered. I mean, here we
44 are now three years later -- well, 2019 is when
45 that case first started and it doesn't seem that
46 anybody's actually done anything.
47 A I can't speculate on another --

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1 Q Okay.
2 A -- officer's decision.
3 Q Well, not just on the other officer, but, like,
4 within the VPD, I mean.
5 A Yeah.
6 Q To the best of your knowledge, or as far as you
7 know, is there anything on the website, or about
8 the website which violates any law of Canada?
9 THE COURT: Well, that's not really, again, his role to
10 determine.
11 THE ACCUSED: Okay.
12 THE COURT: The whole issue today is whether or not it
13 violates your probation.
14 THE ACCUSED: Right.
15 Q Earlier, there was some talk about -- wait, sorry,
16 I'm trying to remember if that was a discussion
17 with you or with Detective Tanino. Okay. Rather
18 than making the assumption, I'll put it in the
19 form of a question. When I was interviewed on
20 August 17th, 2021, by Detectives Tanino and
21 Detective Robert -- Roberts, did I tell them, at
22 that time, that I had sent an email to the admin
23 of the website on August 13th or 14th, requesting
24 that they take the website offline until my
25 probation ended?
26 A I believe I did write that in my narrative there,
27 yes.
28 Q Okay.
29 A Again, I don't have the specifics, as I was just
30 providing a --
31 Q Right.
32 A -- brief summary.
33 Q During the course of the interview, did Tanino or
34 Roberts ask me to provide the passwords for my
35 phone and laptop so they could verify that email?
36 A I wasn't present for the interview.
37 Q Oh.
38 A You would have to -- that's a question that you
39 would need to --
40 Q But you're familiar with the interview, aren't
41 you? I mean, you -- you've reviewed the
42 transcripts, I -- I assume?
43 THE COURT: Well, one of the -- one of the difficulties
44 is that because he didn't conduct him the
45 interview, what you're asking him to do, really,
46 is just to read it as -- as Mr. Johnson could read
47 it, I could read it, and to answer a question,

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1 which isn't the best evidence. The best evidence
2 would have come from Constable Torino [sic] who
3 actually conducted the interview.
4 THE ACCUSED: Right.
5 THE COURT: But if you have -- if you have something in
6 relation to that question, then you can take him
7 to the part of the transcript.
8 THE ACCUSED: That question was leading to something
9 that wasn't actually the final point of that line.
10 THE COURT: Okay.
11 A In relation to that question and reviewing my
12 narrative here, in relation to that email
13 question, I wrote that you stated you emailed a
14 friend who is running the website to take it down.
15 You would not provide officers with that password,
16 or of your computer to confirm the detail and that
17 you would provide that email at a later date.
18 THE ACCUSED: Yes, I see that that is in --
19 A So, that's what I can say on that question. I
20 don't know the exact wording or specifics --
21 THE ACCUSED: right.
22 A -- but that's what I wrote in my summary.
23 THE ACCUSED:
24 Q Are you aware that at the time of my arrest in
25 this matter I was still bound by a probation order
26 from the index offence, the criminal harassment
27 offence -- well, I guess that will be the first
28 question.
29 A Sorry, can you repeat that?
30 Q Are you aware -- or more specifically, I guess,
31 were you aware, at the time of my arrest --
32 A Yeah.
33 Q -- that I was still bound by a probation order
34 from the index offence, a probation order from
35 Justice Holmes that took effect back in -- or that
36 was entered in 2017?
37 A I was aware that you still had other court
38 conditions, yes.
39 Q Okay. And were you aware that one of those
40 conditions prohibited me from accessing the
41 internet other for the purposes of sending emails
42 and looking for employment?
43 A I don't know the exact wording, but I know that
44 you had a condition of that kind.
45 Q Do you know how many task action reports have been
46 generated, or -- is that the right word,
47 generated? For those case or file?

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1 A Not off the top of my head, no.
2 Q Okay. Are those -- are those generally all
3 disclosed to the -- to the defendant in the
4 matter, or is there a reason that they wouldn't
5 be?
6 A I believe they are generally disclosed unless
7 there's specific source material that needs to be
8 vetted. But oftentimes, a task may be assigned --
9 Q Mm-hmm.
10 A -- and then it's deemed not relevant and nothing
11 is disclosed on that matter because we don't end
12 up using it.
13 Q Earlier, you had mentioned TAR number 6, or task
14 action report number 6?
15 A Yes.
16 Q That was never provided to me. Was that
17 intentional, or was that just an oversight?
18 A That task may have been renamed. So, looking at
19 this task number 6 for full details of the
20 interview, what I believe happened was the task 6
21 was just to prepare an interview script for
22 yourself and then it was later amalgamated into
23 Detective Tanino's greater -- in her -- greater --
24 sorry, task action report. I believe that's what
25 happened. I would have to go back to my computer
26 to confirm that, as I don't have -- that wasn't my
27 task. I assigned it, but that's not my task that
28 I have in front of me here. So, I -- I can't
29 speak with it without refreshing my memory.
30 Q Getting back to this -- or the issue of the email
31 that I had stated that I had sent to
32 editor@desicapuano.com --
33 A Yes.
34 Q -- requesting that they take down the website, did
35 you, in the course of your investigation, make any
36 attempts or efforts to obtain a copy of that
37 email?
38 A Yes.
39 Q Okay. Did you apply for an obtain a search
40 warrant for my mobile phone?
41 A Yes, for a laptop, a mobile phone and a USB.
42 Q And what was the -- what were the results of the
43 search of the phone?
44 A We've had not gained access to that phone yet.
45 It's still on the machine that's trying to break
46 the encryption.
47 Q Trying to break the encryption? Sorry.

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1 THE COURT: Trying to which?
2 A Break the encryption on the device.
3 THE COURT: Oh, break the encryption.
4 A Yeah.
5 THE ACCUSED: Okay.
6 Q And did you apply for an obtain a search -- yeah,
7 you said you did, for the laptop as well --
8 A Yes.
9 Q -- correct? And what was the result of that?
10 A I found no emails sent.
11 CNSL C. JOHNSON: I'll just rise to say, Your Honour,
12 that the Crown is not relying on any of this
13 evidence and as a result, I say that it's not
14 relevant to the issues at trial.
15 THE COURT: I don't know that it's helpful to Mr. Fox
16 anyway because you're asking questions that may
17 not assist your case by asking whether or not they
18 found an email sent.
19 THE ACCUSED:
20 Q Mm-hmm. I'm -- I'm sorry, what was it that you
21 had said? Like, I believe I had asked if anything
22 was found, or what was found, or?
23 A I did not find anything -- any email sent from
24 that device.
25 Q Right. Now, it's -- it's my understanding that --
26 sorry, I'm trying to think of how I can phrase
27 this. We're in an area now where I have a very
28 lot of very technical expertise because I'm a
29 software engineer and I'm trying to think of how I
30 can phrase the question in laymen's terms. No, I
31 don't -- hmm. Okay. So, no emails were found on
32 the laptop; correct? That's what you said?
33 A None that were within the scope of our search
34 warrant.
35 Q Was -- did you find anything on the laptop newer
36 than 2019?
37 A Yes.
38 Q Oh. What?
39 A I found two -- there were two internet searches of
40 basically your name and your -- it basically said
41 Patrick Fox website and that was it.
42 Q And this would have been in one of the web
43 browsers, I'm assuming?
44 A Yeah, and that's all I observed on that. But
45 again, it wasn't relevant to the investigation.
46 THE ACCUSED: Right, right.
47 Let me just ask Mr. Johnson a question if I

