

**244069-10-BC
Vancouver Registry**

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

**Vancouver, B.C.
February 27, 2023**

REX

v.

PATRICK HENRY FOX

PROCEEDINGS AT TRIAL

BAN ON PUBLICATION 486.5(1) CCC

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Crown Counsel:

**R. Elias
T. Laker**

Appearing on his own behalf:

P. Fox

INDEX

WITNESS FOR THE CROWN

AMBER MCELROY	4
EXAMINATION IN CHIEF ON VOIR DIRE #4 BY CNSL R. ELIAS, Continuing:	4
CROSS-EXAMINATION ON VOIR DIRE #4 BY THE ACCUSED:	11
SUBMISSIONS ON VOIR DIRE #4 FOR CROWN BY CNSL R. ELIAS:	13

WITNESS FOR THE CROWN

AMBER MCELROY	16
EXAMINATION IN CHIEF BY CNSL R. ELIAS:	16
CROSS-EXAMINATION BY THE ACCUSED:	25
ROBIN SHOOK	46
EXAMINATION IN CHIEF ON VOIR DIRE #5 BY CNSL T. LAKER:	48
EXAMINATION IN CHIEF BY CNSL T. LAKER:	53
CROSS-EXAMINATION BY THE ACCUSED, PATRICK FOX:	69
RE-EXAMINATION BY CNSL T. LAKER:	91

EXHIBITS

EXHIBIT 9: Form 5.2 Report to a Justice	18
EXHIBIT 10: Search Warrant	20
EXHIBIT 11: Form 5.2 Report to a Justice	22
EXHIBIT 12: Copies of proxy logs and emails - seven pages	45
EXHIBIT 13: Curriculum Vitae of Sergeant Robin Shook - 16 pages (was A on Voir Dire #5)	53
EXHIBIT 14: Copy of document titled Vancouver Police Department Digital Forensics Unit Mobile Device Examination Results Sheet for 2022-66177, prepared by Sergeant Robin Shook- 10 pages	55

EXHIBITS ON VOIR DIRE #4

EXHIBIT D (on voir dire #4): Police Interview of Accused8

EXHIBITS ON VOIR DIRE #5

EXHIBIT A (on voir dire #5): Curriculum Vitae of Sergeant Robin Shook - 16
pages47

RULINGS

[RULING ON VOIR DIRE NUMBER FOUR]15
Ruling on Voir Dire #5 - Sergeant Robin Shook qualified as expert52
**Ruling re Voir Dire #2 - a statement by Mr. Fox in another matter may be
held for cross-examination of him, if he testifies96**

Proceedings**BAN ON PUBLICATION 486.5(1) CCC**

1
2 Vancouver, B.C.
3 February 27, 2023
4
5 CNSL R. ELIAS: Your Honour, if I could call the Fox
6 matter. It's a matter before you today for
7 continuation of trial. It's Ryan Elias, E-l-i-a-
8 s, first initial R, is he and him pronouns please,
9 for the Provincial Crown. And I am here with my
10 colleague, Ms. Laker. We are in the fourth voir
11 dire as I recall. Oh, and Mr. Fox is here in
12 person, of course.
13 THE COURT: Yes, good morning, Mr. Fox.
14 CNSL R. ELIAS: We are currently in the fourth voir
15 dire on this file with respect to the
16 voluntariness of a statement Mr. Fox gave with
17 Sergeant McElroy. And Sergeant McElroy is just
18 outside. Before I call her in I thought it might
19 be a good idea to just -- and Madam Clerk prompted
20 this -- prompted this as well just to review the
21 status of the various voir dire to make sure that
22 we're all on the same page.
23 THE COURT: Yes.
24 CNSL R. ELIAS: So as I said, to my recollection and to
25 my notes, this is the fourth voir dire. Voir dire
26 number one was with Ms. Seath with some reported
27 remarks that you found to be involuntary. And, in
28 my submission, nothing turns on that and we are
29 not seeking anything further with respect to that
30 voir dire. Voir dire number two was the
31 voluntariness of the statement with Constable
32 Dent. You have ruled that it was voluntary, but
33 your ruling as to its any further use that could
34 be put to it is still pending I believe.
35 THE COURT: I have a note that the Crown was going to
36 complete argument on that.
37 CNSL R. ELIAS: Yes, and I've done -- I've done a
38 little bit of research, so I am prepared to speak
39 to that further.
40 THE COURT: And I thought the Crown's position was that
41 Crown was only seeking to rely on it for cross-
42 examination purposes.
43 CNSL R. ELIAS: That is correct. So it may be moot in
44 any event. But, of course, Mr. Fox needs to know
45 whether we are permitted to do so before he
46 decides whether he wants to testify or not.
47 THE COURT: No, of course. If you had some further
argument and I don't think I've heard from Mr. Fox

Proceedings**BAN ON PUBLICATION 486.5(1) CCC**

1 on it at all either.
2 CNSL R. ELIAS: No.
3 THE COURT: So if the Crown has any further argument
4 and then Mr. Fox and then I'll --
5 CNSL R. ELIAS: Well, I can tell you -- tell you what I
6 have -- what I have discovered in my little bit of
7 research. From what I --
8 THE COURT: Maybe we'll take -- take a step away from
9 that --
10 CNSL R. ELIAS: Yes.
11 THE COURT: -- and tell me and then we'll go back to
12 that.
13 CNSL R. ELIAS: Okay. There was voir dire -- oh, and I
14 should say, Your Honour, regardless of -- of what
15 happens with the remaining argument for voir dire
16 number two Crown will be seeking to have the
17 admissible evidence admitted at trial. So
18 primarily I think Constable Dent provided a file
19 number that the Crown is seeking -- for his
20 investigation that the Crown is seeking to have be
21 entered as evidence in the trial proper.
22 Voir dire number three was with Catherine
23 Meiklejohn with respect to the authenticity of her
24 screen shots. You ruled that they were authentic.
25 And again, I don't know if we canvassed that Crown
26 would be seeking to have the evidence from that
27 voir dire entered at the trial proper. So there
28 was some evidence about when she looked at them.
29 Sergeant McElroy testified about her certain
30 involvement in that process. So all that, to
31 avoid the need for repetition, we are seeking to
32 have that entered at the trial proper as well.
33 THE COURT: And so are you -- are you asking to do that
34 now, or just providing the facts, something that
35 you need to --
36 CNSL R. ELIAS: If we could do that now, given that
37 that voir is complete. I don't think there's
38 anything more to say about that. So, I'll let Mr.
39 Fox make any comments he'd like to make.
40 THE ACCUSED: Sorry, I'm a little unclear. Perhaps you
41 could refresh my memory. What -- what that is
42 exactly that we are referring to with respect to
43 Ms. Meiklejohn?
44 CNSL R. ELIAS: Yes. So it was Catherine Meiklejohn
45 testified about -- oh she didn't testify on the
46 voir dire, but Sergeant McElroy testified about
47 assigning Catherine Meiklejohn to -- to look at

Proceedings**BAN ON PUBLICATION 486.5(1) CCC**

1 the website and then that she was in the office
2 and observed what appeared to be the website that
3 Catherine Meiklejohn looked at and then received
4 some screenshots. Submitted them, or attached
5 them to the file and eventually sent them to the
6 Crown. So that -- that evidence.

7 THE ACCUSED: I don't believe that I would have any
8 objection, or opposition to the evidence that Ms.
9 Meiklejohn forwarded -- reported that Ms.
10 Meiklejohn accessed. The issue that I have is
11 whether what she was accessing was actually on the
12 internet. I don't dispute that, you know, web
13 browser on her local machine. She brought up some
14 pages that appeared to her to be the website, or
15 related to the website.

16 THE COURT: Okay. So based on that I can make a ruling
17 with respect to the authenticity of what Ms.
18 Meiklejohn said she accessed. That is what the
19 Crown is seeking from Ms. Meiklejohn, or --

20 CNSL R. ELIAS: Yes, and the remaining --

21 THE COURT: -- Sergeant McElroy?

22 CNSL R. ELIAS: And the balance of the evidence
23 admitted to the trial proper for that voir dire.
24 So Sergeant McElroy's brief testimony for that
25 voir dire.

26 THE COURT: Okay. So, both Sergeant McElroy's and Ms.
27 Meiklejohn's evidence with respect to that will be
28 evidence on the trial proper.

29 CNSL R. ELIAS: Thank you, Your Honour. And then, of
30 course, I'll have a similar application with
31 respect to voir dire number four once we're done.
32 But we'll cross that bridge when we come to it, I
33 think.

34 THE COURT: So, before resuming -- so that means you
35 haven't finished your examination in chief of
36 Sergeant McElroy?

37 CNSL R. ELIAS: Correct.

38 THE COURT: Okay, and then Mr. Fox will have an
39 opportunity to cross-examine Sergeant McElroy if
40 he wishes.

41 CNSL R. ELIAS: Yes.

42 THE COURT: And then there was the expert witness,
43 Sergeant Shook to come in the Crown's case. Do
44 you want to address voir dire number two now and
45 complete that, or do you want to wait?

46 CNSL T. LAKER: My temptation as Sergeant McElroy is
47 already here would be just to conclude her

Proceedings**BAN ON PUBLICATION 486.5(1) CCC**

1 evidence and then make arguments with regards to
2 voir dire number two. I think that -- just to be
3 aware of --
4 THE COURT: All right, that's fine. That means in
5 between Sergeant McElroy and Sergeant Shook we'll
6 complete that?
7 CNSL T. LAKER: Yes.
8 THE COURT: Okay.
9 CNSL T. LAKER: Thank you. And I'll just step out and
10 have Sergeant McElroy --
11 THE COURT: Okay, thank you.
12 CNSL R. ELIAS: And, Madam Clerk, if I could have
13 the -- the disc that we were playing. It's -- I
14 can't remember which exhibit on the voir dire it
15 is, but.
16 THE CLERK: C voir dire 4, I believe.
17 CNSL R. ELIAS: That sounds right. So and A and B were
18 the two transcripts.
19 THE CLERK: A and B. A and B, two transcripts, Your
20 Honour.
21 THE COURT: Thank you.
22 THE CLERK: And, Your Honour, would you like the
23 witness to be re-affirmed?
24 THE COURT: Yes, please.

AMBER MCELROY

26 a witness called for the
27 Crown, recalled,
28 reaffirmed.
29
30

31 THE CLERK: Please state your full name and your rank
32 and spell your surname for the record.
33 THE WITNESS: Sergeant Amber McElroy. Surname is M-c-
34 E-l-r-o-y.
35 THE CLERK: Thank you, and your badge number, please?
36 THE WITNESS: Two-three-four-three.
37 THE CLERK: Thank you.
38 THE COURT: Thank you, Sergeant McElroy. You can have
39 a seat or remain standing as you prefer.
40 THE WITNESS: Thank you, Your Honour.

**EXAMINATION IN CHIEF ON VOIR DIRE #4 BY CNSL R. ELIAS,
CONTINUING:**

41
42
43
44
45 Q Sergeant McElroy, thank you from me as well for
46 being here. I am -- as I am sure you recall we
47 were in the middle of reviewing Mr. Fox's

VOIR DIRE**Amber McElroy (for Crown)****in chief on voir dire #4 by Cnsl R. Elias****BAN ON PUBLICATION 486.5(1) CCC**

1 statement with you. So I'm just going to cue us
2 back up to where we were.

3 A Thank you.

4 Q And if Sergeant McElroy could be given a copy of
5 the -- the statement transcript.

6 THE CLERK: Is that Exhibit A, or B, please?

7 CNSL R. ELIAS: B, the thicker one.

8 THE CLERK: Thank you, Exhibit B on voir dire four.

9 THE COURT: Let me get that, thank you.

10 CNSL R. ELIAS: And we are on page 41 of that
11 transcript, I believe.

12 THE COURT: Yes. I have a note at line 26 is where we
13 follow.

14 CNSL R. ELIAS:

15 Q Yes, so I'm going to back a few back a few --
16 about 15 seconds.

17
18 (AUDIO/VIDEO BEING PLAYED)
19 (AUDIO/VIDEO STOPPED)

20
21 So I'm just going to pause and make sure that we
22 all have --

23 CNSL T. LAKER: We are just about to get to line 4 I
24 believe just at the top of the page.

25 THE COURT: Oh, thank you. I was looking for -- okay.

26 CNSL R. ELIAS: Thank you. So I'll resume then from
27 here.

28 THE COURT: Okay.

29
30 (AUDIO/VIDEO BEING PLAYED)
31 (AUDIO/VIDEO STOPPED)

32
33 CNSL R. ELIAS: So, Your Honour, there's about a nine
34 minute pause here. I want to canvass with Mr. Fox
35 as to whether there's any -- any -- anything he'd
36 like to just see in the intervening video, or
37 hear.

38 THE COURT: Have you watched it and can say that
39 nothing happens in that part?

40 CNSL R. ELIAS: I have, Your Honour.

41 THE COURT: Okay. All right, then let's fast forward
42 through it, please.

43 CNSL R. ELIAS: I'm going to restart.

44
45 (AUDIO/VIDEO BEING PLAYED)
46 (AUDIO/VIDEO STOPPED)
47

VOIR DIRE**Amber McElroy (for Crown)****in chief on voir dire #4 by Cnsl R. Elias****BAN ON PUBLICATION 486.5(1) CCC**

1 So again, Your Honour, there's a six minute pause.
2 From the Crown's perspective nothing happens
3 through that pause.

4 THE ACCUSED: I agree.

5 THE COURT: Okay.

6 CNSL R. ELIAS: Thank you.

7 THE COURT: So you can fast forward then until there's
8 interaction between Sergeant McElroy and Mr. Fox.

9 CNSL R. ELIAS:

10 Q And restarting.

11

12 (AUDIO/VIDEO BEING PLAYED)

13 (AUDIO/VIDEO STOPPED)

14

15 So, Sergeant McElroy, having listened to that
16 statement, you were following along with the
17 transcript. And was the transcript overall
18 accurate?