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1 could. There was a request previously about
2 making my laptop available during the cross-
3 examination?
4 CNSL C. JOHNSON: Yes, this officer has your laptop.
5 THE ACCUSED:
6 Q So, my laptop is here?
7 A Yes.
8 Q Okay. Now, from the information provided by Nancy
9 Yingling [phonetic] in the digital forensics unit,
10 it -- it is clear that only the Windows partition
11 on the laptop was searched. And if I'm getting
12 too technical with any of this --
13 A You're getting too technical. I don't understand
14 what you're saying --
15 Q Right.
16 A -- I'm going to be very honest with that.
17 Q See, this is why I was kind of hoping that --
18 A Yeah, I -- I apologize.
19 Q -- Yingling would be here, but --
20 A My technical knowledge is very limited.
21 THE ACCUSED: Right.
22 THE COURT: So, I -- at this point, I don't see any
23 relevance of anything on the computer, unless it
24 assists your case. So, for example, if they were
25 to find an email that you sent during the relevant
26 time period to the administrator of the site, then
27 that might assist your defence and --
28 THE ACCUSED: Right.
29 THE COURT: -- I would obviously allow you to pursue
30 that. But to ask him about other emails, or
31 what's on the laptop, it's really not of any
32 relevance to the case.
33 THE ACCUSED: Right. In a moment, I think it's become
34 very clear where I'm --
35 THE COURT: Okay.
36 THE ACCUSED: -- where I'm going with this.
37 Q I -- I assume that you're familiar with Windows,
38 the operating system?
39 A I -- from turning my --
40 Q You've heard of it --
41 A -- computer on, yes.
42 Q -- you know it's operating system? Okay. Have
43 you heard of a system called Linux?
44 A Called what?
45 Q Linux.
46 A No.
47 Q Are you familiar with a product called openSUSE?

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1 A Called?
2 Q Open -- openSUSE.
3 A No. I'm sorry, can I just pause here? Are we
4 able to turn this fan down? I'm having a hard
5 time hearing Mr. Fox.
6 THE COURT: Yeah, it's quite loud up here as well. Is
7 it a heater fan, or?
8 A It's appreciated, as it's quite warm, but I'm --
9 I'm just --
10 THE COURT: Yeah.
11 A -- having a hard time hearing Mr. Fox.
12 THE ACCUSED: Also because my throat's a little dry, so
13 my voice is --
14 THE COURT: Yeah, so you -- and did you get some water?
15 Did we give you some water?
16 THE ACCUSED: Yeah, I have -- I have water here --
17 THE COURT: Okay. Good, yeah.
18 THE ACCUSED: -- but --
19 A Okay.
20 THE COURT: So, you said Linux, or?
21 THE ACCUSED: Linux or openSUSE. It's o-p --
22 THE COURT: OpenSUSE.
23 THE ACCUSED: -- e-n-s-u-s-e --
24 THE COURT: Okay.
25 THE ACCUSED: -- which is a version of Linux.
26 A I -- I'm not familiar with either of those.
27 THE ACCUSED:
28 Q Okay. Do you recall, when you were escorting me
29 from the annex building across the street to the
30 jail, we had talked very briefly about the USB
31 stick that was in my laptop bag that was seized?
32 A Yes.
33 Q do you recall me mentioning to you that it
34 contains just the installation media for openSUSE,
35 which I installed on the laptop?
36 A I -- I don't recall that --
37 Q No?
38 A -- conversation, I'm sorry.
39 Q Okay. But that is in the transcript, so --
40 A Yeah, it -- it more than likely is, but I -- I
41 don't recall that off the top of my head --
42 Q Right.
43 A -- without referring to that.
44 Q Okay. Are you aware that I don't use Windows?
45 A No.
46 Q Are you aware that I use Linux and other Unix-
47 based operating systems?

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1 A No.
2 Q Are you aware that that laptop that you were
3 searching for the email on was configured as a
4 dual boot and I primarily used the Linux partition
5 on it, not Windows?
6 A I don't know --
7 Q Right.
8 A -- anything about anything like that.
9 Q So, my point with this, I guess, is I'm trying to
10 establish how much effort was actually put into
11 trying to find or obtain this email, like, to --
12 to prove that I did contact them. But beyond the
13 questions I've just asked, I don't know --
14 A Yeah, we --
15 Q -- how I could establish that much better. Oh,
16 there is actually something. I had some questions
17 . . . Okay, with respect to search warrants or
18 I'm not sure if this would be a production order,
19 or what, but so, during the interview, I informed
20 Detectives Tanino and Roberts that I had sent an
21 email, et cetera, et cetera. Did I mention which
22 email service I used for that? And I believe Mr.
23 Johnson had asked you about that earlier?
24 A I believe it was Gmail.
25 Q Correct. And are you aware that Gmail is what's
26 called an IMAP based mail service? IMAP means
27 internet message access protocol?
28 A I don't know --
29 Q Okay.
30 A -- anything about that.
31 Q Are you aware that with IMAP protocol, the
32 messages are stored on the server, not on the
33 user's device?
34 THE COURT: I didn't --
35 A No.
36 THE COURT: -- I didn't hear your answer.
37 A No, no, sorry, I -- I don't know anything about
38 that, no.
39 THE ACCUSED:
40 Q Did you, at any point, apply for or make any
41 attempt to obtain a search warrant, or a
42 production order, or a subpoena, for Google or
43 regarding my Gmail account?
44 A No.
45 Q Can you tell me why not?
46 A The decision was made that we had applied for a
47 search warrant for the laptop --

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1 Q Mm-hmm.
2 A -- and as a -- we didn't get any results from it,
3 that was the extent of what we were going to do in
4 order to search for this email.
5 Q I see. So -- so, because the email could not be
6 found on the partition on the laptop which I don't
7 use and it's an IMAP based service, so, it
8 wouldn't be on the laptop any -- well, all right.
9 CNSL C. JOHNSON: That's more for argument.
10 THE ACCUSED: Yeah.
11 THE COURT: You can call evidence about that, but he's
12 not knowledgeable enough to respond to your
13 inquiries in that regard.
14 THE ACCUSED: Right. These -- some of these are
15 questions that I would have hoped to put to
16 Officer Yingling who was the one that isn't
17 available today.
18 THE COURT: Yes?
19 CNSL C. JOHNSON: It's normally the defence that makes
20 admissions, but if Mr. Fox is interested, I have
21 learned that Gmail is generally not saved on a
22 person's laptop. You have to go, as he says, into
23 the internet where your various messages are
24 store, as opposed to on your laptop. So, the
25 Crown is willing to admit that Gmail would not be
26 stored on a laptop in normal circumstances, if
27 that's any assistance.
28 THE ACCUSED: Thank you, it is, yes.
29 Q Regarding the surveillance that was done on me,
30 upon my release from custody on August 12th, 2021,
31 I believe you had mentioned earlier that that
32 surveillance began at Fraser Regional Correctional
33 Centre; right?
34 A Yes.
35 Q And how many officers were involved in that?
36 A I don't have that knowledge. Again, that task was
37 assigned to another detective in the unit,
38 Detective Roberts.
39 Q Yes, Roberts was the one. And can you tell me
40 again, what was the purpose for the surveillance?
41 A To find out where you -- Your Honour, sorry, the
42 purpose was to find out where you were staying.
43 Q Were you aware at the time that I had -- that I
44 was under a probation order that required me to
45 report in person -- not -- at least every four
46 days on Cordova Street, across the street from
47 here?

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1 A I was not aware of that, no.
2 Q Oh. If you're -- if the objective or the goal was
3 to find out where I would be staying, did it over
4 occur to you to simply ask me?
5 A No, it did not.
6 Q Oh. Are you familiar with something call a
7 forensic acquisition summary?
8 A No.
9 Q Okay. Do you review the material for the
10 investigation -- or from the investigation before
11 it's disclosed to me?
12 A I would need to know specifically what you're
13 talking about, but typically no.
14 Q Oh, no?
15 A No.
16 CNSL C. JOHNSON: If I could clarify, Mr. Fox and
17 please indicate if you don't want me to help, but
18 the forensic acquisition summary you're referring
19 to the report from Constable Yingling; is that
20 correct?
21 THE ACCUSED: Yeah.
22 CNSL C. JOHNSON: So, that might assist this witness to
23 know what that document is.
24 A Oh, okay.
25 THE ACCUSED:
26 Q Perhaps if I -- if I was to hand that to you,
27 would that have any familiarity to you, or? The
28 reason is because there's one --
29 CNSL C. JOHNSON: Your Honour, I'm handing a document,
30 which is entitled Vancouver Police Department
31 digital forensic unit, forensic acquisition
32 summary.
33 THE ACCUSED: Thank you.
34 THE COURT: Are you asking whether he's familiar with
35 it?
36 THE ACCUSED: Yes, because I do have a couple of
37 questions about a couple of the entries in there
38 and so, I just want to make sure he's familiar
39 with it.
40 A Okay. So, yes, I'm sorry, I didn't know the exact
41 title of this document because I've never written
42 one --
43 THE ACCUSED: Mm-hmm.
44 A -- as it's something that our digital forensics
45 unit does and I'm not a member of that unit. I'm
46 just going to make a quick comment here. I'm
47 reviewing this document and everything looks

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1 apparent except for this last page.
2 THE ACCUSED: Right.
3 A That's in relation to another one of my files that
4 has absolutely no bearing on this whatsoever and
5 I'm shocked that this was included in this file.
6 THE ACCUSED:
7 Q Right. That was going to be one of the questions
8 I was going to ask --
9 A Okay.
10 Q -- about, is why somebody else's disclosure
11 material is included in my disclosure?
12 A So, that's probably a question that you would need
13 to ask the detective -- or sorry, Detective
14 Yingling, who submitted this. What I suspect and
15 again, I can't speak for her directly, what I
16 suspect is this is another one of my files that
17 she was working on at the same time and it simply
18 was added by error. But I can guarantee you,
19 there is nothing relevant between you and --
20 Q Oh, no --
21 A -- this other file.
22 Q -- I understand that has absolutely nothing to do
23 with my case and no relevance --
24 A Yeah.
25 Q -- I am curious though, is this something that
26 happens often?
27 A I really hope not, but I can only speak for myself
28 and this is the first time that I've ever had this
29 experience and I apologize to everybody here.
30 Q Okay. So, within that forensic acquisition
31 summary, there is an entry on pages 3 -- wait, I
32 think there's one before that, isn't there? I
33 guess not, on pages 3 and 4, it's toward the
34 bottom of page 3, with a timestamp of 2021-08-25,
35 at 15:13:09.
36 A Okay.
37 Q And it states, at least in part [as read in]:
38
39 Email sent to lead investigator, Detective
40 Dent, advising ready for REAP.
41
42 Is that correct?
43 THE COURT: And I didn't hear it, ready for?
44 THE ACCUSED: Oh, REAP, R-E-A-P.
45 THE COURT: Okay.
46 THE ACCUSED: I'm not sure what that means.
47 A I'm sorry, which page are you on?

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1 THE ACCUSED:
2 Q In my notes, it says -- it says pages 3 and 4, so
3 I believe it's at the bottom of page 3.
4 A It's actually at the top of page 4.
5 Q Oh, okay.
6 A Yes, I see email sent me advising ready for REAP,
7 yes.
8 Q Okay. And the information itself is correct, is
9 it not? Like, she did send you an email at
10 that --
11 A Yes.
12 Q -- letting you know it's ready?
13 A Yes.
14 Q And this is relating to the information that was
15 extracted from my laptop?
16 A Yes.
17 Q Then on page 4, there's another entry with a
18 timestamp, 2021-10-12, at 13:23:48, which states
19 [as read in]:
20
21 On October 12th, 2021, I received an email
22 from Detective Dent that he wished to review
23 the data on REAP. I provided a copy to
24 Detective Constable Woolridge [phonetic] to
25 place upon -- to place up onto REAP.
26
27 A Yes.
28 Q And is that information correct as well?
29 A Yes.
30 Q Okay. So, she sent you that on 10-12. Oh, okay,
31 you sent that to her, okay, on -- sorry, I was
32 confused by my own notes. And I need a moment now
33 to find the search warrant, unless you happen to
34 know, off the top of your head what the dates were
35 -- were on the search warrant?
36 A I -- Your Honour, if I may?
37 Q I believe it was valid for, like, one week. It's
38 sometime in August.
39 A If I may?
40 Q Yeah.
41 A A warrant is deemed executed once our forensic
42 section --
43 Q Mm-hmm.
44 A -- takes custody and plugs in the laptop. That
45 was done within the one week of the timeframe of
46 the warrant.
47 Q Mm-hmm.