19 A It was.

20 Q Were there any gaps, or errors that you noted that
21 you -- like a substantial gap that you wanted to
22 fill in?

23 A No.

24 Q And did I understand correctly, that interview was
25 from about 12:50 to 2:31 we just heard?

26 A Yes.

27 Q Throughout your time with Fox did you make any
28 promises to him that -- for some things for
29 benefit?

30 A No.

31 Q Did you make any threats?

32 A No.

33 Q Did you ever touch him?

34 A Perhaps leading him by the arm, if anything, but
35 other than that, no.

36 Q Overall from your perspective was Fox -- did Mr.
37 Fox appear to be listening to you as you spoke to
38 him?

39 A Yes.

40 Q Did he appear to understand what you were saying?

41 A Yes.

42 Q Did you find him to be confused?

43 A No.

44 Q And did you observe anything that you would call a
45 sign of intoxication?

46 A No.

47 Q Did you perceive him to be fearful?

VOIR DIRE

Amber McElroy (for Crown)

in chief on voir dire #4 by Cnsl R. Elias

BAN ON PUBLICATION 486.5(1) CCC

1 A No.
2 Q Did you observe any injuries on him?
3 A I did not.
4 Q Do you recall any complaints of any injuries?
5 A No.
6 Q So, at the end of the interview that we just saw
7 here, what further interaction did you have with
8 Mr. Fox?
9 A Actually we were just -- I can't honestly recall
10 whether I assisted in leading him across the
11 street to the jail, or whether my partner did
12 that. But he would have -- we would have finished
13 up the interview and then one of us, if not both
14 of us took him across to the jail. I don't
15 believe I was part of that transport.
16 Q So, actually, Your Honour, there is one more audio
17 file on the CD recording the transport. Mr. Fox
18 was transported from an inter -- interview room to
19 jail. I have a transcript of that that I am going
20 to provide to Mr. Fox. I'm in your hands as to
21 whether we should play it, or whether the
22 transcript of that interaction will be sufficient.
23 Perhaps I'll ask Sergeant McElroy to review it and
24 see if this accords with her memory and canvass
25 with Mr. Fox whether he wants to hear the
26 recording, or whether he is content.
27 THE COURT: Well, the recording is the evidence and the
28 transcript is usually just the aide to hear the
29 evidence. So if you think it is relevant I think
30 you would -- I'd expect you would want to play it.
31 CNSL R. ELIAS: Yeah, Your Honour. My submission isn't
32 that it's relevant. It's just on the disc so I
33 want -- so I do want to provide the -- the
34 transcript --
35 THE COURT: Oh, I see.
36 CNSL R. ELIAS: -- so that if you do want to review it
37 you have that aide.
38 THE COURT: I mean, without seeing it I don't know if I
39 want to review it. I just -- I'd be relying on
40 Crown to tell me they either think it's -- it's
41 part of what they want to present to establish
42 voluntariness, or not.
43 CNSL R. ELIAS: Your -- in my submission, it's not
44 relevant to voluntariness. There's nothing --
45 there's nothing there. There is some further
46 discussion about this access to IT issue. Nothing
47 the Crown would intend to rely on, but there's

VOIR DIRE**Amber McElroy (for Crown)****in chief on voir dire #4 by Cnsl R. Elias****BAN ON PUBLICATION 486.5(1) CCC**

1 a -- I turn to Mr. Fox if there's anything in
2 that.
3 THE COURT: Well, how long is it? It doesn't look very
4 lengthy.
5 CNSL R. ELIAS: It's four pages of transcript. I think
6 there's some long pauses, but we could probably
7 get through it quite quickly. I don't know. I
8 anticipate.
9 THE COURT: All right. I don't know what is on it, but
10 in the interest of completeness I think and
11 perhaps it might assist Mr. Fox, or he might have
12 some questions about it, let's just play it. Do
13 you agree, Mr. Fox?
14 THE ACCUSED: Yes, I take no position either way on it.
15 THE COURT: Okay.
16 CNSL R. ELIAS: All right, so I'll hand up a copy of
17 this transcript and I will pass one to Sergeant
18 McElroy.
19 A Thank you.
20 THE COURT: Okay. So this transcript will be Exhibit D
21 on voir dire number four.
22 THE CLERK: On voir dire four.

23
24 **EXHIBIT D (on voir dire #4): Police**
25 **Interview of Accused.**
26

27 CNSL R. ELIAS: Thank you, Your Honour. It appears
28 that it's one -- one audio file covering both the
29 interview and the transport to jail. So I'm just
30 going to need a moment to find the end of the
31 interview.
32 THE COURT: Yes, okay. Would you like me to stand
33 down, or are you able to just look for it while --
34 CNSL R. ELIAS: If you don't mind me fumbling around a
35 lit bit, I think I can find it quite quickly.
36 THE COURT: Okay.
37 CNSL R. ELIAS: Thank you.
38 THE COURT: It looks as though the time needs to be
39 adjusted though.
40
41 (AUDIO BEING PLAYED)
42 (AUDIO STOPPED)
43
44 CNSL R. ELIAS: I apologize, Your Honour, I didn't
45 notice it was one file or I would have found
46 the -- the timing point beforehand.
47 THE COURT: No, that's fine, but I think you want to

VOIR DIRE

Amber McElroy (for Crown)

in chief on voir dire #4 by Cnsl R. Elias

BAN ON PUBLICATION 486.5(1) CCC

1 have a look at the time in the sense that we just
2 finished an interview that I am viewing at 2:31
3 p.m. on the 16th.

4 CNSL R. ELIAS: Yes.

5 THE COURT: And, you know, devices can -- daylight
6 savings time. So in terms of your searching if
7 I'm not being clear, so the transcript begins at
8 1:38 p.m. So in other words, that is impossible
9 if the other one ended at 2:31 p.m. The transport
10 came after the interview?

11 CNSL R. ELIAS: Oh, yes.

12 THE COURT: So in terms of searching --

13 CNSL R. ELIAS: Well, Your Honour, I think I've found
14 where we are. We are at line 16 now. So nothing
15 I think has been said between -- well, just some
16 of those noises we heard. So if Mr. Fox is
17 content to start with line 16 there.

18 THE ACCUSED: Sure, yes.

19 CNSL R. ELIAS:

20 Q Thank you.

21

22 (AUDIO BEING PLAYED)

23 (AUDIO STOPPED)

24

25 So, Sergeant McElroy, was the transcript
26 substantially accurate?

27 A Yes, and I apologize to the court obviously. I
28 was present and I do recall that now.

29 Q No worries. I was going to say having -- having
30 listened to that do you recall now the -- the last
31 of your interactions with Mr. Fox?

32 A Yes, I do.

33 Q Can you maybe just summarize -- summarize what
34 those were?

35 A So we were on the third floor of the annex. We
36 took the elevator downstairs. We went out the
37 front door. We took a cross-walk across East
38 Cordova to the jail. They are buzzed into the
39 jail. Once there, there is a place for search
40 where I wanted him for anything that we may have
41 missed on our previous search. And then the male
42 holding cell pre-hold was full so they suggested I
43 put him in the female pre-hold. I put him in that
44 area for processing at the jail and I shut the
45 door.

46 Q After that did you have any further in-person
47 contact with Mr. Fox before trial?

VOIR DIRE

Amber McElroy (for Crown)

in chief on voir dire #4 by Cnsl R. Elias

BAN ON PUBLICATION 486.5(1) CCC

- 1 A No, I did not.
- 2 Q Overall in your interview were you candid with Mr.
- 3 Fox about your level of knowledge about the file?
- 4 A I was.
- 5 Q Were you honest about -- about your -- or,
- 6 attempting to be honest when you summarized the
- 7 state of the evidence at that point?
- 8 A I was.
- 9 Q And then there was this episode during the
- 10 statement where you -- you told Mr. Fox that you
- 11 went to check the website. Could you explain to
- 12 Her Honour what you did when you were out of
- 13 the -- out of the room?
- 14 A Sure. So Mr. Fox was in our interview room and
- 15 next door to that was a monitor room where
- 16 Detective Jenew [phonetic] was sitting. We have a
- 17 computer set up there with two monitors. One has
- 18 access to our VPD like internal computer system
- 19 and potential internet access through that. And
- 20 the second is just a monitor that shows my
- 21 interaction with Mr. Fox in that room, so that he
- 22 is monitored for safety at all times. And I had
- 23 previously signed on that commuter -- computer
- 24 with my permissions and I had set it up. So I had
- 25 the same permissions that I would have at this
- 26 computer that I would at my main office at
- 27 Graveley Street.
- 28 Q And did you try to access the website?
- 29 A I did. I went into our internet access point and
- 30 I typed in the website address a couple of times
- 31 and I received an error message which I should
- 32 have taken a screenshot of, but I didn't,
- 33 basically telling me that this website was blocked
- 34 and I wasn't able to access it.
- 35 Q Now, in the course of preparing for this interview
- 36 had you planned to attempt to access the website?
- 37 A No, prior to this in my office at Graveley we sit
- 38 right beside the analyst and we have two different
- 39 levels of permissions to the internet within the
- 40 department. Someone like analyst Meiklejohn has
- 41 full access the same that you would at your home.
- 42 Q Sorry.
- 43 A Oh, sorry.
- 44 Q Just for the purpose of the voluntariness voir
- 45 dire did you plan to try to access for the website
- 46 during your interview with Mr. Fox?
- 47 A No, I didn't. So I didn't bring a laptop or any

VOIR DIRE

Amber McElroy (for Crown)

in chief on voir dire #4 by Cnsl R. Elias

BAN ON PUBLICATION 486.5(1) CCC

1 screenshots. It wasn't something that I was
2 planning to do. I tried to facilitate it in a
3 moment, but it wasn't in my plan.
4 Q And when you described the steps you took to Mr.
5 Fox afterwards were you being honest at that point
6 about what had happened outside the room?
7 A Yes, I thought it was a fair request and I was
8 happy to try attempt to honour it, but I wasn't
9 able to do that.
10 Q Okay, just one moment. Your Honour, those are all
11 my questions for Sergeant McElroy for the purposes
12 of the voluntariness voir dire. I'll have some
13 more questions for her in trial proper though.
14 THE COURT: Okay, thank you. Any questions on the
15 voluntariness voir dire for Sergeant McElroy, Mr.
16 Fox?
17 THE ACCUSED: I have no questions specifically related
18 to the voluntariness, but I do one question
19 related to a question that the Crown had just
20 asked.
21 THE COURT: Okay. You'll have an opportunity to -- to
22 cross-examine Sergeant McElroy after, but since
23 the question is present in your mind now, why
24 don't you ask it and --
25 THE ACCUSED: Sure.

CROSS-EXAMINATION ON VOIR DIRE #4 BY THE ACCUSED:

28
29 Q When you attempted to access the website from the
30 computer in the other room, you said that an error
31 message had come up?
32 A Yeah, not -- I guess I misspoke. Not an error
33 message. Just the message saying you can't access
34 this site.
35 Q Right, but my question for you would be what is
36 that -- the page where the message that came up,
37 and I'm assuming it was fully paged within the
38 browser, correct? It was -- it appeared as a page
39 within the web browser, I assume, right? Like it
40 wasn't a separate dialogue box that popped up
41 outside of the web browser?
42 A It was separate to the internet. It was an
43 internal message. It seemed like it was -- it
44 wasn't on that website because I couldn't get to
45 the website at all. It just wouldn't let me
46 access it.
47 A Well, but you said it was an internal message. Do

VOIR DIRE

Amber McElroy (for Crown)

cross-exam on voir dire #4 by the Accused

BAN ON PUBLICATION 486.5(1) CCC

- 1 you know it was an internal message, or are you
2 guessing it was an internal message?
- 3 A I am guess -- I am guessing it was my limitations
4 in my website access.
- 5 Q Okay, but you --
- 6 A So I'm guessing that it would be an internal
7 message through there.
- 8 Q But you don't actually know if that error message,
9 or that page, or whatever it was, if that was
10 returned by the web server, or if it was returned
11 by something internal to VPD's network?
- 12 A I know that when I returned to the office I had
13 the analyst run the website again from her
14 computer and it didn't come up with that message.
15 So if that's what your --
- 16 Q Well, no I'm just -- I'm trying to clarify whether
17 or not you know that the error message that you
18 received came from the web server that the website
19 was supposedly -- was it on -- coming off the
20 internet, or if it came from something within
21 VPD's network? Like was it the VPD's network that
22 gave you that error message, or was it the actual
23 web server?
- 24 A My impression, and I apologize again for not
25 noting down the exact information, my impression
26 at the time was that it was my department limiting
27 my access to the internet. It was an internal
28 message was my impression at the time. And since
29 requesting proxy logs that has been confirmed that
30 that was my limited access to the website that
31 stopped my access to that website.
- 32 Q Okay. So you said multiple times there "my
33 impression". So can I assume then that what you
34 mean to say is that you don't actually know
35 whether you were blocked by the web server itself,
36 or by something internal to VPD's network by that
37 message. You don't know where it actually came
38 from?
- 39 A So my belief at the time was that it came from my
40 internal department and that belief has since been
41 proven correct after speaking with IT.
- 42 Q Okay. That was your belief, but do you know
43 beyond all doubt where that message came from?
- 44 A I do now after speaking with IT, yes.
- 45 Q And so you know that that message definitely came
46 from the internal network?
- 47 A Yes.

VOIR DIRE

Amber McElroy (for Crown)

cross-exam on voir dire #4 by the Accused

BAN ON PUBLICATION 486.5(1) CCC

1 Q Okay. I'm going to ask more about this later when
2 I cross-examine.
3 THE COURT: Okay.
4 THE ACCUSED: Thank you.
5 THE COURT: All right. Do you have any re-examination
6 for Sergeant McElroy on the subject of the voir
7 dire, Mr. Elias?
8 CNSL R. ELIAS: No, Your Honour. No, nothing for re-
9 examination.
10 THE COURT: Okay. So then at this point, Sergeant
11 McElroy, I think I'll ask you to step outside for
12 the argument of the voluntariness.
13 THE WITNESS: Sure.
14 THE COURT: And they want to call you in again, I
15 understand.
16 CNSL R. ELIAS: Yes, that's right.

17
18 (WITNESS STOOD DOWN)
19

20 CNSL R. ELIAS: And at this point, Your Honour, I'll
21 also take a moment to make sure that we have all
22 the exhibits back with Madam Clerk.
23 THE COURT: Yes.
24 THE CLERK: Thank you.
25 CNSL R. ELIAS: So I'm handing her the disc and I see
26 that she took the transcripts from the witness
27 stand there.
28 THE CLERK: [indiscernible] the last exhibit.
29 THE COURT: Yes. So how does Crown want to proceed
30 now. Do you want to argue voir dire number four,
31 complete your argument on voir dire number two?
32 CNSL R. ELIAS: Your Honour, let's, subject to my
33 colleague's comments, let's complete voir dire
34 number four which I think is relatively
35 straightforward and then we can finish with
36 Sergeant McElroy's evidence and then deal with
37 voir dire number two once she's --
38 THE COURT: Okay.
39 CNSL R. ELIAS: -- off the hook, as it were.

40
41 **SUBMISSIONS ON VOIR DIRE #4 FOR CROWN BY CNSL R. ELIAS:**
42

43 CNSL R. ELIAS: With respect to voir dire number four
44 and the voluntariness of the statement that Mr.
45 Fox gave to Sergeant McElroy, the Crown's
46 submission is that it's -- it's clearly voluntary.
47 It's a statement in which Mr. Fox is an active, I

BAN ON PUBLICATION 486.5(1) CCC

1 would say clearly informed and competent
2 participant. He engages in fairly extensive
3 discussion with Sergeant McElroy. He disagrees
4 with her frequently and gives his alternative
5 theories about -- about the -- about what -- what
6 she says has happened and the propositions she
7 puts to him. There is nothing in his -- his
8 demeanour, or in the content of his evidence that
9 suggests that he was incompetent in any way, or
10 even intoxicated. He is clearly of an operating
11 mind and taking full active, often quite combative
12 part in the -- in the interview. You heard from
13 Sergeant McElroy and Sergeant Kim that there were
14 no threats, no inducements, no promises of benefit
15 and in my submission that reflected in the
16 transcripts and audio that you have reviewed.
17 Nothing of that sort took place, nor was this an
18 atmosphere of oppression.

19 Leaving aside the issue of sugar in the
20 coffee with which Mr. Fox didn't appreciate
21 there's nothing -- nothing arising to -- arising
22 to the level of oppression, or any sort of conduct
23 that would -- would come close to overbearing his
24 will. It's not as conversational and pleasant as
25 the Dent interview, but it's a, in my submission,
26 standard professional police interview in which
27 Mr. Fox clearly chose to -- chose to answer some
28 questions, chose not to answer other questions.
29 And had every opportunity to participate, or not
30 participate as he chose to from moment to moment
31 throughout the interview. There was no police
32 trickery. Sergeant McElroy has -- has testified
33 that she was doing her best to be honest.
34 Certainly there were no grave misrepresentations
35 of the evidence that might fool Mr. Fox into
36 thinking that he had to speak otherwise he would
37 be in legal jeopardy, or anything of that matter.
38 So I've gone quite quickly, Your Honour, but in my
39 submission it is clearly voluntary and there's no
40 reason for you to be concerned that Mr. Fox wasn't
41 a voluntary participant in the statement. And
42 I'll note for you that the Crown will be seeking
43 leave to hold this statement for cross-
44 examination. We are not seeking to lead it as
45 part of our Crown case. So subject to any
46 questions, that is the Crown's submissions on
47 voluntariness.