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1 A It took them some time to access it and then we
2 have a long period of time for me to review it.
3 The review doesn't have to happen within that one
4 week, only search warrant needs to be executed
5 within that timeframe, which it was.
6 Q I see. So, if I understand this correctly, you're
7 saying that as long as the data is extracted and
8 copied onto VPD's server, or some other place
9 within the timeframe --
10 A I -- I don't know the exact terminology or
11 technicalities of that --
12 Q Mm-hmm.
13 A -- all I know is that once I've handed the laptop
14 with the signed warrant -- or in this case, I
15 didn't do that, another detective did, but once
16 that process has done -- been completed, the
17 search warrant is deemed executed.
18 Q Okay. Have you found any evidence to contradict
19 my claims that I relinquished ownership and
20 control of the website to a third party prior
21 to -- prior to my being on probation?
22 A No.
23 Q Have you found any evidence at all to even -- or
24 any evidence at all even suggesting that I have
25 ever been dishonest in any of the legal
26 proceedings against me?
27 A No.
28 Q Now, I would like to turn your attention to the
29 occurrence report in RTCC version 1 that you've
30 written the narrative for.
31 A Oh, I'm sorry.
32 THE COURT: Is that in relation to this case?
33 THE ACCUSED: I'm sorry?
34 THE COURT: Is that in relation to this case?
35 THE ACCUSED: Oh, yes, yes.
36 THE COURT: Okay.
37 A Okay.
38 THE ACCUSED:
39 Q I just have a few questions about some of the
40 information that's stated in there. And I know
41 you've stated this already, but for the sake of
42 being redundant, I just want to confirm again that
43 you did write this narrative; is that correct?
44 A I did.
45 Q Okay. Oh, sorry, this version of the document is
46 slightly different from what's in my notes and so,
47 the page numbers might not match. But I have the

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1 section numbers and sections headings anyway.
2 A Okay.
3 Q Background of Events. There's a section called
4 Background of Events and in the second
5 paragraph --
6 A Okay.
7 Q -- one, two, probably in the third line, toward
8 the end, it says [as read in]:
9
10 The website was written in the first
11 person . . .
12
13 Sorry, this might not line up the same as --
14 A Okay.
15 Q -- what you have.
16 A Sorry, what -- what am I looking for?
17 Q Oh, the sentence that starts with [as read in]:
18
19 The website was written in the first
20 person . . .
21 A Yes.
22 Q Oh, okay, and then the relevant part is:
23
24 . . . and was made with the purpose of
25 posting defamatory and in most cases, false
26 information about Capuano.
27
28 A Yes.
29 Q So, you wrote that, do you -- do you believe that?
30 A I obtained this background of events --
31 Q Mm-hmm.
32 A -- from this original file. I reviewed the
33 synopsis of it --
34 Q Mm-hmm.
35 A -- and I deemed it relevant just to provide
36 context for this file and I -- basically, I took
37 information from that synopsis and I put it into
38 this file.
39 Q Okay. Regardless of the accuracy or correctness
40 of that information?
41 A Again, it's -- correct me if I'm wrong, but it's
42 already been tried in court.
43 Q Well, no. The question of whether or not the
44 information on the website is true or defamatory
45 has never been tried in court.
46 A Okay.
47 Q So, I assume from that response then, that you,

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1 yourself, have never actually found any false or
2 incorrect or defamatory information on the
3 website?
4 A I have not investigated the website.
5 Q But you have seen the website; is that correct?
6 A I've seen the front page of the website and the
7 open letter to David Eby.
8 Q Okay.
9 A And that's all on the website I have reviewed.
10 Q And the parts that you have looked at on the
11 website, I'm assuming you have not found any false
12 or incorrect information?
13 A In the open letter to David Eby, it's --
14 Q The parts that you looked at.
15 A -- it's a completely subjected open letter to
16 David Eby, so --
17 Q We're only -- I'm only interested in information
18 about Capuano.
19 A Yes.
20 THE COURT: You know, I'm just going to -- I'm just
21 going to interrupt you there for a moment.
22 THE ACCUSED: Sure.
23 THE COURT: We're trailing away from the issue before
24 the court. The issue before the court is did you
25 breach your probation --
26 THE ACCUSED: Mm-hmm.
27 THE COURT: -- by failing to ensure that the website
28 was no longer available.
29 THE ACCUSED: Okay.
30 THE COURT: So, whether it was true or not true, or
31 whether it -- other things you wrote to David Eby
32 were true or not true, that's not an issue for
33 this court to decide.
34 THE ACCUSED: Okay.
35 CNSL C. JOHNSON: Your Honour, I'm wondering if we
36 could just very briefly deal with the document
37 that Mr. Fox put to Detective Dent, where it
38 appears that both Detective Dent and Mr. Fox agree
39 that the last page was disclosed to Mr. Fox
40 inadvertently?
41 THE COURT: Yes.
42 CNSL C. JOHNSON: And I've looked it and it is not
43 relevant to Mr. Fox's case. Clearly, there's
44 been --
45 THE COURT: It should be removed from the disclosure.
46 CNSL C. JOHNSON: -- and so, I would like to be able
47 to --

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1 THE COURT: So, Mr. Fox, you agree that that last page
2 is not relevant to your case?
3 THE ACCUSED: Correct.
4 THE COURT: Okay. And so, we're going to remove it
5 from the disclosure --
6 THE ACCUSED: Okay.
7 THE COURT: -- because it shouldn't be --
8 A Just the one page, yeah.
9 THE COURT: So, if you could just remove that and if
10 you can give it to Madam Registrar for shredding.
11 CNSL C. JOHNSON: Oh, okay, thank you. And I'll return
12 -- sorry. I'll return the main document to Mr.
13 Fox.
14 THE COURT: Okay. Good. Thank you.
15 CNSL C. JOHNSON: And thank you --
16 THE COURT: That can be shredded at your convenience.
17 A Your Honour, may -- may I ask, is that the only
18 copy of that one document that you have?
19 THE ACCUSED: That I have?
20 A Of -- of that one particular page?
21 THE ACCUSED: This is actually the Crown's copy of this
22 document.
23 A Okay.
24 THE ACCUSED: And so, that was actually the Crown's --
25 A I -- I'm just -- the reason I'm asking you is
26 obviously, if it has no relevance or anything else
27 to that, I just would like any copies or anything
28 of that one page to be shredded. It's involving
29 another --
30 THE COURT: Do you have other copies of that page?
31 THE ACCUSED: I do not have any other copies of the
32 disclosure material at all, but the best I can say
33 to that is I don't have any in my control or
34 possession. Whether or not somebody else might,
35 because I understand there were some hard drives
36 that were lost a few months ago --
37 THE COURT: But you haven't provided that page to
38 anyone?
39 THE ACCUSED: I have not.
40 THE COURT: Okay.
41 THE ACCUSED:
42 Q Okay. So, let me see, I'm going to try to stay
43 focused on the issues that are directly relevant
44 here. So, I'm almost done then. But getting back
45 to this interview of Fox that we were talking
46 about earlier, where there was some uncertainty
47 about who I should put the questions to, so, I'll

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1 ask you --
2 THE COURT: Is that the interview by Constable Turino
3 [sic]?
4 THE ACCUSED: I'm sorry?
5 THE COURT: Is that the interview by Constable Turino
6 [sic]?
7 THE ACCUSED: Yeah, I'm kind of unclear at this point
8 who would be able to answer the questions.
9 THE COURT: All right. Go ahead and ask them.
10 THE ACCUSED: I had a separate document to refer to
11 that. Now, the court may remember that these are
12 actually the points that the Crown previously had
13 stated at one of our appearances that I had agreed
14 to admit to, but then I had said, well, no, I
15 don't agree to that because the wording was
16 supposed to have been changed. These are these
17 same points.
18 THE COURT: All right.
19 THE ACCUSED:
20 Q Most of these have not been presented to the court
21 and so, they're not really evidence in these
22 proceedings, I guess, at this point, since they
23 weren't admitted to and nobody was questioned on
24 them. Except, Detective, you did mention one in
25 particular that I have a question about. Aha. It
26 says [as read in]:
27
28 He stated that he emailed his friend who is
29 running the website, to take it down.
30
31 Et cetera, et cetera.
32 A Yes, I see that point.
33 Q Okay. Now, I know what you're referring to in the
34 interview, however, I want to ask you about the
35 use of the word "friend" there. Do you have any
36 knowledge of that? The reason is, in the
37 interview, it was never stated that the person --
38 it was never stated or even suggested that the
39 person who is currently running the website has
40 any association with me whatsoever and I never
41 reviewed to that person as a friend or an
42 associate or an acquaintance. So, I would like to
43 get some clarity on -- on this here. Now, are you
44 saying that I admitted that the person who is
45 running the website right now is a friend of mine?
46 A If I used the wrong word there, I -- I apologize
47 in describing that relationship. But you emailed

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1 somebody who you know to run the website. Whether
2 or not they're a friend or not -- I -- I wrote
3 friend, I --
4 Q Mm-hmm.
5 A -- acknowledge that I wrote friend. If they're
6 not a friend, I apologize that I may have inferred
7 that.
8 Q Right. Is it your understanding then that I had
9 stated in that interview that somebody that I know
10 is running the website?
11 A I don't have that interview in front of me, I
12 can't ask -- answer that question.
13 Q Okay. The reason I'm asking you is because it
14 sounds like that what you -- that's what you just
15 said a moment ago and so, I just wanted to clarify
16 that.
17 A I don't know the exact relationship between you
18 and the person you haven't identified, without
19 knowing who they are, if that answers your
20 question.
21 Q Yes, yes, it does.
22 A Okay.
23 Q It's just this is a pretty important point. I
24 mean . . . Aha. Okay. Do you have a copy of the
25 transcript of the Tanino Fox interview?
26 A No.
27 Q Oh.
28 A I have a copy of the interview that you and I
29 conducted --
30 Q Very good.
31 A -- I don't have a copy of the Tanino Fox interview
32 because I can't speak to that.
33 THE COURT: Do you have a copy of it, Mr. Johnson?
34 CNSL C. JOHNSON: Well, Mr. Fox has a copy of it.
35 THE ACCUSED: Well, I have it --
36 THE COURT: Yes.
37 THE ACCUSED: -- right here.
38 THE COURT: He's got a copy, but for the officer to
39 follow along.
40 THE ACCUSED: And this -- this was covered when
41 Detective Tanino testified earlier.
42 THE COURT: Okay. Well, you can ask the question. Mr.
43 Johnson will look for it.
44 Oh, you've got it there? Okay. Good.
45 So, just refer to --
46 CNSL C. JOHNSON: This is -- this includes -- the
47 arrest of Mr. Fox was recorded and the transport,

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1 et cetera, et cetera --
2 THE COURT: Okay.
3 CNSL C. JOHNSON: -- but the interview is in there.
4 THE COURT: So, what --
5 A Okay.
6 THE COURT: -- what page are you referring to, sir?
7 THE ACCUSED: Within there, there's a document --
8 because that's actually a number of documents,
9 but --
10 A Yeah.
11 THE ACCUSED: -- there's one in particular that has 39
12 pages. You'll see at the bottom, it'll say, like,
13 page 10 of 39, et cetera.
14 A Okay. Yeah.
15 THE ACCUSED:
16 Q So, in that transcript, on page 10 --
17 A Okay.
18 Q -- on line -- let's see here, I guess -- so,
19 starting around line 24, there was some discussion
20 between Detective Tanino and myself, where she
21 asks me if I have access -- administrative access
22 to the website and if I don't, who does?
23 A I see that, yeah.
24 Q Right. And then at 29, I explain [as read in]:
25
26 Partially because I can't answer that right
27 now, I don't know and that was done very
28 deliberately.
29
30 Et cetera, et cetera.
31 So, that's the extent of what was stated in
32 the interview about my knowledge of who's actually
33 running the website now --
34 A Okay.
35 Q -- as opposed to any suggestion that it's somebody
36 that I know, or some friend, or associate or
37 something.
38 A Sorry, what's the question?
39 THE ACCUSED: Oh.
40 THE COURT: Well, I think he's referring back to your
41 reference to it being his friend --
42 A A friend.
43 THE COURT: -- who he contacted.
44 A Okay.
45 THE COURT: And he's referring you to the actual
46 interview, where he says --
47 THE ACCUSED: Right.