VOIR DIRE

Submissions on voir dire #4 for Crown by Cnsl R. Elias

BAN ON PUBLICATION 486.5(1) CCC

1 THE COURT: Remind me. Mr. Fox was given his right to
2 counsel but did not choose to speak to counsel
3 before speaking to police?

4 CNSL R. ELIAS: That's right, Your Honour. Constable
5 Kim testified to that and I believe reviewed an
6 arrest script.

7 THE COURT: Okay. Mr. Fox, with respect to the
8 voluntariness of your interview with Sergeant
9 McElroy, do you have any submissions.

10 THE ACCUSED: No, I have no submissions with respect to
11 voluntariness and I have no concerns about the
12 voluntariness. I agree that it was entirely
13 voluntary.

14 THE COURT: All right, thank you.

15
16 [RULING ON VOIR DIRE NUMBER FOUR]

17
18 CNSL R. ELIAS: Thank you, Your Honour, and Crown would
19 seek to have viva voce evidence of Sergeant
20 McElroy entered into the trial proper. Just some
21 of the narrative and -- and whatnot.

22 THE COURT: So that is a little unusual in that if
23 Crown were making it part of their case that would
24 be a normal thing to do. But since you're holding
25 it I think you as a procedural manner -- well,
26 I'll hear from you if you think differently, but I
27 think you are going to need to take her back to
28 those parts of her testimony that you want to have
29 as part of the trial proper.

30 CNSL R. ELIAS: Fair enough, Your Honour, if that keeps
31 it simpler rather than --

32 THE COURT: I think it keeps it clearer.

33 CNSL R. ELIAS: Yes.

34 THE COURT: And it's -- unfortunately, it's a bit
35 repetitive, but in the circumstances you are not
36 seeking that evidence to be part of your case
37 against Mr. Fox. So, the other alternative is for
38 you to parse out every single piece of evidence
39 that you want Sergeant McElroy to testify to and
40 then ask Mr. Fox if he agrees. And he may do
41 that, but that will take some time as well. And
42 so --

43 CNSL R. ELIAS: Agreed, Your Honour, and there's not
44 all that much from the transcripts, or from the
45 voir dire.

46 THE COURT: Okay.

47 CNSL R. ELIAS: So, I'll -- I'll need her back here for

Proceedings**BAN ON PUBLICATION 486.5(1) CCC**

1 any key points that I want in the trial proper.
2 THE COURT: Okay, and then before we call her back --
3 you want to call her back right away before
4 addressing voir dire number two, just to complete
5 her evidence?
6 CNSL R. ELIAS: Yes, I think so.
7 THE COURT: Okay.
8 THE CLERK: Excuse me, Your Honour, the evidence from
9 voir dire four is not being marked, or entered
10 on --
11 THE COURT: No, it's not because of the purpose for
12 which Crown is seeking to -- to lead it. Thank
13 you.
14 THE CLERK: Thank you very much.
15 THE COURT: But we are out of voir dire number four now
16 and I have made the ruling and we are going back
17 into the trial proper with Sergeant McElroy.
18 THE CLERK: Thank you very much.
19 THE COURT: Sergeant, you are still under affirmation
20 and we are back in the trial proper now.
21 THE WITNESS: Thank you.

AMBER MCELROY

a witness called for the
Crown, recalled, reminded.

EXAMINATION IN CHIEF BY CNSL R. ELIAS:

22
23
24
25
26
27
28
29 Q Sergeant McElroy, I'm going to have to ask you
30 some questions that are a little bit repetitive to
31 those you've already answered, so apologies for
32 that.
33 A Sure.
34 Q Can I just confirm you're an officer of the
35 Vancouver Police Department?
36 A I am.
37 Q And how long have you been so?
38 A Just over 18 years.
39 Q And what is your current assignment?
40 A I'm a sergeant at the Vancouver Jail.
41 Q And prior to that do I understand that you worked
42 for the domestic violence and criminal harassment
43 unit?
44 A I did.
45 Q For about how long?
46 A Approximately two years.
47 Q And on May 16th, 2022 then what was your duty?

Amber McElroy (for Crown)
in chief by Cnsl R. Elias
BAN ON PUBLICATION 486.5(1) CCC

- 1 What were your duties on that day?
- 2 A I was a detective constable and I guess
- 3 investigator for Mr. Fox's file.
- 4 Q So you became involved in an investigation with
- 5 Mr. Fox?
- 6 A Yes. It was in the domestic violence criminal and
- 7 harassment unit.
- 8 Q Thank you. Do you have the file number for that
- 9 investigation, the police file number:
- 10 A Yes, 2022-66177.
- 11 Q And in the course of that investigation you took a
- 12 statement from Mr. Fox?
- 13 A I did.
- 14 Q Did you seize anything from Mr. Fox at the time of
- 15 his arrest?
- 16 A Yes, I did seize a cellphone, tablet, two SD cards
- 17 and two USBs.
- 18 Q And can you explain to the court what you did with
- 19 those objects?
- 20 A Sure. Incidental to arrest I put Mr. Fox's
- 21 cellular phone in a Faraday tin and placed it in
- 22 the back of our unmarked police vehicle and Mr.
- 23 Fox's tablet was too large for a Faraday tin and
- 24 so that remained in his laptop soft case along
- 25 with the two SD cards and the two USBs.
- 26 Subsequent to the statement that we took from Mr.
- 27 Fox I then reattended back to our police station
- 28 at 3585 Graveley Street. The cellular phone in
- 29 the Faraday tin, along with the two SD cards and
- 30 the two USBs were tagged in locker 31 on the fifth
- 31 floor at 3585 Graveley Street which are our
- 32 serious investigative section property lockers.
- 33 And the tablet which was too large to be contained
- 34 within a Faraday tin I took directly to the
- 35 digital forensic unit which is located in our
- 36 Kootenay building. Forgive me, I don't know that
- 37 address right now, but I can get that. And that
- 38 was tagged in locker room one, to be included in
- 39 the Faraday room.
- 40 Q So you said the Kootenay address. Could you just
- 41 give an approximate location of that?
- 42 A It's right beside the Graveley Street address.
- 43 It's -- our department is split between the two
- 44 buildings at Graveley and Boundary.
- 45 Q Graveley and Boundary, thank you, in which city?
- 46 A In Vancouver.
- 47 Q And province?

Amber McElroy (for Crown)
in chief by Cnsl R. Elias
BAN ON PUBLICATION 486.5(1) CCC

1 A BC.
2 Q Thank you. So just to cover off this was at the
3 time of the arrest. You arrested Mr. Fox?
4 A I -- Detective Kim provided the arrest and
5 Charter. I was present during the arrest.
6 Q Right, and then you took them to the -- the two
7 lockers as you described. Did you -- when did you
8 see Mr. Fox's devices next?
9 A Not until July 15th.
10 Q And what -- did you -- did you file a Form 5.2?
11 A The 5.2 yes, on the day of arrest.
12 THE COURT: Sorry you didn't see what until July 15th?
13 I missed that word.
14 CNSL R. ELIAS: Mr. Fox's devices.
15 THE COURT: Okay.
16 CNSL R. ELIAS:
17 Q So I'm just going to hand -- hand you something,
18 Sergeant McElroy, and you can let me know if you
19 recognize it?
20 A Thank you. I do recognize it. It's the initial
21 5.2 that I completed on the day of arrest for the
22 devices that were seized off of Mr. Fox.
23 Q And whose handwriting is that on the form?
24 A That's mine.
25 Q Thank you. If this could be entered as an exhibit
26 please, Your Honour.
27 THE COURT: The 5.2 Report to a Justice will be
28 Exhibit -- Madam Clerk, can you just see where are
29 we?
30 THE CLERK: Nine, Your Honour.
31 THE COURT: Exhibit 9 on the trial.

EXHIBIT 9: Form 5.2 Report to a Justice

32
33
34
35 CNSL R. ELIAS:
36 Q And this -- this exhibit describes all the devices
37 that you seized from Mr. Fox?
38 A It does.
39 Q And it records where it says "disposition", what
40 does that mean on the second page -- or on the
41 second page?
42 A So the SIS lockers for items 4, 5 and 6 and then
43 on the second page, is that where you're?
44 Q I see actually that it's the same -- the same on
45 both. So yes, if you could explain what field,
46 "State location where detained" indicates?
47 A So it is where the devices were supposed to be

Amber McElroy (for Crown)
in chief by Cnsl R. Elias
BAN ON PUBLICATION 486.5(1) CCC

1 stored at the time of seizure. It does say the
2 digital forensics unit, but because I had it in a
3 Faraday tin I had decided that I would keep it in
4 the SIS locker. So even though a smart phone does
5 say "Digital forensic unit" it actually stayed in
6 the SIS lockers at Graveley Street, whereas the
7 [indiscernible] tablet did go to digital forensics
8 unit.

9 Q Which you said is an adjoining, or adjacent
10 building?

11 A It's adjacent building. It's -- yeah.

12 Q And then the next time you saw these devices you
13 said was on July?

14 A Fifteenth.

15 Q Fifteenth.

16 A Two thousand and twenty-two.

17 Q What did you do on that day?

18 A So that is the day that I submitted my search
19 warrant to the judicial justice and it came back
20 approved. And once I had received the approved
21 court papers I removed the tablet, the two SD
22 cards and the two USBs from locker number 31 and
23 transported them across basically the parking lot
24 to the Kootenay building and tagged them in locker
25 number one at the digital forensics unit.

26 Q And were the devices where you left them?

27 A Those -- yes, they were retrieved from --

28 Q On Monday, yes. To your knowledge had anyone else
29 accessed them in the intervening time?

30 A The only device that had been accessed was the
31 tablet the next day after the arrest on May 17th
32 the digital forensics unit would have removed the
33 tablet from locker number one and put it in a
34 Faraday room and where that's where it remained up
35 until July 15th when I brought the rest of the
36 devices over.

37 Q And you say would have, is that the standard
38 practice?

39 A Yes.

40 Q But you weren't there personally for that step?

41 A I wasn't. I had requested that it remain in the
42 Faraday room and there would be no reason for them
43 to remove it from that room.

44 Q Thank you. I'm going to hand another document to
45 you. Just if you could let me know if you
46 recognize this?

47 A Yes, this is the -- the search warrant that I

Amber McElroy (for Crown)
in chief by Cnsl R. Elias
BAN ON PUBLICATION 486.5(1) CCC

1 wrote to get access to the devices.
2 Q So you composed the -- the digital form of this
3 document?
4 A I did.
5 Q And the writing on the back, is that -- did you
6 write that, or is that the -- it says "Judicial
7 Justice"?
8 A That is the judicial justice that wrote that.
9 Q Right, so you said it was approved, that's the
10 approval. And on page two there is a -- some --
11 some items numbered with Roman numerals. Can you
12 just describe what those are?
13 A Yes, this is what I was asking permission from the
14 judicial justice to search Mr. Fox's devices for.
15 Would you like me to --
16 Q No, that's okay. If this warrant could also be
17 entered as an exhibit please, Your Honour.
18 THE CLERK: We are on ten in the trial proper.
19 THE COURT: Okay. Any objection, Mr. Fox?
20 THE ACCUSED: No.
21 THE COURT: Okay. So Exhibit 10.

22
23 **EXHIBIT 10: Search Warrant**
24

25 CNSL R. ELIAS:
26 Q So on July 15th then after you received this
27 warrant you retrieved the devices and you said you
28 gave them to digital forensics?
29 A That is correct.
30 Q Did you have any contact with them after that, or
31 any problem with them after that?
32 A We discussed the -- the large amounts of searching
33 that I was requesting, i.e. the SD cards, the USB
34 and a tablet and the phone. They indicated that
35 their section was quite busy and we decided that
36 we would just narrow down the search to the tablet
37 and the phone.
38 Q Thank you. Did you eventually receive any
39 information from DFU about the phone first?
40 A I did in October. If I can refer to my notes I
41 could see the exact date, but it was in October I
42 received information -- that the information --
43 that the search data would be available to me.
44 Q All right. Did you look at the data?
45 A I did.
46 Q And then did you refer it for any further
47 analysis?

Amber McElroy (for Crown)
in chief by Cnsl R. Elias
BAN ON PUBLICATION 486.5(1) CCC

1 A Yes, so using the scope of the items requested
2 from the judicial justice I went through Mr. Fox's
3 phone on a system called REAP [phonetic] which
4 allows us to view the contents. There were 27
5 items that I flagged for further review from our
6 digital forensics unit. Among these items were --
7 Q I'll ask --
8 A No, okay, sorry.
9 Q No, that's all right. I'll have the digital
10 forensics witness testify to those. But you
11 referred them. Did you receive any information
12 back from your referral at that --
13 A I didn't, no. I think Crown has, but since I
14 moved sections and ceased to be the lead
15 investigator. So I actually had never received
16 the digital forensics report.
17 Q Fair enough. And then with respect to the tablet,
18 do you know if any further analysis was done on
19 the tablet?
20 A At the time of me leaving the digital -- I'm
21 sorry, the domestic violence unit, the search had
22 not been loaded on REAP at that point and I -- I'm
23 not sure where it stands on that process as I am
24 no longer the lead investigator.
25 Q Thank you. In -- in leaving the phone or, rather,
26 in your dealing with the phone did you happen to
27 record a -- any -- any device numbers, or
28 anything like that that would identify it?
29 A I did not.
30 Q Okay. When it was stored with the property office
31 would there have been a file number attached to
32 it, or was there?
33 A Yes. All six of these exhibits have been assigned
34 individual exhibit numbers which have remained
35 with them throughout their transport within our
36 department.
37 Q And is there a file number? Is that the file
38 number for the investigation itself?
39 A Yes. So it's -- it's a basically a number that
40 uses the file number as a basis and then attaches
41 a one, two, three and for all intents and purposes
42 these exhibit numbers are the file number dash
43 one, dash two, dash three, up to six.
44 Q Thank you. So my next -- for my next questions if
45 Detective McElroy could be shown Exhibit 5,
46 please. Those are the May 16th screen captures.
47 THE CLERK: Yes, Your Honour, Exhibit 5 is A and B, the

Amber McElroy (for Crown)
in chief by Cnsl R. Elias
BAN ON PUBLICATION 486.5(1) CCC

1 screen captures [indiscernible] documents.
2 THE COURT: Yes.
3 CNSL R. ELIAS:
4 Q And, Detective McElroy, before I have you look at
5 that, there's one more thing just about the -- the
6 other, or the devices. I'm going to hand you
7 another document?
8 A Thank you.
9 Q And I'll just let Her Honour take a look at that.
10 So can you tell me what this -- this is?
11 A It is the second 5.2 Report to Justice that I
12 wrote in regards to this file to include the data
13 that was captured from both his, Mr. Fox's,
14 cellphone as well as the -- the tablet.
15 Q And this is your handwriting on the -- on this
16 form?
17 A It is.
18 Q Then it was filled out on November 1st, status. I
19 can use that date. You received the data in
20 October?
21 A I was advised the data was available on October
22 24th. I didn't actually access it until November.
23 Q If this could also be entered as an exhibit
24 please, Your Honour.
25 THE COURT: Yes. The -- the Report to a Justice 5.2
26 dated November 1st, 2022 will be, I think we're at
27 11?
28 THE CLERK: Thank you, Your Honour.
29

EXHIBIT 11: Form 5.2 Report to a Justice

30
31
32 CNSL R. ELIAS:
33 Q So then turning, Sergeant McElroy, to Exhibit 5
34 which I think you have in front of you. Do you --
35 could you read through this and tell me if you --
36 if you recognize it?
37 A These are like screen shots that were captured by
38 our analyst from www dot desicapuano dot com.
39 Q And in the course of your investigation did you
40 review the -- these posts, like the substance of
41 them?
42 A I was shown them and yes, I did read through them
43 briefly, but I didn't make any further notes
44 regarding them.
45 Q Just one moment. If I could have you turn to page
46 22 of the -- the package there of Exhibit 5. Are
47 you -- are you familiar with the post that is

Amber McElroy (for Crown)
in chief by Cnsl R. Elias
BAN ON PUBLICATION 486.5(1) CCC

1 captured on this page and the next page 23?
2 A Yes.
3 Q Do you know the -- the incident that it's refer --
4 or, are you familiar with the incident that it's
5 referring to?
6 A Yes, I have a running knowledge in regards to
7 this, but I do know that at the time when the
8 previous investigators were dealing with Mr. Fox's
9 case we also had another file in domestic violence
10 and criminal harassment unit in regards to an
11 accused by the name -- can I?
12 Q I don't need to hear the name of the other
13 accused.
14 A Another -- another accused.
15 Q Yes.
16 A And it was learnt that by mistake some disclosure
17 meant for the other accused's file was sent to Mr.
18 Fox by accident.
19 Q And do you know when that mistake came to light?
20 A I would -- didn't hear of it until after I had
21 left the section. It wasn't until probably just
22 the end of last year.
23 THE COURT: So the end of 2022.
24 A Twenty-two.
25 CNSL R. ELIAS:
26 Q And that's when you heard of it, okay. Just one
27 moment. That's all I have for Exhibit 5 actually.
28 Thank you. In your previous testimony you -- you
29 mentioned that you saw Const -- or Analyst
30 Meiklejohn pull up the website. Can you tell the
31 court where that was physically, where that --
32 where those offices are?
33 A Yes domestic violence criminal harassment unit is
34 located on the 5th floor of 3585 Graveley Street,
35 Vancouver, BC. Specifically Analyst Meiklejohn's
36 computer is just in the cubicle beside where I
37 sit.
38 Q At the Graveley Street --
39 A Yes.
40 Q -- building. Got it. And have you -- have you
41 checked to see if the website is online more
42 recently?
43 A I did check just late last week and it was -- the
44 website is down and the URL name desicapuano dot
45 com is available for purchase.
46 Q Thank you.
47 THE ACCUSED: I'm sorry, can I -- I just want to make

Amber McElroy (for Crown)
in chief by Cnsl R. Elias
BAN ON PUBLICATION 486.5(1) CCC

1 however that correctly. Did you say the domain
2 desicapuano dot com or the domain desireecapuano
3 dot com is available for purchase?
4 A Desicapuano dot com on Go Daddy.
5 THE ACCUSED: Okay.
6 CNSSL R. ELIAS: Your Honour, those are all the Crown's
7 questions for Sergeant McElroy.
8 THE COURT: Okay, thank you. I think we'll take the
9 morning break now. Come back please at 11:20 and
10 that will be cross-examination of Sergeant McElroy
11 by Mr. Fox.
12 CNSSL R. ELIAS: Thank you.
13 THE SHERIFF: Order in court.
14
15 (WITNESS STOOD DOWN)
16
17 (PROCEEDINGS ADJOURNED FOR MORNING RECESS)
18 (PROCEEDINGS RECONVENED)
19
20 CNSSL R. ELIAS: Your Honour, I see we are back on the
21 record. We have Sergeant McElroy just outside for
22 cross-examination by Mr. Fox. I think my
23 colleague is just trying to help him with an IT
24 question, or any questions [indiscernible]?
25 THE ACCUSED: Yes, but actually, I don't think it's
26 really going to be Mr. -- I don't think I'm going
27 to need him, because of what I just mentioned
28 about if whatever they were accessing would have
29 had to have been on the internal network. And so
30 the fact that there are other cache copies of it
31 on the internet are [indiscernible] because that
32 wouldn't -- there's no way that that could have
33 been what they were accessing, otherwise it would
34 be in the logs. But before the witness does come
35 in I do want to mention that based on what the
36 witness has stated so far today I think it's
37 extremely likely that I am going to request, or
38 pursue a subpoena for Mr. Lam about -- to testify
39 about these proxy logs and his emails with, is it
40 Sergeant McElroy now, or detective?
41 CNSSL T. LAKER: Sergeant. This is my suggestion, Your
42 Honour. Let's -- so let's finish off with
43 Sergeant McElroy.
44 THE COURT: Oh yes, I think --
45 CNSSL T. LAKER: And then Mr. Fox can cross-examine her.
46 And then we are going to have Sergeant Shook come
47 at 2:00 p.m.

Amber McElroy (for Crown)
in chief by Cnsl R. Elias
BAN ON PUBLICATION 486.5(1) CCC

1 THE COURT: Okay.
2 CNSL T. LAKER: So depending on timing for this morning
3 we can deal -- potentially deal with any of these
4 other sort of unresolved issues --
5 THE COURT: Right.
6 CNSL T. LAKER: -- if we have time. Otherwise we can
7 deal with any possible applications by Mr. Fox
8 concluding the voir dire two this afternoon. I do
9 know that Sergeant Shook, he is only available --
10 I mean he can be here for longer, but his shift at
11 the jail starts at 3:45. So his hope was that he
12 would not be here for too much longer past 3:45,
13 but hopefully we can deal with all of that as it
14 comes up.
15 THE COURT: Right, but he is working when he is giving
16 testimony too.
17 CNSL T. LAKER: Yes.
18 THE COURT: So we try and accommodate where possible,
19 but --
20 CNSL T. LAKER: Yes, exactly.
21 THE COURT: Okay. So why don't, Mr. Fox, you cross-
22 examine Sergeant McElroy and then we'll see
23 where -- where we are. I think voir dire number
24 two should be completed if we have time this
25 morning and then if you still want to apply to
26 subpoena Mr. Lam then perhaps we'll have time for
27 that this morning so that we can -- okay.
28 THE ACCUSED: Okay, thank you.
29 THE COURT: So, Sergeant McElroy, you are still under
30 affirmation and now I'm going to let Mr. Fox ask
31 you questions he has in cross-examination.
32 THE WITNESS: Thank you, Your Honour.

AMBER MCELROY, recalled,
reminded.

CROSS-EXAMINATION BY THE ACCUSED:

33
34
35
36
37
38
39 Q I would like to go back to what I was asking you
40 earlier about when you tried to access the website
41 from within the other room next to where I was
42 being interviewed. And I believe that you had
43 said that there some kind of error message, or
44 denial of access message, or something that had
45 come up and that you were quite confident that
46 that message was generated by something within the
47 VPD's network, not from something out on the

Amber McElroy (for Crown)
cross-exam by the Accused
BAN ON PUBLICATION 486.5(1) CCC

1 internet; is that correct?
2 A Yes, that is correct.
3 Q Okay, can you explain to me how it is that you are
4 so confident of that?
5 A So again, I can't remember the exact content of
6 the message but when I read it at the time I
7 believed it was an internal message denying me
8 access to that website. I believed that it was
9 department specific because I knew that our
10 analyst was able to access it and I had different
11 internet permissions from our analyst.
12 Q Okay. I'd like to present you with a document
13 that you had obtained from -- from Johnny Lam, an
14 IT person within the VPD. It's a -- the proxy
15 logs that I showed you briefly before. And I have
16 a few questions about that, that have arisen now
17 from what you're saying about when you tried to
18 access the website. And I wonder if this might be
19 a good time to give a copy to the court so that
20 the judge could follow along with what I'm asking.
21 CNSL R. ELIAS: Yes, I don't have a court copy of
22 the -- we don't have a court copy of the proxy
23 logs yet, do we?
24 THE COURT: No.
25 THE ACCUSED: No, they haven't been given to the court
26 yet.
27 CNSL R. ELIAS: Okay, let me get them. I think I have
28 other copies here, let me just find it. Do you
29 want the email as well at this point, or just
30 the -- the proxy logs.
31 THE ACCUSED: Well, I really need to probably ask a
32 question or two about the email.
33 CNSL R. ELIAS: I apologize, Your Honour, I'm just
34 going to see if I can find the document.
35 THE COURT: No, that's fine. Do you need time to get
36 the copies of that, or do you have copies?
37 CNSL R. ELIAS: Perhaps it might be best to stand down
38 and I can just print fresh copies rather than dig
39 through my -- my files here. I think it --
40 THE COURT: Okay. I won't go far, so I'll just wait
41 for you to do that and then we can continue with
42 the cross-examination.
43 CNSL R. ELIAS: I'll try to be very quick. Thank you.
44 THE SHERIFF: Order in court. All rise.

(WITNESS STOOD DOWN)

Amber McElroy (for Crown)
cross-exam by the Accused
BAN ON PUBLICATION 486.5(1) CCC

1 (PROCEEDINGS STOOD DOWN)
2 (PROCEEDINGS RECONVENED)
3
4 CNSL R. ELIAS: ... giving me the time to find those.
5 I'll pass Sergeant McElroy a copy and hand one up
6 for the court to look as well of the document Mr.
7 Fox requested.
8 THE COURT: Thank you. Okay, so --
9 THE ACCUSED: I assume they have -- it has the emails
10 first and then the proxy logs.
11 CNSL R. ELIAS: Yes.
12 THE ACCUSED: Okay.
13 THE COURT: So -- so this is a cover email from Johnny
14 Lam to Amber McElroy and attached to it are the
15 proxy server logs from May 16th, 2022; is that
16 right?
17 CNSL R. ELIAS: That is correct.
18 THE COURT: Okay, and the date of the email is October
19 24th.
20

21 **AMBER MCELROY, recalled.**
22

23 **CROSS-EXAMINATION BY THE ACCUSED, CONTINUING:**
24

25 Q Okay so, Sergeant McElroy, I assume that these are
26 documents that you are familiar with; is that
27 correct?
28 A That is correct.
29 Q Okay, and can you confirm this document that we
30 are describing as the proxy logs, the one that
31 says re search near the top, is this the document
32 that was emailed to you from Johnny Lam on October
33 24th, 2022?
34 A Yes, it is.
35 Q Okay. Is it your understanding that this is the
36 log file from, or accessed log information from
37 the VPD's proxy servers?
38 A Yes.
39 Q Okay and it's -- it is my understanding that you
40 are saying, you're claiming, that when you tried
41 to access the website the proxy server denied you
42 access; is that correct?
43 A Yes.
44 Q Are you not aware that if -- if the proxy server,
45 or in this case the Cisco proxy server that VPD
46 uses, if it had denied you access to a website
47 there would be a corresponding log in entry in the

Amber McElroy (for Crown)
cross-exam by the Accused
BAN ON PUBLICATION 486.5(1) CCC

1 logs stating that access was denied? The question
2 is are you aware of that?
3 A No, I'm not aware what the proxy log would say, or
4 not say in regards to that.
5 Q Is it your understanding that Mr. Lam is an IT
6 specialist, or IT professional with the VPD?
7 A Yes.
8 Q Okay, great. So, when you looked at this proxy
9 log a few moments ago, and I realize that there's
10 a lot of clusters of -- tough to read through, but
11 did you see anything in there stating that access
12 was denied? Well, actually first let me take a
13 step back from that. Did you find a single entry
14 in this proxy log referring to the domain name
15 desicapuano dot com?
16 A Yes, I can see it just by scanning in the first
17 two entries.
18 Q Okay, but let me ask you there. Is that actually
19 referring to the domain name desicapuano dot com,
20 or is that referring to the domain name
21 desicapuano dot com dot site indices dot com?
22 A So it does say site indices, but when I refer back
23 to Johnny Lam's email what I look at -- at that to
24 be is potentially different pages within the
25 website. He is speaking to that in his email.
26 Q Okay. I'd like to show you if I could what was
27 marked as Exhibit number 6.
28 A Okay.
29 THE CLERK: I'll just provide a landscape Exhibit
30 number 6.
31 THE COURT: Thank you.
32 THE ACCUSED:
33 Q And if you would be kind enough, please, to turn
34 to page five.
35 THE COURT: Give me a moment, Mr. Fox. I know I have
36 that. I just want to get it out.
37 THE ACCUSED: Sure. And just to refresh everybody's
38 memory this was -- these are some pages that Ms.
39 Meiklejohn had accessed using the Hunchly software
40 on -- well, various days. The one we're going to
41 look at here was accessed on May 3rd, 2022.
42 THE COURT: Thank you, I have it. So you're looking at
43 the first page then with that date?
44 THE ACCUSED: Oh, no. So well, page five of that
45 exhibit.
46 THE COURT: Page five, thank you.
47 THE ACCUSED:

Amber McElroy (for Crown)
cross-exam by the Accused
BAN ON PUBLICATION 486.5(1) CCC

1 Q So, Sergeant McElroy, looking at page five, would
2 you agree that what follows is going to be the web
3 page that was accessed at desicapuano dot com dot
4 site indices dot com on May 3rd of 2022?
5 A On page five it does look like that's what the URL
6 is at the top, yes.
7 Q Right, and to be clear, my understanding from Ms.
8 McElroy's testimony is that what we see on page
9 five here is information that was generated by the
10 Hunchly software when she accessed the following
11 web page.
12 A So -- and I can't speak -- I know -- and also
13 Meiklejohn was here speaking to this, but my
14 understanding is that Hunchly just helps her
15 capture the images off the website. It's not
16 actually a search software. She is still
17 accessing the internet directly and she's using
18 Hunchly to capture.
19 Q Yes, that is correct.
20 A Okay.
21 Q So if you would turn to the next page, please.
22 And you should see a printout from a website. And
23 at the top it says, "Site indices"?
24 A Mm-hmm.
25 Q So do you agree that that page all the way through
26 to -- sorry, let me find the end of it here, to
27 page ten. So pages six through page ten, do you
28 agree that that is what desicapuano dot com dot
29 site indices dot com refers to?
30 A On May 3rd, yes it looks like that's what it
31 refers to.
32 Q Okay. Is it your understanding that what we are
33 looking at right now, that web page has anything
34 at all to do with the website that this whole case
35 is about, the desicapuano dot com website?
36 A No, it doesn't look to be except under the toenail
37 on page six it does say desicapuano dot com in the
38 print. And then if you were to flip to page seven
39 it does -- under title it has her name as well as
40 some of the words that were used on desicapuano
41 dot com to describe her. So it seems to be a bit
42 of a mix of a website and I don't know what this
43 other stuff is.
44 Q Okay, are you familiar with what an analytics
45 website is?
46 A No.
47 Q Okay, what we've already heard from Ms. Meiklejohn

Amber McElroy (for Crown)
cross-exam by the Accused
BAN ON PUBLICATION 486.5(1) CCC

1 about citing "Indices dot com" actually being an
2 analytics website. But I just want to make sure
3 of your understanding of what we're looking at
4 here. So is this, or is this not the website that
5 I originally created etc. that was recently
6 accessible through desicapuano dot com, or is this
7 some other website?
8 A So, on May 3rd I know that it was still password
9 protected at that time.
10 Q I'm --
11 A So analyst Meiklejohn was able to -- on May 3rd,
12 sorry was the date she's captured it.
13 Q No, I'm sorry though, but are you saying that site
14 indices dot com was password protected on May 3rd?
15 A No, I'm saying that analyst Meiklejohn was tasked
16 with getting screen captures from desicapuano dot
17 com and at this time, on this date, the website
18 was still password protected and this is the
19 information she was able to pull using her system.
20 Q Sure.
21 A And I don't know exactly how she accesses
22 everything, but this is the information she
23 provided on that date. This isn't what the
24 website looked like on the day of your arrest.
25 Q Yes, that's all fine and swell, but what I'm
26 leading to, what I'm trying to get at here is to
27 determine whether desicapuano dot com dot site
28 indices dot com is actually a completely separate
29 independent website that has absolutely nothing to
30 do with the website that was located at
31 desicapuano dot com?
32 A Mm-hmm.
33 Q Is this a separate different website, or are you
34 suggesting that maybe this is actually part of the
35 same website?
36 A I think perhaps we should look at the screen
37 captures from the date that these proxy logs
38 reference. Maybe we'll have a bit more
39 information.
40 Q Well, unfortunately, there are no captures from
41 desicapuano dot com dot site indices dot com that
42 were provided, or disclosed to me on the day of
43 May 16th.
44 A So if we look at the proxy logs, Mr. Fox --
45 Q Yes.
46 A -- we'll see that earlier that morning prior to
47 us making the decision to arrest you that day