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1 A Yeah.
2 THE COURT: -- who the individual is.
3 A I -- I see that you wrote -- so this -- I'll just
4 read this sentence here [as read in]:
5
6 It was done very deliberately, before the
7 probation began in 2018. I've been all over
8 this before, but before the probation began,
9 I transferred ownership and control of the
10 website to another party, so that way I
11 couldn't be compelled to take it down or
12 anything with it, with the understanding that
13 once I'm no longer on probation, that I would
14 take back the website.
15
16 THE ACCUSED: Yes, okay.
17 A So, I -- I read that sentence, yes.
18 THE ACCUSED:
19 Q Okay. So, do you agree then that I never stated
20 or admitted, or made any comments about knowing or
21 having any association with the person that's
22 currently running the website?
23 A I see what you said and I also see that you still
24 have the intention of taking the website back.
25 Q Well, okay, except, give me one moment here.
26 A And again, this isn't my interview, I'm just
27 reading what you --
28 Q No, I --
29 A -- said there.
30 Q -- I -- I understand you. And sorry, coming to --
31 CNSL C. JOHNSON: If it's of any assistance at all, I
32 did hear the witness say that when he used the
33 word "friend" that was a mistake. And so, I think
34 that's what Mr. Fox is trying to get at and --
35 THE ACCUSED: Well, I --
36 THE COURT: Give you a little bit --
37 CNSL C. JOHNSON: -- I think the rest of this is
38 surplusage.
39 THE ACCUSED: -- I agree --
40 THE COURT: I'm going to let him pursue it a little bit
41 longer.
42 THE ACCUSED: -- I agree that the witness did say that
43 perhaps the use of the word "friend" was a mistake
44 and it should have been maybe associate, or -- or
45 something, but I'm just trying to make it clear
46 that the person who is currently running the
47 website has absolutely no connection to me and I

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1 don't know who the person is and all of this was
2 done deliberately so that I couldn't be put in a
3 position where I would have to do something
4 against them, or take the website down, et cetera.
5 Anyway, I guess that's clear then.
6 And from that list, I don't think that there
7 was anything else that was mentioned here in
8 court, so then it shouldn't be relevant.
9 Q Okay. So, if I have a probation condition that
10 requires me to do something like take down the
11 website and if -- if I have no ownership, control,
12 influence, or access -- administrative access to
13 the website to do so, what would -- let's see.
14 How would you expect -- or how would you suggest
15 that a person could go about complying with that
16 condition under those circumstances?
17 THE COURT: Well, that's not really for him to say.
18 It's --
19 THE ACCUSED: Right.
20 THE COURT: -- it's not the Crown's obligation to prove
21 that you -- that -- they're proving that you did
22 not do something. If you're going to offer a
23 defence as to why you were unable to do that,
24 that's up to you.
25 THE ACCUSED: Mm-hmm.
26 THE COURT: But the Crown's obligation is to prove that
27 you're in contravention of the positive obligation
28 on you to do something. And that's certainly an
29 argument you can make in your summation, but it's
30 not really something this officer can answer.
31 THE ACCUSED: Right. I was having difficulty with
32 trying to think of how to present that because I
33 was basing it on a statement that he had made
34 earlier, a little while ago.
35 Q Okay. So, now then, at this point, I want to come
36 back to the line of questioning before lunch about
37 whether or not you have ever deliberately
38 misrepresented facts about a defendant or accused
39 while giving sworn testimony, specifically on
40 November -- on November 26th, 2020, when you went
41 into the courtroom on that day to testify about
42 the statements that I had made to you, did you
43 knowingly and deliberately misrepresent the
44 statements that I had made to you in that prior
45 interview for the purpose of misleading the court?
46 A No.
47 Q Okay. So, while you were giving the testimony,

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1 did you believe that the statements that I had
2 made to you on September 17th, 2020 were serious
3 and truthful?
4 A Mr. Fox, I can't -- respectfully, Your Honour, I
5 can't -- it's not my role to say whether or not
6 you're lying or not. It's my role to interview
7 you and obtain a statement from you, which is what
8 I did on that date.
9 Q But I -- wait. I believe I was asking if you --
10 if you believed that the statements were serious
11 and truthful?
12 THE COURT: Well, that -- that's not really relevant.
13 I mean, at the end of the day, I have to decide
14 who's being truthful.
15 THE ACCUSED: Right, right.
16 THE COURT: Because otherwise, I'm relying on someone
17 to tell me whether they think the person's
18 truthful and that's not helpful to me. At the end
19 of the day --
20 THE ACCUSED: Right.
21 THE COURT: -- I have to decide what I accept, in terms
22 of the evidence.
23 THE ACCUSED: But that's -- that's why I wanted to have
24 the video here, so that if some dispute about
25 whether or not the statements were jokes, or
26 sarcasm, if there was a dispute, the video is
27 here. It's very clear whether or not they were
28 serious.
29 THE COURT: Certainly, at the trial, it would have been
30 open to you, or whoever was conducting your
31 defence, to challenge the officer and say, well,
32 even though Mr. Fox said that, you could tell by
33 his demeanour or his laughter, or his gestures
34 that he wasn't -- that he was just kidding.
35 THE ACCUSED: Right. It looks like I'm almost done.
36 THE COURT: Did you want to use the afternoon break to
37 review your notes and ensure that you've asked all
38 your questions?
39 THE ACCUSED: Unfortunately, I'm not allowed to bring
40 them downstairs.
41 THE COURT: Oh, okay. Why don't we do this, Mr.
42 Sheriff, would you mind remaining in the courtroom
43 with him, so he can review his notes --
44 A SHERIFF: Okay, Your Honour, yes.
45 THE COURT: -- for the break? I'm sorry that you're
46 not going to get your break. It sounds like we --
47 THE ACCUSED: Oh.

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1 THE COURT: -- might end a little bit early.
2 THE ACCUSED: No, I -- I could not, in good conscience,
3 stop him from getting his break.
4 THE COURT: Oh, no, no, no, he's -- he's offered to do
5 that.
6 A SHERIFF: That's okay.
7 THE ACCUSED: Okay.
8 THE COURT: I want to make sure that you've got -- you
9 know, we've got a whole other day, so we're not in
10 any rush. I want to make sure that you have ample
11 time to review your notes. I would offer the same
12 thing to Mr. Johnson. Quite often, people need to
13 take the break to regroup and review their notes.
14 So, Mr. Sheriff has been kind enough to offer to
15 stay and so, we'll do that. We'll take the break
16 and then just let Madam Registrar know when you're
17 ready.
18 THE ACCUSED: Okay. Thank you.
19 THE COURT: If you need to take a break after you
20 review your notes, just let Mr. Sheriff know and
21 you can take your afternoon break and then we'll
22 come back.
23 THE ACCUSED: Thank you.
24 THE COURT: Okay.
25 A SHERIFF: Order in court, all rise.
26 THE COURT: Again, you know, Officer, not to discuss
27 the case.
28 A Yes.
29 THE COURT: Thank you.
30 A Thank you, Your Honour.
31
32 (WITNESS STOOD DOWN)
33
34 (PROCEEDINGS ADJOURNED FOR AFTERNOON RECESS)
35 (PROCEEDINGS RECONVENED)
36
37 **KYLE DENT, recalled.**
38
39 THE COURT: Did you have enough time to review your
40 notes, Mr. Fox?
41 THE ACCUSED: Yes, I did.
42 THE COURT: Okay.
43 THE ACCUSED: Thank you.
44 THE COURT: Good.
45 THE ACCUSED: I just have a few quick summary, or recap
46 questions to make sure that I'm clear on where
47 these things stand.