Amber McElroy (for Crown)
cross-exam by the Accused
BAN ON PUBLICATION 486.5(1) CCC

1 there were searches done at 6:00 a.m. and again at
2 7:00 a.m. and those were done by Analyst
3 Meiklejohn and she provided screen captures from
4 those searches, which I believe we do have here.
5 Q Okay. So to make sure I'm understanding this
6 correctly you are saying that at 6:14 a.m. and
7 approximately seven something a.m. Ms. Meiklejohn
8 had accessed the website and provided some screen
9 captures which I assume would be in Exhibit 5?
10 A I apologize. I don't know the exhibit number. I
11 was looking at it earlier.
12 CNSL R. ELIAS: Yes, Exhibit five.
13 THE COURT: Yes, it is Exhibit five.
14 CNSL T. LAKER: If I -- I just -- if I could just have
15 a moment. I may object to this question, but I
16 just want to confer --
17 THE COURT: Yes, okay.
18 CNSL T. LAKER: -- with my colleague for the time
19 being.
20 THE COURT: Yes.
21 CNSL T. LAKER: Okay, I have no objection. Thank you.
22 THE CLERK: Is it Exhibit five, Your Honour.
23 THE ACCUSED: Yes, please.
24 THE COURT: Oh, yes.
25 A Thank you.
26 THE ACCUSED:
27 Q So in four of each of the pages that was printed
28 out and included in Exhibit five there's another
29 one of those Hunchly reports where it shows the
30 URL and the date the page was accessed. Could you
31 please tell me which one of those pages was
32 accessed at 6:00 or 7:00 a.m.?
33 A I couldn't -- I couldn't say. I know that they
34 were captured later in the day. I don't know how
35 the analyst saves the data, or where she puts it.
36 Q Okay. Well, from a quick look at these it looks
37 like they were all -- according to the Hunchly
38 reports it looks like they were all accessed
39 around 9:20 to 9:30 a.m. approximately?
40 A Mm-hmm. Yeah, it looks like that on the front
41 pages. Again, I don't know if that is when they
42 were taken off the website, or that's just when
43 they were printed from the Hunchly program. I
44 can't speak to that. I can see that the proxy
45 logs don't show access around that time --
46 Q Right.
47 A -- but I know that I was present in the office

Amber McElroy (for Crown)
cross-exam by the Accused
BAN ON PUBLICATION 486.5(1) CCC

1 when Analyst Meiklejohn accessed the website and
2 these are the pages that I saw over her
3 shoulder -- shoulder looking at her computer.
4 Q Okay and we'll explore that further in just a
5 moment, but first I'd like to go back to the proxy
6 log. So in the fourteen entries that were found
7 that did contain the string desicapuano dot com in
8 the 48 hours from May 16th and May 17th, are there
9 any that you find in there that do not refer to
10 desicapuano dot com dot site indices dot com?
11 A Yes. On the second page at 2:22:51 p.m. it says
12 desicapuano dot com dot ICO.
13 Q Yes?
14 A And in addition below that it also says
15 desicapuano dot com dot ICO which kind of -- which
16 would correspond around the time that I was
17 searching for your website.
18 Q Okay, and there is actually one more dot ICO on
19 the next page as well?
20 A Yes, I do see that.
21 Q Are you familiar with what a dot ICO file is?
22 A I'm not.
23 Q Are you aware that a dot ICO file is used to
24 indicate an icon file?
25 A I don't know what it is, so I can't comment on
26 whether or not I know that to be true.
27 Q Okay. Do you agree that in these particular
28 instances here the three with the dot ICO on the
29 end, it's -- sorry, the URL that is referenced
30 here is desicapuano dot com dot ICO, not
31 desicapuano dot com. Do you agree with that, or?
32 A Again, I don't a hundred percent understand the
33 computer language here.
34 Q Right.
35 A All I can say is that I accessed a computer around
36 the time that's indicated in this proxy log that I
37 was provided by IT showing that an attempt was
38 made.
39 Q Okay.
40 A And I did not type that ICO or site industry --
41 indices. I just typed desicapuano dot com.
42 Q Okay, and if you would look in the entry that is
43 at -- on the -- on H-2 there's three entries. The
44 entry in the middle that refers to desicapuano dot
45 com dot ICO, in there there's a -- sorry, I'm
46 looking for it.
47 THE COURT: Sorry, are you on page two of five, or

Amber McElroy (for Crown)
cross-exam by the Accused
BAN ON PUBLICATION 486.5(1) CCC

1 three of five?
2 THE ACCUSED: Two of five.
3 THE COURT: Two of five, thank you.
4 THE ACCUSED:
5 Q I'm looking for a particular field within that
6 cluster of information but for some reason I'm
7 having difficulty seeing it. Oh, here it is.
8 Okay. One, two, three -- so the fourth line from
9 the top of that block at the end it says Len, L-e-
10 n. And then --
11 A I see it.
12 Q And then continued onto the next line, g-t-h. So
13 it's the word length. And then within square
14 brackets 780 B meaning bites.
15 A Yes, I see that.
16 Q Would it be your understanding that that refers to
17 the length, or the size of the particular file
18 that was returned?
19 A I have no understanding. I can't comment on that.
20 Q Sure. Okay, but you do say that you had typed in
21 desicapuano dot com in the address bar and you
22 were able to pull up the website, correct -- or
23 sorry, no. You received some response, an error
24 message, or something from VPD's network?
25 A Yes.
26 Q Can you explain then why it is that there's no
27 corresponding denial of access log entry in here?
28 A I -- I can't explain it other than the fact that's
29 the time that I ran the website. I specifically
30 in my request to IT told them that I had been
31 interviewing you at the time and that the request
32 from Crown was to obtain evidence that I had
33 searched the website. They provided proxy logs
34 for the whole day and indicated that my -- my
35 search would have been within these parameters. I
36 have narrowed down to the timing and I believe
37 these two timings, these are the two attempts that
38 I made to access the website.
39 Q I believe that it is entirely reasonable to say
40 that at 2:25 p.m. those few entries there would
41 correspond to what you did, attempts to access at
42 that time. But I would suggest to you that what
43 you attempted to access, or what you possibly even
44 did access was the page that we just looked at
45 which was desicapuano dot com dot site indices dot
46 com, not actually the website?
47 A Again, the URL I typed was desicapuano dot com. I

Amber McElroy (for Crown)
cross-exam by the Accused
BAN ON PUBLICATION 486.5(1) CCC

1 do have internet access although it's more limited
2 than what our analysts does have. But apparently
3 this website is not on the list of things I am
4 allowed to view.

5 Q So is it your understanding that you can only
6 access websites that you are explicitly authorized
7 by the proxy server to access?

8 A So there are two levels of internet access within
9 the department and not everyone is provided
10 internet access. It has to be applied for. And
11 in the detective position I was allowed to get
12 internet access after application and for most
13 members it's a basic level of internet access
14 which doesn't include access to social media,
15 things like that. Our analyst has full access as
16 you would access the internet from your home
17 because she needs to do open source searches as
18 part of our investigations. Up until that moment
19 I didn't realize that desicapuano was one of the
20 websites I was blocked from. I learned it in that
21 moment and that's why I wasn't able to provide
22 that information.

23 Q Do you know if you are blocked from site indices
24 dot com?

25 A I have never tried to search site indices dot com.

26 Q But going to the proxy logs you did. According to
27 the proxy logs there were I guess nine accesses to
28 site indices dot com on that day?

29 A But my searches say dot ICO which you said means
30 icon, which doesn't say site indices.

31 Q Right. The reason -- well, I could explain these
32 dot ICOs but it would be a technical explanation,
33 so I'll save that discussion for when hopefully
34 Mr. Lam testifies because it would be pointless
35 and meaningless and because I'm not testifying at
36 this point, so. Okay, I would like to move on.
37 Earlier when the Crown was asking you some
38 questions there was mention of my phone being
39 searched and my tablet as well. Do you know, was
40 my tablet searched?

41 A Actually, I believe it was, but I don't know for
42 sure. I wasn't part of the -- the domestic
43 violence unit at the time.

44 Q Okay, are you aware that the search warrant that
45 you were looking at earlier that is listed as
46 Exhibit 10 states in here that these --

47 CNSL T. LAKER: Sorry, if the witness could just be

Amber McElroy (for Crown)
cross-exam by the Accused
BAN ON PUBLICATION 486.5(1) CCC

1 provided with it. That would be great.
2 THE ACCUSED: Oh, sure.
3 THE COURT: That was Exhibit 10, I believe.
4 THE CLERK: Exhibit 10, Your Honour.
5 THE COURT: Yes.
6 A Thank you.
7 THE ACCUSED:
8 Q So on page three, right above where it says
9 "Issued by"?
10 A Yes.
11 Q There's a two line paragraph there. And it starts
12 with "And to search the cellular phone for things
13 that" etc. So, doesn't that mean that only the
14 cellular phone was authorized to be searched?
15 A It does. Under the things to be searched there's
16 a list of six exhibits. The cellular phone is
17 part of that. But yes, in that line it is
18 misleading because we were searching six exhibits
19 not just the cellular phone.
20 Q But in the six exhibits, the list of the six
21 exhibits, that paragraph doesn't actually say --
22 state that it's giving authorization to search
23 those. That paragraph just says that there's
24 reasonable grounds for believing that those
25 following items -- well, I guess it's not really
26 critical if the tablet hasn't been searched.
27 Anything if the tablet was searched nothing from
28 the tablet is being used at the trial. So I guess
29 it's not really too important. So we can move on
30 from there.
31 A Okay.
32 Q In the course of your investigation have you been
33 in contact with Desiree Capuano, or the person
34 known to be Desiree Capuano, I should say?
35 A Not as part of the investigation, but as a
36 complainant victim safety measure, yes I have been
37 in contact with her.
38 Q Okay, and when you had been in contact with her
39 did she express any concern about the website?
40 CNSL T. LAKER: Your Honour, I am going to object to
41 this question. I just don't see what the
42 relevance is.
43 THE COURT: I don't see the relevance.
44 THE ACCUSED:
45 Q Okay, maybe we'll come back to that after when --
46 when the relevance becomes more clear. Do you
47 happen to have a copy of your notes with you?

Amber McElroy (for Crown)
cross-exam by the Accused
BAN ON PUBLICATION 486.5(1) CCC

1 A Yes, I do.
2 Q So I have a question which I believe is definitely
3 relevant. It has to do with the allegation that I
4 failed to report. And so in your notes, I don't
5 know how I could turn you to the appropriate spot
6 because it seems that your notes span multiple
7 notebooks and they're not all together. The one
8 that says 135 at the top from October 12th.
9 CNSL T. LAKER: Yes, it appears the notation from
10 October 12th of 2022 --
11 A Do I have permission to --
12 THE COURT: Yes, yes. You can look at your notes,
13 Sergeant McElroy.
14 THE ACCUSED:
15 Q Oh, I think I'm looking at the wrong one.
16 A I do have it.
17 Q Sorry, I was looking at the wrong note. Yes, so a
18 note from May 4th, 2022.
19 CNSL T. LAKER: Is -- is the reference on page three.
20 THE COURT: Notes from May 4th, 2022; is that correct?
21 THE ACCUSED: Yes.
22 CNSL T. LAKER: Yes, and I may have a copy.
23 A Apologies, Your Honour, I have a photocopy of
24 those notes. I don't have that original notebook
25 with me.
26 THE COURT: All right. So maybe perhaps you can
27 compare what Mr. Fox wants to ask you about,
28 because I'm sure he has a photocopy as well from
29 disclosure. And as long as you are both on the
30 same page, so to speak, that's -- that will work.
31 THE ACCUSED:
32 Q This entry, yeah.
33 CNSL T. LAKER: Yes.
34 A Thank you.
35 THE ACCUSED:
36 Q So that entry dated May 4th, '22, did you -- did
37 you write that?
38 A I did.
39 Q Okay, and does that refer to some -- a statement
40 made by Probation Officer Trimis?
41 A Yes, there was a phone conversation.
42 Q Does that mean that that phone conversation
43 occurred on May 4th?
44 A Yes.
45 Q And can you tell me, did he say to you that I had
46 said, "I didn't take any steps because it has been
47 taken down"?

Amber McElroy (for Crown)
cross-exam by the Accused
BAN ON PUBLICATION 486.5(1) CCC

1 A So the information that I had received is that you
2 had shown up at the probation office and your
3 regular probation officer PO Trimis wasn't
4 present. So the person there had redirected you
5 to reattend on April 21st and that's basically
6 what that -- that is, that you didn't go on April
7 twenty -- 21st.

8 Q Well, but what is written here in your handwriting
9 and it's in quotation marks says, "I didn't take
10 any steps because it has been taken down". Since
11 that's in quotation marks I took that to mean, or
12 I understand that to mean that that is what Mr.
13 Trimis had said to you that I had said I guess to
14 the Probation Officer Seath when I reported to her
15 on the 19th?

16 A Yes. That was the -- that was the statement they
17 provided.

18 Q Okay. So on May 4th, 2022 he did tell you that I
19 did state that to some probation officer, correct?

20 A That is correct.

21 Q And is it your understanding that the probation
22 condition required me to inform -- or sorry, to
23 report to a probation officer to inform them of
24 the exact steps I had taken to ensure the website
25 was no longer available?

26 CNSL T. LAKER: Your Honour, I am going to object to
27 this question. So I'll just -- because what this
28 officer's interpretation of his reporting
29 condition isn't necessarily relevant at this time.
30 That that particular breach allegation is one that
31 is directed through Community Corrections, not the
32 police, and was -- and in my view asking this
33 officer about her interpretation simply doesn't
34 assist the court in any way with regards to that
35 particular count.

36 THE COURT: Okay. So, it is the case that Sergeant
37 McElroy couldn't give a legal opinion, or a
38 conclusion about what that probation term means,
39 but I'm just wanting to understand if you would,
40 Mr. Fox, for you the relevance of the question.
41 And it maybe we should ask Sergeant McElroy to
42 step outside just for a minute just so I can make
43 sure that, in fact, you won't be asked to answer
44 this question, or not.

45 THE ACCUSED: But -- but actually, I can forego the
46 question because as I consider it more, as I think
47 about it more, I realize that there was a warrant

Amber McElroy (for Crown)
cross-exam by the Accused
BAN ON PUBLICATION 486.5(1) CCC

1 for my arrest issued on that count. And so she
2 really had no discretion in whether or not to make
3 any recommendations of charges because it was
4 already --
5 THE COURT: Okay. If you -- if you are content to
6 leave the question, that's fine. That also
7 addresses -- solves the question whatsoever.
8 THE ACCUSED: So moving on then. I would now like to
9 present the witness with the C-log entries from
10 the probation department which were Exhibit 4. I
11 have a question about an entry in here.
12 THE CLERK: Exhibit 4, Your Honour.
13 THE COURT: Okay, thank you.
14 THE ACCUSED:
15 Q There was an entry, and I realize you didn't make
16 these entries so your knowledge of this might be
17 somewhat limited. But on the second page, page
18 two of four, the first full entry, or the second
19 entry, the one that says "2022-04-20" at the time
20 "13:52:40"?
21 A Yes.
22 Q In there Mr. Trimis discusses, or describes a
23 conversation he had had with Detective Dent
24 regarding the -- the website and this issue of
25 having a password. So according to what is in
26 here I get the impression from what Mr. Trimis is
27 saying that VPD's position on the website having a
28 password was that as far as they are concerned I
29 have met the condition and you're not going to
30 pursue that matter any further. Was -- is that
31 your understanding?
32 A So I've never seen this before and I wasn't part
33 of that investigation. What I can say is
34 Detective Dent was the lead investigator on your
35 previous incident and he has never been assigned
36 as lead investigator on this file. So I can't
37 speak to the conversation that he may have had
38 with your probation officer. That was not -- once
39 I took lead and conduct of the file which was
40 right from the get-go I didn't know this
41 conversation was happening and I wasn't privy to
42 this decision because I was in separate
43 conversations with Crown and my management.
44 Q Okay, and do you have any conversations with the
45 cyber crimes unit?
46 A Subsequent to searching your phone I had a
47 conversation with cyber crime unit, but it's not

Amber McElroy (for Crown)
cross-exam by the Accused
BAN ON PUBLICATION 486.5(1) CCC

1 in regards to what this note is about.
2 Q Okay, and my apologies. I probably should have
3 asked Detective Dent about this when he was
4 testifying. So we'll move on from there.
5 A And just to be clear, so that's not the VPD
6 position. That might have been a conversation
7 that he had, but that's not what our position was
8 on this investigation.
9 Q Sorry, there are some questions that I think that
10 I might want to ask. It's just that until we hear
11 from somebody who knows about the proxy logs, for
12 example Mr. Lam, I don't really know that -- that
13 I can go any further with that. Let me ask you,
14 Sergeant. The -- the website. So it's my
15 understanding from what a number of people have
16 testified that there was a period of time where
17 the website required a password, or PR anyways.
18 Require a password to access what was on there.
19 Are you familiar -- familiar with that?
20 A Yes.
21 Q Okay, and can you tell me, what caused that to
22 change? Like what -- what happened on the web
23 server that caused it to start prompting for a
24 password?
25 A I don't have control of the website. I imagine
26 whoever has control of the website would be able
27 to make those changes.
28 Q If whoever had control of the website had deleted
29 the -- sorry, I was about to get into some
30 technical stuff and then I realized that I'd
31 probably be speaking of things that people
32 wouldn't have knowledge of. That's why I stopped.
33 If whoever had access to the website had deleted
34 all of the content from the directory on the
35 server that the Apache web server looks for to
36 find the content they get to display. If they had
37 deleted that entire directory would the web server
38 then have prompted for a password?
39 A I can't speak to that.
40 Q Okay, so is it fair to say then that you don't
41 actually know. Like the fact that it was asking
42 for a password, you don't know whether or not the
43 website was even still there. I mean, are you
44 saying then that as far as you know somebody could
45 have gone onto the website's -- the server,
46 deleted all of the content thereby deleting the
47 website and that could have caused the Apache

Amber McElroy (for Crown)
cross-exam by the Accused
BAN ON PUBLICATION 486.5(1) CCC

1 server, Apache being the software product, to
2 prompt anybody who goes, or who tries to access
3 the website for a password?
4 A I can't speak to that. All I can say is that when
5 our analyst searched the website when it was
6 password protected, there were still bread crumbs
7 and information from the website that she was able
8 to access through Google searches. And as you can
9 see on the site indices pages which reference the
10 website. We couldn't say and that's what
11 discussed in our interview. We couldn't say
12 whether there is anything behind the password, or
13 not behind password because we did not have access
14 to it until the weekend before your arrest.
15 Q In -- in the interview when you interviewed me you
16 did make a statement that the website still shows
17 up in Google; is that correct? Do you remember
18 saying that?
19 A I do.
20 Q Okay, so there is here -- in Exhibit 6 there is
21 some Google search results.
22 THE COURT: Just a minute. Exhibit 6.
23 THE ACCUSED: Yes.
24 THE COURT: Let me just get that. And do you have
25 that, Sergeant McElroy, in front of you still?
26 A I do. Yes, thank you.
27 THE COURT: Okay.
28 THE ACCUSED:
29 Q So it appears that this was captured on May 3rd,
30 2022 and it shows that you were on there. So it
31 was a Google search for the literal string
32 desicapuano dot com. Do you agree with that?
33 A Yes, I do. Okay.
34 THE COURT: Sorry, I just want to make sure I'm
35 following you. On page one?
36 A Page two.
37 THE ACCUSED: Sorry the first page was the Hunchly
38 report and then --
39 A Oh, sorry, page two.
40 THE COURT: Page two?
41 THE ACCUSED: Yes, page two is the actual Google search
42 results that were printed out.
43 THE COURT: Right, thank you.
44 THE ACCUSED:
45 Q Can you tell me, or can you tell me where in those
46 search results there is anything at all that
47 refers to the website desicapuano dot com? And

Amber McElroy (for Crown)
cross-exam by the Accused
BAN ON PUBLICATION 486.5(1) CCC

1 when I say refers to, I mean that would be a link
2 to the website, or that would be content on the
3 website desicapuano dot com?
4 A I don't see a direct link from the Google search,
5 no. But I do see the website and I see
6 information that is from the website listed in the
7 Google search.
8 Q I'm sorry, you say that you see the website and
9 the information from the website. Which entry are
10 you referring to?
11 A If you look at the first entry it has desicapuano
12 dot com.
13 Q Yes.
14 A And then dates that site indices dot com.
15 Q Yes.
16 A So it has the website URL within there. And then
17 it has some information that is also on the
18 website, or had previously been on the website
19 listed, "Her the drug addict child abuse of".
20 Q Right, but isn't that the third party website that
21 just gathers information about other websites and
22 just compiles them and -- otherwise known as an
23 analytics website? Like that -- that website site
24 indices dot com is not part of desicapuano dot
25 com. It has got nothing at all to do with
26 desicapuano dot come?
27 A Oh, I understand, but what I explained to you in
28 the interview was that when we searched that
29 desicapuano dot com, as you can see in the Google
30 search box information from your website cropped
31 up. And that's what this --
32 Q Information from the website, okay. Okay, would
33 you agree with me that's kind of like saying that
34 if there is a picture, a photograph of Ms. Capuano
35 that was on the website, but that photograph also
36 appears as say in her Facebook timeline and does
37 that mean that I'm responsible for that? Like
38 it's a third party. It's got nothing to do with
39 me.
40 A Well, this isn't -- this isn't the issue, that
41 you're not charging -- you are not being with
42 having content on the website that's no longer
43 accessible with this search specifically. The
44 issue is we typed in desicapuano dot com and it
45 came up password protected. In addition to that,
46 we were able to also get this information. This
47 is not a standalone evidence. This is in addition

Amber McElroy (for Crown)
cross-exam by the Accused
BAN ON PUBLICATION 486.5(1) CCC

1 to a password protected website. We also were
2 able to retrieve this information and then
3 subsequently the website became live and then we
4 could capture that information.
5 Q Okay.
6 A This is -- just compliments what the analyst was
7 able to come up with once we started searching
8 your website.
9 Q And when you say searching the website do you mean
10 searching for the website?
11 A Searching desicapuano dot com.
12 Q Okay. A number of times you have used the term
13 password protected when referring to the website
14 and that there was some period of time where it
15 was prompting for a password. What do you mean by
16 protected?
17 A So if you refer to the same book on page 17 it
18 will give you an example of what the screen did
19 say when we searched desicapuano dot com. It
20 would come up prompting for a user name and a
21 password and this is what I mean when I say
22 password protected.
23 Q Okay. So you don't really mean protected. You
24 don't mean that there was something there that
25 there was a password and the purpose of the
26 password was to protect some data?
27 A No, I can't -- I couldn't speak to what was
28 potentially behind this. Whether the website was
29 up and live at this point if you had a password,
30 or if there was nothing there. I have no idea
31 because I did not have access.
32 Q Right, okay. All right, so I'm just about done.
33 I just want to clarify a couple of points which
34 would be like two minutes to make sure that I'm
35 understanding everything correctly here. So it's
36 my understanding that what you're saying is that
37 the times when the website appeared to be
38 prompting for a password, you have no knowledge of
39 whether or not the website was actually -- was
40 actually there?
41 A That is correct.
42 Q Okay, and you are saying that on May 16th, 2022
43 Ms. Meiklejohn accessed what appeared to be the
44 website using the URL WWW dot desicapuano dot com
45 and you were present and you observed her doing
46 that; is that correct?
47 A That is correct.

Amber McElroy (for Crown)
cross-exam by the Accused
BAN ON PUBLICATION 486.5(1) CCC

1 Q Okay. However, nothing comes up in the proxy logs
2 in that 48 -- 48 hour period showing that anybody
3 ever made any attempt to access that domain?
4 A If what you're saying, and you're reading the
5 proxy logs correct --
6 Q Yes.
7 A I mean, that's what you're saying. I can't speak
8 to whether that is correct, or not correct.
9 Q Okay. All right, I don't believe that I could
10 have any further questions at this time for the
11 witness.
12 THE COURT: Okay, but before I ask if Crown wants to
13 re-examine you know, you've mentioned that maybe
14 you will have some further questions for Sergeant
15 McElroy. Generally, I think you're aware that's
16 not how it works.
17 THE ACCUSED: Right.
18 THE COURT: There is a possibility to apply to recall a
19 witness, but it's pretty exceptional and there has
20 to be a compelling reason to do that. So I just
21 want to make sure you are aware of that. If you
22 think you might have any more questions for
23 Sergeant McElroy now?
24 THE ACCUSED:
25 Q Okay yes, let me -- let me just ask one or two
26 more. When -- when you observed Ms. Meiklejohn
27 access what appeared to be the website, what steps
28 did you take to confirm, or you, or Ms.
29 Meiklejohn, or anyone else for that matter, what
30 steps were taken to confirm that the domain name
31 desicapuano dot com that she was entering was
32 actually resolving to an IP address of, for
33 example, a Go Daddy server where the website was
34 supposedly hosted and not some internal server, or
35 internal computer on VPD's network?
36 A I had no reason to believe that Analyst
37 Meiklejohn's computer was acting faulty. That
38 there was any issue, or problems with it. She, as
39 a course of her job, accessed the internet
40 throughout her day accessing social media
41 networks, different websites, gathers information
42 for us. There was no indication that there was
43 anything wrong with any of her searches that she
44 conducted that day, nor the day prior.
45 Q Okay, does that mean then that you have taken no
46 steps, or to the best of your knowledge, nobody in
47 VPD had taken any steps to confirm what IP address

Amber McElroy (for Crown)
cross-exam by the Accused
BAN ON PUBLICATION 486.5(1) CCC

1 that domain name was resulting to at that time?
2 A No, I didn't look into the IP address. I had no
3 reason to be believe that it wasn't accessing the
4 internet that we all use.
5 Q Right. Okay, I don't have any further questions
6 at this time at all. Thank you.
7 THE COURT: Okay. Okay, thank you, Mr. Fox. Any re-
8 examination for Sergeant McElroy?
9 CNSL R. ELIAS: No, Your Honour.
10 THE COURT: Okay. So we are almost at 12:30. We'll
11 break now. Sergeant McElroy is excused. Come
12 back at 2:00 and perhaps either for Sergeant
13 Shook, or perhaps to address the -- the two
14 issues, the ruling on voir dire number two and
15 whether or not Mr. Lam -- whether Mr. Fox is going
16 to request that he come as a witness.
17 THE COURT: All right. So returning at 2:00 p.m.
18
19 (WITNESS EXCUSED)
20
21 THE SHERIFF: Order in court. All rise.
22
23 (PROCEEDINGS ADJOURNED FOR NOON RECESS)
24 (PROCEEDINGS RECONVENED)
25
26 THE COURT: . . . the email and the proxy server log,
27 Mr. Fox, what would you --
28 THE ACCUSED: Oh, sorry.
29 THE COURT: -- like to do with it?
30 THE ACCUSED: I believe that, especially the proxy
31 server logs are going to be extremely critical to
32 my defence. But I'm pretty sure they're probably
33 going to require somebody like Mr. Lam to provide
34 testimony about the exact contents of them.
35 THE COURT: Sure. But Sergeant McElroy was able to
36 identify them, to the extent that she received
37 them, this is the email she received from Mr. Lam.
38 THE ACCUSED: I --
39 THE COURT: The -- the meaning or the interpretation
40 you may require something further, but I believe
41 you could ask that these be marked as an exhibit
42 now.
43 THE ACCUSED: I --
44 THE COURT: Does Crown have any objection to that?
45 THE ACCUSED: I would very much like to ask that these
46 be marked as an exhibit.
47 CNSL R. ELIAS: No objection from us, Your Honour.

Proceedings

BAN ON PUBLICATION 486.5(1) CCC

1 THE COURT: Okay. I think the authentication hurdle, I
2 think, has been what needs to be, as to they are
3 what they purport to be. Right. So they'll be
4 the next exhibit, Exhibit 12?

5 THE CLERK: Yes, Your Honour.

6 THE COURT: Exhibit 12. And then we'll break for
7 lunch. Thank you.
8

9 **EXHIBIT 12: Copies of proxy logs and emails**
10 **- seven pages**
11

12 THE SHERIFF: Order in court.
13

14 (PROCEEDINGS ADJOURNED)

15 (PROCEEDINGS RECONVENED)
16

17 CNSL T. LAKER: Yes, Your Honour. Laker, initial T.,
18 for the Crown, and I'm here with my colleague Mr.
19 Elias, and Mr. Fox is present, and we can continue
20 to deal with the Fox matter.

21 Sergeant Shook is here, and my suggestion is
22 that we deal with his evidence and then deal with
23 those last remaining issues following his
24 evidence. Does that -- would that work for Your
25 Honour?

26 THE COURT: I was thinking about that over lunch, and I
27 think it may, and -- and here's why? I was
28 thinking, Mr. Fox, maybe, once you have an
29 opportunity to cross-examine Sergeant Shook you
30 may find, I'm not sure, but you may find that he
31 can answer some of the questions that you had. So
32 in that sense, from a practical perspective, it
33 made some sense to me to wait, let him testify,
34 let you cross-examine him and then see if you
35 still wanted to apply to subpoena Mr. Lam.

36 CNSL T. LAKER: Mm-hmm.

37 THE COURT: You're nodding yes. You think that makes
38 sense?

39 THE ACCUSED: Yes, that makes sense, but I'm quite,
40 quite confident that he's not going to have the
41 expert knowledge of the proxy logs.

42 THE COURT: Okay. That may be so, but just in case,
43 let's -- let's go ahead with him and then deal
44 with the issues that remain after -- after his
45 testimony is done.

46 CNSL T. LAKER: Yes. And just for the court's benefit,
47 I will be asking that Mr. -- Sergeant Shook is

Proceedings

BAN ON PUBLICATION 486.5(1) CCC

1 qualified as an expert. So I was just explaining
2 to Mr. Fox that we would have to enter into a voir
3 dire for the purposes of -- of that.

4 THE COURT: Right.

5 CNSL T. LAKER: And -- and I don't believe Mr. Fox
6 takes issue with Sergeant Shook's qualifications,
7 but just for the purposes of making sure that do
8 everything procedurally correct, I think we should
9 still embark on that.

10 THE COURT: Yes.

11 CNSL T. LAKER: Okay.

12 THE COURT: That's fine. You know, this happens
13 routinely, a voir dire is declared when an
14 expert's qualifications are put before the court.
15 The opposing side is asked if they have any
16 questions in cross-examination on the
17 qualifications; they may, or they may say, no, I
18 don't have any, and then the Crown seeks to have
19 the person qualified on the basis of what they've
20 put before the court and then outline the areas of
21 expertise so that everyone is aware of what --
22 what the sphere of expertise upon which the
23 expert's going to testify.