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1 THE COURT: Certainly.

2

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

4

5 Q So, first, if I understand this correctly, you're
6 saying that there was no search for the email that
7 I had sent to editor@desicapuano.com with Google?
8 With the hosting provider -- or sorry, with --
9 with the mail provider?

10 A The only search that was conducted was obtained --
11 the search warrant was obtained for the laptop,
12 the phone and the USB. That was it.

13 Q Right. But I believe that you had stated that you
14 haven't been able to get past the encryption or
15 something on the phone yet and also there's a
16 similar issue with the laptop?

17 A No, there is no -- no, the laptop was reviewed and
18 no email was observed.

19 Q What I mean by similar issue with the laptop is
20 the Linux partition, the partition that I actually
21 use on the laptop.

22 A Oh, yeah, I can't say to that, I'm sorry.

23 Q What you were looking at on the laptop was an
24 unused partition. That's why everything was so
25 old.

26 A Okay.

27 Q But anyway. And it's my understanding that you're
28 saying that there was no attempt or effort made to
29 verify who owns or controls the website, or
30 whether I have any ownership or control of the
31 website?

32 A That's correct.

33 Q And that you have no evidence about whether or not
34 the website was actually taken offline for any
35 period of time during that 48 hours after my
36 release?

37 A I --

38 THE COURT: So --

39 A -- oh, I'm sorry, Your Honour.

40 THE COURT: -- I'm -- I'm not sure that that's a
41 correct recitation of his evidence.

42 THE ACCUSED:

43 Q Let me rephrase. Other than the website being
44 online at these specific times that Officer
45 Meiklejohn checked it, there's no evidence or
46 knowledge about whether, at any other times, it
47 had been taken offline?

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1 A That is correct and if I may clarify, Catherine
2 Meiklejohn is a civilian employee with the --
3 Q Oh.
4 A -- department. I don't want there being an
5 confusion that she's an officer.
6 Q Okay. And I take from that, that means that I
7 should not be referring to her as Officer
8 Meiklejohn? Okay.
9 A Yeah, if -- if you please, thank you.
10 Q And do I also understand this correctly, that
11 you're saying that there's no evidence that I have
12 had any involvement in the website? I mean during
13 the times relevant. So, I'm not concerned
14 with -- like, I mean, obviously, I did have
15 involvement in the website when it was first
16 created, prior to the probation beginning, but
17 at the times relevant to his matter, which would
18 be the 48 hours following my release from custody
19 -- well, let's say from my release from custody,
20 you know, August 2021, up until now. Do I
21 understand this correctly, that you're saying that
22 there's no evidence that you're aware of, or in
23 the VPD's possession that I have had any
24 involvement?
25 A The only evidence that we have right now is you
26 saying that you emailed the content creator to
27 remove the website.
28 THE ACCUSED: Okay. That would be -- that would be all
29 I have.
30 THE COURT: Okay. Anything arising?
31 CNSL C. JOHNSON: No, thank you, Your Honour.
32 THE COURT: Okay. Thank you, you're excused, Officer.
33 A Your Honour, thank you very much. If I ask, this
34 is the court transcript, I believe you wanted to
35 shred it afterwards. Can I leave it somewhere?
36 THE COURT: Okay. Just -- you can just give it to Mr.
37 Johnson. He'll make sure it's shredded.
38 A Okay. And so, I'll give you these documents back.
39 Thank you very much.
40 CNSL C. JOHNSON: Thank you.
41
42 (WITNESS EXCUSED)
43
44 CNSL C. JOHNSON: And that is the evidence I'm calling
45 on behalf of the Crown, Your Honour.
46 THE COURT: Okay. So, the Crown's case is closed.
47 Now, the Crown has closed its case. That's

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1 all the evidence that the Crown's going to be
2 calling. So, at this juncture, you can decide
3 whether to call evidence yourself, whether you'd
4 like to testify in place of, or in addition to any
5 witnesses you'd like to call, or whether you'd
6 want to call no evidence. It's totally open to
7 you.

8 THE ACCUSED: I wasn't planning on testifying, but I'm
9 wondering now -- I'm -- I'm considering possibly
10 testifying.

11 THE COURT: Well, if you like, it's 25 to 4:00 --

12 THE ACCUSED: Mm-hmm.

13 THE COURT: -- would you like until Friday morning to
14 decide whether or not you're going to testify?

15 THE ACCUSED: No, no, I'm -- I'm not going to testify.

16 THE COURT: Oh, okay. Are you calling any evidence?

17 THE ACCUSED: No.

18 THE COURT: Okay. So, I'm just going to -- because
19 you're not legally trained, I'm just going to
20 point out to you that your probation order places
21 a positive obligation on you. And I think we
22 talked about this at one of your other
23 appearances. You have a positive obligation to
24 take all necessary steps to ensure that certain
25 websites are no longer available. That was a
26 positive obligation. You may have a defence to
27 that. Your defence might be that you didn't have
28 the ability to do that because you didn't have
29 control of the website.

30 I'm not sure what your defence will be, but
31 it would be similar to you having a positive
32 obligation to turn in all your firearms to the
33 Vancouver Police. You may have a reason for not
34 doing that. They may have been destroyed in a
35 fire. You may have sold them before the probation
36 order was created. There may be all sorts of
37 defences for you not fulfilling a positive
38 obligation.

39 If you don't call evidence, then you're going
40 to ask me to rely on the evidence that the Crown
41 has put forward and you have to ask yourself
42 whether that will be sufficient. So, I'll -- I'll
43 leave that up to you.

44 You're indicated you don't want to call
45 evidence. I'm -- I'm going to -- sorry, did you
46 want to say something?

47 THE ACCUSED: Actually, you know what, I -- I've

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1 reconsidered and is it too late to change my mind
2 about testifying?

3 THE COURT: What I was going to say to you is, I
4 appreciate you're not legally trained, so you can
5 take until Friday morning to decide if you're
6 going to testify or not because I wouldn't ask you
7 to start your final submissions this afternoon, in
8 any event, because they'll be broken up when we go
9 over to Friday. So, you can decide, between now
10 and Friday morning, if you wish to testify.

11 THE ACCUSED: could we say that I will testify, but
12 leave that for Friday morning?

13 THE COURT: Yes.

14 THE ACCUSED: Okay. That's --

15 THE COURT: But it's --

16 THE ACCUSED: -- what I would like to do.

17 THE COURT: -- open to you to change your mind on
18 Friday morning. If -- if, before you take the
19 witness stand, you tell me that you've
20 reconsidered and you've decided not to testify,
21 it's totally open to you.

22 THE ACCUSED: Okay.

23 THE COURT: All right? So, and I'm just going to ask
24 Mr. Johnson, do you have any cases that you're
25 going to be relying on in your submissions, Mr.
26 Johnson?