24 THE ACCUSED: Okay. Thank you.

25 THE COURT: Okay.

26 CNSL R. ELIAS: I'll just get [indiscernible]

27 CNSL T. LAKER: And he'll affirm.

28 THE CLERK: Thank you, Your Honour.

29 [Indiscernible/away from microphone], Your Honour,
30 would you like to declare the voir dire now?

31 THE COURT: Yes. Declaring voir dire number 5, here,
32 with respect to Sergeant Shook's qualifications.

33 And Sergeant Shook, do you prefer to affirm
34 or swear?

35 A Affirm, please.

36 THE COURT: Thank you.

37

38

ROBIN SHOOK

39

a witness called for the
40 Crown, affirmed.

41

42 THE CLERK: Please state your full name and your rank,
43 and spell your surname for the record.

44 A Robin Shook, Sergeant. Spelled S-h-o-o-k.

45 THE CLERK: And your badge number, please?

46 A 2536, the Vancouver Police Department

47 THE COURT: Thank you, Sergeant Shook. Can have a

Robin Shook (for Crown)
Proceedings
BAN ON PUBLICATION 486.5(1) CCC

1 seat, remain standing as you prefer.
2 THE CLERK: Thank you, My Lady. Sorry.
3 CNSL T. LAKER: And yes, Your Honour, the Crown is
4 going to be seeking to qualify Sergeant Shook as
5 an expert in digital forensics, including the
6 forensic analysis of digital devices, which
7 includes the identification, preservation,
8 extraction and interpretation of digital evidence.
9 THE COURT: Would you happen to have typed that out for
10 me?
11 CNSL T. LAKER: I -- I believe it's included in
12 Sergeant Shook's curriculum vitae. What -- what I
13 understand, I just confirmed with Mr. Fox that he
14 has a copy of it, and I will provide Your Honour
15 with a copy and a copy to be marked as an exhibit.
16 And . . .
17 THE COURT: Thank you. Okay. If it isn't written
18 anywhere, I'm just going to ask you to slowly
19 repeat it.
20 CNSL T. LAKER: Yes. If Your Honour looks at page 14
21 of Sergeant Shook's curriculum vitae, he discusses
22 his expert qualifications that --
23 THE COURT: Yes.
24 CNSL T. LAKER: -- previously in court. So what I've
25 sought him to be qualified as an expert in is --
26 is identical to that in Regina, I'm thinking, not
27 Rex yet, Regina v. Gill [phonetic] from 2022.
28 THE COURT: Okay.
29 CNSL T. LAKER: Where he was qualified as an expert in
30 digital forensics, including the forensic analysis
31 of digital devices, including the identification,
32 preservation, extraction, and interpretation of
33 digital evidence.
34 THE COURT: Right. Thank you. And then the CD, you're
35 asking that it be marked as the first exhibit on
36 voir dire #5?
37 CNSL T. LAKER: Yes, please. Thank you.
38 THE COURT: Okay. Curriculum vitae Exhibit A on voir
39 dire #5.
40 THE CLERK: Thank you, Your Honour.
41 CNSL T. LAKER: And could we please hand that to
42 Sergeant Shook when Madam Clerk's ready.
43 A Thank you.

EXHIBIT A (on voir dire #5): Curriculum
Vitae of Sergeant Robin Shook - 16 pages

VOIR DIRE

Robin Shook (for Crown)

in chief on voir dire #5 by Cnsl T. Laker

BAN ON PUBLICATION 486.5(1) CCC

EXAMINATION IN CHIEF ON VOIR DIRE #5 BY CNSL T. LAKER:

Q And Sergeant Shook, you've indicated that you're a member with Vancouver Police Department?

A Yes.

Q And how long have you worked there for?

A Since 2005, which would make it 18 years.

Q And you've been handed a document. Do you recognize that as your up-to-date curriculum vitae?

A Yes. This is the version of January 8, 2023. There's some stuff that has slightly changed but it is the version that was current when I provided it to you last.

Q And what has changed?

A Two weeks ago I was qualified as an expert in another matter in the Supreme Court of B.C., and that's not in this CV.

Q What was the name of that case?

A Regina versus Siangio or Shongio [phonetic]. It's -- there's another citation which is an Ottawa version of the same trial. This is just a Vancouver. If you look at page 14, it's the same last name as the bottom entry.

Q Ah, yes.

A Except this is a Vancouver matter and that was an Ottawa matter.

Q Okay. And other than your -- you being qualified as an expert in that case, your -- your CV is up to date?

A Yes, that's correct, ma'am.

Q Thank you. And at page 1 you've set out your past and current employment, and you've indicated that you were -- you've been with the Vancouver Police Department since 2005. I note here, on the last paragraph of page 1, you've indicated your experience in the digital forensic unit. Can you just elaborate on that a little bit more?

A Yes. In the six years in which I was a member of the digital forensics unit, I conducted forensic examinations on digital devices and digital data, which would include in-depth analysis of data from things like cell phones, laptop computers, tablets, as well as data from internet sources, including websites and server logs.

Q And you've set out the training that you received to -- to perform in that area of employment, from

VOIR DIRE

Robin Shook (for Crown)

in chief on voir dire #5 by Cnsl T. Laker

BAN ON PUBLICATION 486.5(1) CCC

1 pages 2 to 11. And I noted that that has occurred
2 over the past decade.

3 A Mm-hmm.

4 Q From 2011 to 2022; is that correct?

5 A Yes, that's correct.

6 Q And what I'll do is I'll allow Her Honour to just
7 quickly review that. I don't intend on going
8 through all of that --

9 A Mm-hmm.

10 Q -- in detail with you, sergeant, today. But
11 perhaps you could just highlight a couple of
12 things from this relevant police training that
13 relate to your qualifications as an expert in
14 digital forensics.

15 A Okay. The -- as part of the digital forensics
16 unit there are two main fundamental baseline
17 courses in which an examiner would obtain that
18 kind of set the baseline level of knowledge and
19 expertise as far as police forensic examination in
20 Canada. So the first one I'll draw Your Honour's
21 attention to is on page 9, at the top of the page,
22 the computer forensic examiner course at the
23 Canadian Police College in Ottawa. That is a
24 three-week course that is kind of the base level
25 knowledge base and testing for any forensic
26 examiner -- police forensic examiner in Canada, so
27 that goes from the base level knowledge to doing a
28 lot of processes manually, such as reviewing file
29 systems and how data is stored on devices, and
30 kind of provides that level of standardization of
31 knowledge for police departments and forensic
32 examiners in Canada. So that is kind of the first
33 real stepping stone in which an examiner can
34 examine computers and mobile -- mobile devices and
35 storage medium, such as a USB drive or removable
36 hard drive.

37 The next significant one would be another
38 Canadian Police College course, which is
39 highlighted on page 7, right in the middle of the
40 page, the mobile device acquisition and analysis
41 course. And this is also the Canadian Police
42 College in Ottawa. It's a two-week course which
43 further builds on the computer forensic course but
44 is more tailored to mobile devices, primarily cell
45 phones, as that is what the vast majority of
46 examinations are now based upon. So those are the
47 two baseline courses for forensic examiners in the

VOIR DIRE

Robin Shook (for Crown)

in chief on voir dire #5 by Cnsl T. Laker

BAN ON PUBLICATION 486.5(1) CCC

1 police world in Canada to have. That's kind of
2 the standardization. The -- the knowledge on how
3 examinations are done, what relevant caselaw there
4 is in Canada at that time, how examinations are
5 done with best practices across the agreed-upon
6 standards in forensic units in Canada, and then we
7 go to all of the other courses that you see.

8 So the thing with technology, as I'm sure
9 Your Honour is well aware, is it's constantly
10 changing. So every time a company releases a new
11 device or a device updates, there's a new iPhone
12 or a new operating system, or different types of
13 technologies. For example, drones are now fairly
14 ubiquitous when they weren't when I started.
15 There are courses to each us, as a forensic
16 examiner, how to get the data from that device and
17 then how to interpret and process that device to
18 make it -- that data to make it something that is
19 just entries in a database to actually having real
20 world -- real world meaning within a courtroom.

21 So because there is -- I think there was 11
22 pages of courses, that is why there's so many,
23 because it's constantly evolving and constantly
24 changing from year on year. So the two baseline
25 ones were the Canadian Police College courses, and
26 then everything subsequent is just further
27 knowledge and experience and -- and getting to
28 know what new devices are coming out, kind of like
29 an update, like a caselaw update, what's happening
30 and how police departments are then able to get
31 data from the newer generation of devices. There
32 are a lot of them. I think -- I think it was
33 something like a hundred and eighty days in
34 courses I did in the six years I was there,
35 something -- something like that. So was a lot of
36 -- lot of updated training just to remain relevant
37 and have the ability to -- to stay current with
38 the new trends and new devices.

39 Q And I see that you've received training to deal
40 with Android devices, for instance, at page 6, in
41 2017. There is a -- a course entitled, Access
42 Data Android Forensic Analysis.

43 A Yes.

44 Q And so you're familiar with Android devices and
45 examining -- examining material that's -- that's
46 obtained from that device?

47 A Yes, that's correct.

VOIR DIRE

Robin Shook (for Crown)

in chief on voir dire #5 by Cnsl T. Laker

BAN ON PUBLICATION 486.5(1) CCC

- 1 Q And with regards to your prior court experience,
2 you've already alluded to the fact that you have
3 recently been found to be an expert in -- in this
4 particular area. I note that you referenced a
5 number of other cases, on pages 14 and 15, where
6 you have been found to be an expert as well?
- 7 A Yes.
- 8 Q And that includes courts both here in British
9 Columbia and, as you had noted, in 2022 you were
10 also found to be an expert in the Ontario Court of
11 Justice?
- 12 A Yes.
- 13 CNSL T. LAKER: Your Honour, that -- those are all the
14 questions that I propose to have for Sergeant
15 Shook on -- on this voir dire. I don't know if
16 Mr. Fox has any questions for him with regards to
17 his qualifications.
- 18 THE ACCUSED: I have no questions for him with regards
19 to his qualifications as they've been stated in
20 his resume or thus far. There -- there are going
21 to be questions that are going to come up in
22 cross-examination, though, that will relate to his
23 expertise or competence in certain specific areas.
- 24 THE COURT: Okay, but I -- the specific question before
25 me now is whether my next step is to qualify
26 Sergeant Shook as an expert in the areas that
27 Crown is seeking to have him qualified in
28 and . . .
- 29 THE ACCUSED: Yes. And I apologize. The reason -- the
30 reason that my response was so vaguely stated, I
31 guess, is I'm not a hundred per cent clear on the
32 scope that the Crown is seeking to qualify him as
33 an expert. Because, for example, she had brought
34 up his knowledge of Android systems. But does
35 that mean that -- that the witness is an expert
36 in, for example, the system files that the Android
37 devices maintain, or . . . I -- well, I -- I
38 would say at this point I have no questions or
39 concerns --
- 40 THE COURT: So if you just --
- 41 THE ACCUSED: -- about qualifying him as a . . .
- 42 THE COURT: Have you got the curriculum vitae in front
43 of you?
- 44 THE ACCUSED: I do.
- 45 THE COURT: Okay, so just -- just have a look at the --
46 page 14, underneath Regina versus Gill, because
47 that's what Crown is seeking at this point, just

VOIR DIRE

Robin Shook (for Crown)

in chief on voir dire #5 by Cnsl T. Laker

BAN ON PUBLICATION 486.5(1) CCC

1 that I qualify Sergeant Shook as an expert in
2 that.

3 THE ACCUSED: Yes. To a lay person that might make
4 significant sense, but to a very technical person
5 with a software engineering and computer science
6 background, that's an incredibly vague statement.
7 And so that's why I'm kind of unclear. It's
8 almost like we're speaking two different
9 languages. But I'm sure it will become more clear
10 as he testifies.

11 THE COURT: Right. I mean questions you may have for
12 him specifically about his expertise connected to
13 what he testifies about --

14 THE ACCUSED: Mm-hmm.

15 THE COURT: -- that's proper cross-examination, as
16 opposed to is Sergeant Shook an expert in -- in
17 this area with enough training and background to
18 be able to testify about this subject matter.

19 THE ACCUSED: Sure. Thank you.

20 THE COURT: Okay.

21 CNSL T. LAKER: So at this point, Your Honour, I'm just
22 going to ask that you do find Sergeant Shook as an
23 expert in the noted -- previously noted area.

24 THE COURT: Thank you. So I've seen Sergeant Shook's
25 curriculum vitae and I've heard him asked some
26 questions about his background and the extensive
27 coursework he's taken, in particular for the six
28 years when he was a member of the digital forensic
29 unit, and I am satisfied that it is appropriate to
30 qualify him as an expert in the areas the Crown
31 has outlined, that is, an expert in the forensic
32 analysis of digital devices, including the
33 identification, preservation, extraction, and
34 interpretation of digital evidence. Mr. Fox had
35 indicated that he may want to cross-examine about
36 the evidence [indiscernible/background noise] and
37 he may have more detail type questions, but didn't
38 take objection to him being qualified as
39 [indiscernible].

40 CNSL T. LAKER: Yes, thank you, Your Honour. So I'll
41 ask that the evidence heard on the voir dire
42 become part of the trial proper and that his
43 curriculum vitae be marked as the next exhibit.

44 THE CLERK: That will 12 -- or 13, Your Honour. I
45 apologize.

46 THE COURT: Thirteen. Yes. So, Mr. Fox, this is
47 something, there's nothing objectionable, and

VOIR DIRE

Robin Shook (for Crown)

in chief on voir dire #5 by Cnsl T. Laker

BAN ON PUBLICATION 486.5(1) CCC

1 rather than repeating the evidence that's clearly
2 part of the trial now that Sergeant Shook is
3 qualified as an expert, so I'm going to allow
4 that, what we heard already as his evidence, going
5 to evidence on the trial proper and that
6 curriculum vitae will become the next marked
7 exhibit on the trial, Exhibit 13.

8
9 **EXHIBIT 13: Curriculum Vitae of Sergeant**
10 **Robin Shook - 16 pages (was A on Voir Dire**
11 **#5)**

12
13 **EXAMINATION IN CHIEF BY CNSL T. LAKER:**

14
15 Q And Sergeant Shook, on January the 12th of 2023,
16 you commenced an analysis of a digital device that
17 was related to police file number 22-66177; is
18 that correct?

19 A Yes, that's right.

20 Q And what did you know about this search?

21 A The -- the information I knew about it was that it
22 was a Motorola cell phone, and it was in relation
23 to a -- a file from our domestic violence and
24 criminal harassment unit. The digital forensic
25 unit is not a investigative unit. We're a support
26 unit, which means that the work done is on a
27 support basis, so it's devices from across the
28 department from everything from our patrol to
29 devac [phonetic], which I stated, to homicide, and
30 the information that is provided to me is
31 encompassed as part of my report. It's a single
32 page form in which the details of the examination
33 requested are outlaid on it. The device and other
34 pertinent information such as the property tag
35 number or exhibit number.

36 Q And the device was a Motorola Moto X Play phone?

37 A Yes, that's correct

38 Q And as a result of you analyzing or -- or
39 examining, I should say, this device, you created
40 a report; is that correct?