27 CNSL C. JOHNSON: Yes, and I think they may be in the
28 court file. The two cases that I would rely on
29 are the decision of Associate Justice Holmes in
30 sentencing Mr. Fox and the decision of Judge
31 Rideout, who granted this probation order and I
32 believe they've been filed. And if they haven't
33 been, I can provide them.

34 THE COURT: Okay. So, let's see if they're in the
35 file. It would be the reasons of -- so, the
36 reasons of -- it's in this court, Judge Holmes, or
37 Madam Justice Holmes?

38 CNSL C. JOHNSON: Madam Justice Holmes I Supreme
39 Court --

40 THE COURT: In Supreme Court? Okay.

41 CNSL C. JOHNSON: -- who convicted Mr. -- Mr. Fox on
42 the initial offences.

43 THE COURT: Which was?

44 CNSL C. JOHNSON: Which was -- there's a series of
45 them, but I believe criminal harassment.

46 THE COURT: Okay.

47 THE ACCUSED: Criminal harassment and possession of a

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1 firearm in a place not authorized.
2 THE COURT: Okay. Do we have those decisions in the
3 court file by any chance?
4 THE CLERK: Your Honour, I don't see it in this court
5 file, but there's also, but there's also, I think,
6 a file associated with this file that might --
7 THE COURT: Okay. Do you have copies of those?
8 CNSL C. JOHNSON: I don't have them handy, Your Honour,
9 but what I could do is send them electronically to
10 perhaps the judicial case manager.
11 THE COURT: Yes. Are you able to do that this
12 afternoon?
13 CNSL C. JOHNSON: I actually do have, from -- just one
14 moment, Your Honour. The transcript that Mr. Fox
15 provided today from the Court of Appeal, that he
16 referenced does have the reasons of Judge Rideout
17 in it.
18 THE COURT: Okay.
19 CNSL C. JOHNSON: And so, I --
20 THE COURT: So, you already have a copy of that
21 transcript.
22 THE ACCUSED: Yes.
23 THE COURT: And this is an extra copy, so, I'll take
24 that copy. This is -- it has the reasons of Judge
25 Rideout --
26 CNSL C. JOHNSON: Yes.
27 THE COURT: -- or Justice Holmes?
28 CNSL C. JOHNSON: Judge Rideout.
29 THE COURT: Judge Rideout. Okay.
30 CNSL C. JOHNSON: And the decision of Madam Justice
31 Holmes is online. I could locate it and have it
32 sent quickly and Mr. Fox --
33 THE COURT: Okay.
34 CNSL C. JOHNSON: -- previous engagement has that
35 disclosure.
36 THE COURT: All right. You can send electronically to
37 Mr. Fox later?
38 CNSL C. JOHNSON: I cannot, but I -- I know that on a
39 previous occasion I provided him with a copy of
40 that decision.
41 THE COURT: Do you have a copy of Judge Rideout's
42 decision?
43 THE ACCUSED: Oh yes, for sure.
44 THE COURT: Oh, you do have a copy of that? Okay.
45 So, you could send it to me later today, so
46 that I could print it out, or?
47 CNSL C. JOHNSON: Yes, I don't -- I'm reluctant --

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1 THE COURT: Or just -- or just send it -- just send it
2 electronically. I'm not in this courthouse
3 tomorrow, so I'm going to just give my email
4 address to Madam Registrar to provide to you.
5 Okay. Would you give that to Mr. Johnson, and I
6 trust you won't share that with anyone, other than
7 your assistant perhaps, if -- if your assistant is
8 helping you send.
9 CNSL C. JOHNSON: Thank you.
10 THE COURT: So, that's for Mr. Johnson to send me a
11 copy of Judge Rideout's -- Judge Rideout's
12 decision; right?
13 Now, any -- any law with respect to the
14 probation -- your argument on the probation order
15 and his -- his obligations and so, on and --
16 CNSL C. JOHNSON: No --
17 THE COURT: -- the duties and --
18 CNSL C. JOHNSON: -- I'm not going to provide anything
19 further. It's -- I think my argument is, Your
20 Honour has stated it to some extent, but there's a
21 positive obligation on Mr. Fox and the evidence
22 that I've called today establishes that he failed
23 in that obligation.
24 THE COURT: Okay. So, I'll leave that with you. I'm
25 going to ask that you really read the condition
26 carefully that you're bound by to understand --
27 THE ACCUSED: Okay.
28 THE COURT: -- what you were obligated to do; okay?
29 And so, they -- the Crown has created a *prima*
30 *facie* case by establishing that the website was
31 online and accessible on the internet more than 48
32 hours after your release from prison. So they've
33 established that. You may have an excuse as to
34 why it wasn't removed and maybe you're going to
35 rely on -- on the Crown's evidence about that, or
36 -- or maybe you're going to give your own evidence
37 about that, but you're going to have to explain to
38 the -- convince the court that you were unable to
39 ensure that the website was not accessible.
40 THE ACCUSED: Okay.
41 THE COURT: All right? Okay. Any questions --
42 THE ACCUSED: No.
43 THE COURT: -- Mr. Fox? Okay.
44 Anything else, Mr. Johnson?
45 CNSL C. JOHNSON: No, thank you.
46 THE COURT: Okay. We're going to return at 9:30 on
47 Friday. The expectation is that you'll testify on

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1 that date, but you may change your mind before
2 then, so I'll leave that up to you.
3 And then the expectation will be, whether you
4 testify or not, both of you will be prepared to
5 argue -- make final argument in the case on
6 Friday, unless, for some reason, we run out of
7 time, but hopefully we won't --

8 THE ACCUSED: Okay.

9 THE COURT: -- okay?

10 CNSL C. JOHNSON: Yes. And Your Honour, I do have a
11 copy of that other decision on my phone and so, I
12 can send it to you --

13 THE COURT: Just -- if you can --

14 CNSL C. JOHNSON: -- within moments.

15 THE COURT: -- just forward it to me, then I can print
16 it off before I leave today.

17 CNSL C. JOHNSON: Thank you.

18 THE COURT: Okay. Thank you.

19 A SHERIFF: Order in --

20 THE COURT: Thank you, Madam Registrar.

21 A SHERIFF: -- order in court.

22

23 (PROCEEDINGS ADJOURNED TO FEBRUARY 25, 2022,
24 AT 9:30 A.M.)
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28 Transcriber: P. Moore
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I hereby certify the foregoing to
be a true and accurate transcript
of the evidence recorded on a sound
recording apparatus, transcribed to
the best of my skill and ability.

A handwritten signature in blue ink, appearing to read "P. Moore". The signature is fluid and cursive, with a large initial "P" and a stylized "M" followed by "ore".

P. Moore
Court Transcriber