41 A Yes, that's correct.

42 Q And I'm going to show you a copy.

43 THE COURT: This was previously provided to me.

44 CNSL T. LAKER: Oh, it was? Okay.

45 THE COURT: I -- I have kept it and not looked at it.

46 CNSL T. LAKER: Okay.

47 THE COURT: But is this --

Robin Shook (for Crown)
in chief by Cnsl T. Laker
BAN ON PUBLICATION 486.5(1) CCC

1 CNSL T. LAKER: Yes.
2 THE COURT: Is it -- do you want to check it's the
3 same?
4 CNSL T. LAKER: Ten pages?
5 THE COURT: Ten pages long?
6 CNSL T. LAKER: Yes.
7 THE COURT: No, it's not quite. I think I -- actually,
8 hand me what you have because what I was given
9 before was stapled, and I can see it has some
10 other documents at the end.
11 CNSL T. LAKER: Yes, it does have some other documents.
12 I think that those documents actual l y were
13 contained on the -- in the report, but I -- what
14 I'll do is I'll ask Sergeant Shook about them
15 separately and we can deal with it that way, Your
16 Honour.
17 THE COURT: Okay. Do you have this, Mr. Fox?
18 THE ACCUSED: Yes, I do, thank you.
19 CNSL T. LAKER:
20 Q And, so Sergeant Shook, I just want to -- going to
21 hand you a document.
22 A Thank you.
23 Q And I see that at the top of the document it
24 appears to be dated January the 12th of 2023.
25 A Yes, that's correct.
26 Q And there's a file number associated that says 22-
27 66177?
28 A Yes.
29 Q And it's a digital forensics unit mobile device
30 examination result sheet. Is --
31 A Yes.
32 Q -- that correct?
33 A That's correct.
34 Q And in total, the report appears to be six pages,
35 and it ends with a page that says "Firefox Search
36 Terms" --
37 A Yes.
38 Q -- is that correct?
39 A That's correct.
40 Q And is this the report that you created after
41 examining the Motorola Mato X Play phone?
42 A Yes, it is.
43 Q There were also two additional documents that were
44 included, I believe, in your report. The first
45 one is entitled "Exhibit Submission Form"?
46 A Yes.
47 Q And what's that document, please?

Robin Shook (for Crown)
in chief by Cnsl T. Laker
BAN ON PUBLICATION 486.5(1) CCC

1 A This is what I was referring to -- the information
2 that I would have been provided regarding this
3 device. This is a standard form that is submitted
4 by any unit within the Vancouver Police to the
5 digital forensics unit, that is outlining their
6 examination details that are requested as well as
7 providing the authorization for that search.
8 Q Okay. And was that attached? Was that document
9 attached to your report?
10 A Yes, it was.
11 Q Yeah. Okay. And then the other material, which
12 is entitled pages 8, 9, and 10, I'll just hand it
13 up to you, would you identify what this is?
14 A Yes. This would have been the authorization to
15 search, which was included with the digital
16 forensic unit ex -- sorry, ex exhibit submission
17 form. In this case it's a s. 487, I believe,
18 search warrant.
19 Q Okay. And so all three of those documents were
20 contained in your report?
21 A Yes.
22 Q Okay. And so that was one package; is that
23 correct?
24 A Yes, that's correct.
25 CNSL T. LAKER: Okay. So if I could actually ask that
26 all three of these documents be included as one,
27 and that be marked as the next exhibit, please,
28 Your Honour.
29 THE COURT: That make sense, the --
30 CNSL T. LAKER: I just want to confirm that Mr. Fox
31 does --
32 THE COURT: Mm-hmm.
33 CNSL T. LAKER: -- have all of those --
34 THE ACCUSED: Oh, yeah.
35 CNSL T. LAKER: -- pages
36 THE ACCUSED: Yeah, there's pages and pages.
37 CNSL T. LAKER: Okay. Excellent. Thank you.
38 THE COURT: So collectively, then, these three
39 documents that all came together from Sergeant
40 Shook will be marked together as Exhibit 14 on the
41 trial.
42 THE CLERK: Thank you, Your Honour.

43
44 **EXHIBIT 14: Copy of document titled**
45 **Vancouver Police Department Digital Forensics**
46 **Unit Mobile Device Examination Results Sheet**
47 **for 2022-66177, prepared by Sergeant Robin**

Robin Shook (for Crown)
in chief by Cnsl T. Laker
BAN ON PUBLICATION 486.5(1) CCC

Shook - 10 pages

CNSL T. LAKER:

Q Yes. And in -- and in terms of the information that is provided to you, Sergeant Shook, what -- you've referenced the search warrant in this -- in your report. I'm going to assume that that's because that lists the parameters of your search; is that correct?

A Yes, that's correct. And that -- and it's a checks and balances system because we receive a very high number volume of exhibits, and the inclusion of the authorization to search, whether it's a search warrant or a consent search, within the paperwork provides us the knowledge that we actually have the -- the police have the grounds to search the device in front of us and what we're searching for. So it's another -- another check along the system that we do have grounds to search.

Q And when you're searching the device, are you just looking at the device generally and all of the data that comes from it? Or is it -- has it been limited by the investigators on the file at all?

A So in the -- I can speak to how the Vancouver Police do it. I'm sure different forensic units across Canada will vary how their -- their intake and triage process is, depending on their volume and their resources.

In Vancouver we had a triage process. So how that works is a high number of devices are submitted to us for examination, along with the details requested and the authorization to search. There are some members of the digital forensic unit whose specialty is getting the data from the device. So this varies from physical acquisition, such as physically removing a data chip from a device, to using software devices like that are merely plugging a system into a phone, and then software processes running in order to obtain the device from it. Even as to low tech as taking pictures of the screen, if that's the only level of access that we have. So that is what we -- that is what we call the triage process, in which that data is extracted from the device and then presented to the investigator in -- in whatever form is available but is -- is what we

Robin Shook (for Crown)
in chief by Cnsl T. Laker
BAN ON PUBLICATION 486.5(1) CCC

1 colloquially call a preliminary report. That
2 preliminary report is provided to investigators in
3 whatever easiest-to-navigable format as possible.
4 Just based on the volume of information contained
5 within modern devices, there needs to be a
6 solution in which that data can be reviewed and
7 looked at and catalogued in a way that makes it
8 possible for investigators and subsequent follow-
9 up people, such as in the court process today, as
10 be able to look at that data and -- and interpret
11 what it is.

12 So for example, a regular iPhone might have
13 30,000 emails on it. If we present that
14 information just in a printout report it would box
15 on box of paper. So in this case, a preliminary
16 report may have been with the program Cellebrite,
17 which is a computer program which allows you to
18 search data, to search specific terms, and
19 highlights data types. So rather than navigating
20 a regular phone in which you might have it and
21 then have to go to a photo gallery and then look
22 through pictures, the presentation of the
23 Cellebrite program is a computer-based program in
24 which, if you want to look at the pictures, you
25 click on an icon of pictures, and it will show you
26 representations of every picture that was found on
27 that device.

28 So once this triage process has happened and
29 this preliminary report, although it's a working
30 copy, it's not an actual printed report, whatever
31 data is easiest to navigate is given to the
32 investigators.

33 The investigators are the one who have file
34 knowledge and to know what actually is evidentiary
35 and what's not. So as the digital forensic unit
36 is a support unit, we are not part of the
37 investigative team. I don't know who the accuseds
38 are, I don't know who victims are, I don't know
39 the elements of the offence, what they're looking
40 for. That is for the investigators to review the
41 data for, searching within the terms of their
42 authorization, in this case a search warrant, to
43 ensure that they're within the bounds of their
44 search authorization, and then to take note of
45 that data in whichever way they deem fit for
46 subsequent analysis and extraction for a report
47 for me.

Robin Shook (for Crown)
in chief by Cnsl T. Laker
BAN ON PUBLICATION 486.5(1) CCC

1 Q Okay.
2 A So in this case, using Cellebrite, it's possible
3 to tag data, which is simply a digital version of
4 putting a sticky note on something, so a follow-up
5 and -- a follow-up person such as myself goes,
6 okay, there's some -- for example, there's some
7 internet history that could be evidentiary, so
8 they'll just stick a little tab on it. Doesn't
9 change the data, it just says, this is what I'm
10 looking for. And then once that investigator
11 review is complete, then that review comes back to
12 somebody who is in my position as an examiner.
13 So what the role of an examiner will be is
14 looking at what data was marked as evidentiary;
15 one, confirming it's still within the
16 authorization; and two, is really the -- the then
17 extraction of that data into a format which is
18 readable and understandable in a court and
19 regular-person format. So it can change from the
20 stored value, which is numbers in terms in a
21 database to a format such as a printed output on
22 the report in front of you.
23 Q Right. And so that this report --
24 A Yeah.
25 Q -- is a representation --
26 A Yes.
27 Q -- of -- of the -- what the police determine is
28 the relevant extracted data with regards to this
29 particular file?
30 A Yes, that's correct.
31 Q And so you mentioned that -- that the data can get
32 tagged by the lead investigator or one of the
33 investigators.
34 A Yes.
35 Q Did that take place in this situation?
36 A Yes, that's correct.
37 Q So the subsequent data that you examined had been
38 tagged by the lead investigators as possibly
39 relevant?
40 A Yes.
41 Q Okay. And you looked into that further?
42 A Yes.
43 Q Okay. So I'm just going to draw your attention to
44 a little bit more in your report. So first of
45 all, I see here that you provided a description of
46 the article examined, and we've already discussed
47 that that was the Motorola Moto X Play phone?

Robin Shook (for Crown)
in chief by Cnsl T. Laker
BAN ON PUBLICATION 486.5(1) CCC

1 A Yes.
2 Q And the property office article number was 226177-
3 1?
4 A Yes.
5 Q And you noted you took some photographs of a
6 phone, and that's the phone that you examined?
7 A Yeah.
8 Q And there is a SIM card; is that correct?
9 A That's correct.
10 Q Okay. And what was -- where was that SIM card
11 located?
12 A The -- the data I reviewed is -- is a digital
13 equivalent of the SIM card. The SIM card would
14 have been included as part of the package that was
15 triaged by whoever did the triage. So when I
16 examine the SIM card, I look at the -- the data
17 package from it rather than actually the physical
18 card.
19 Q Okay.
20 A Insofar as, like, when I look at the phone, I look
21 at the data of the phone rather than the actual
22 device itself.
23 Q Okay. And I note that there's a reference on this
24 SIM card that it -- it says Luckymobile.ca.
25 A Yes.
26 Q What's -- what's that?
27 A Lucky Mobile is a service provider that operates
28 in Canada. So it's -- it's usually a pay-as-you-
29 go or it's like a -- think you can buy them at gas
30 stations and cell phone kiosks. It's a -- kind of
31 like a Rogers or Telus or Bell service provider.
32 Q And then underneath those photographs you have
33 your summary of findings.
34 A Yes. Thank you.
35 Q And essentially, if you could just take a moment
36 to review that.
37 A Yeah.
38 Q And that essentially concludes what you've already
39 told the court, just about how the data had
40 already been completed and provided to
41 investigators, investigators reviewed the data and
42 located what was evidentiary.
43 A Yes.
44 Q
45 Using these selections, I located the data
46 verified, and have exported it for exclusion
47 in this report.

Robin Shook (for Crown)
in chief by Cnsl T. Laker
BAN ON PUBLICATION 486.5(1) CCC

- 1
2 A Yes.
3 Q Okay. And underneath that you've written the
4 exhibit details, and that sets out, what? Could
5 you just explain that for the court?
6 A Yeah. The exhibit details is the tombstone data
7 of a device, such as the make, model, colour, a
8 Mac address, which is the -- I kind of think of it
9 as the address of a phone for primarily wireless
10 networks. So where that becomes relevant is in
11 case there's linkages being made within a router
12 or wireless environment. An eye-in-the-eye is a
13 number that is similar to a serial number that is
14 unique to a device. Operating system is the
15 operating system of the device. In this case it's
16 Android 7.1.1. The time zone, which is the time
17 zone that was set to the device at the time of
18 acquisition, in this case it was UTC my state
19 [phonetic] which is the local for Vancouver. And
20 then the two identification entries there, which
21 is a phone number, which is 1-778-951-8542, that
22 would have been imported from the SIM card data
23 from the network data when a phone is -- that was
24 provided into the phone, and a device user which
25 had the entry of, Patrick.
26 Q Okay. And just to confirm, this phone can connect
27 to the internet?
28 A Yes.
29 Q And I see that you've listed the SIM card details
30 which we've already discussed briefly.
31 A Mm-hmm.
32 Q You've also mentioned the memory card details.
33 And then you have another reference here which
34 says, "Other Notes". Can you -- can you just
35 review that quickly and advise the court what that
36 means, what those notes mean?
37 A Yes. Those would be my -- the version of police
38 notes for this examination. So because this is a
39 digital device, it's all done on a computer rather
40 than handwriting notes and scanning them and
41 touching them, this is the section which my police
42 notes are included in my report.
43 Q And in these other notes it says, "searched items
44 tagged."
45 A Yes.
46 Q So those were the items that were tagged by the
47 investigator?

Robin Shook (for Crown)
in chief by Cnsl T. Laker
BAN ON PUBLICATION 486.5(1) CCC

1 A Yes.

2 Q And then you've referenced "Firefox Web Browser
3 records". So can you just explain what that is?

4 A Yes. So with my -- my police notes will note the
5 data that was marked as evidentiary by the
6 investigators when they were reviewing the, what
7 we call the preliminary report, the overall data.
8 So the way that, in this case, Cellebrite, which
9 is the forensic program that I was using,
10 categorizes data for easy view. There are several
11 categories for a investigator to look for, which
12 one of these is searched items and another one is
13 browser records. So depending on the type of
14 investigation that it is, sometimes if an
15 investigator is only interested in browser
16 history, the way that Cellebrite is built is for
17 ease of use is so they allow an investigator to go
18 directly to a data category and then look at the
19 records for that, and that's what I've indicated
20 there.

21 Q Okay. And then you've said:

22
23 Source files are
24 data/data/org.Mozilla.Firefox
25

26 A Yes.

27 Q -- slash -- can you just explain that -- that
28 line, please?

29 A So as these are my police notes, what I've done is
30 referenced what I am looking at as part of my
31 forensic process in my notes rather than including
32 every data category in the report itself. So for
33 example, if we go ahead and look at the results
34 page --

35 Q Yeah.

36 A -- it's a -- a succinct outlay of what data was in
37 a database, so for example, if we look at searched
38 items and Firefox web data, we'd be referring to
39 page 6 of my report.

40 Q Okay.

41 A So if we look on page 6, you see the number
42 column, in which I added, just for easy reference,
43 if we were speaking about a specific items, a date
44 and time reference as it was pulled from the
45 database in which was searched, and then what that
46 search term was in the third column.

47 So a database -- how phones and other mobile

Robin Shook (for Crown)
in chief by Cnsl T. Laker
BAN ON PUBLICATION 486.5(1) CCC

1 devices store data is within databases. So think
2 of -- think of multi-layered Excel spreadsheets,
3 and there could be hundreds of entries in a
4 database that tracks many, many different types of
5 data points that aren't necessarily evidentiary or
6 need to be included for an evidentiary purpose in
7 such a report like this. If you think the -- the
8 overall amount of information being kept on a
9 phone tracks user's movements and what they're
10 doing, when they're doing, why they're doing it,
11 that may be in a database. But if what
12 investigators have concluded is evidentiary is
13 such a search term, there's no -- there's no
14 succinct reason for putting a hundred columns in a
15 report when three or four will show the data
16 that's evidentiary. But what I've done in my
17 notes is listed the source of where I am getting
18 this data from in case the court needs to or
19 defence wishes to go and look at the source of
20 that data from which I'm pulling it from to see if
21 I'm to, one, verify I'm correct, or to do, if
22 there's anything else that's evidentiary,
23 inculpatory or exculpatory that's contained in
24 that database that I haven't included.

25 Q Okay. So -- so with regards to page 6 --

26 A Mm-hmm.

27 Q -- of your Firefox search term.

28 A Yes.

29 Q In very simple terms, what -- what is -- what is
30 that table of?

31 A So Mozilla Firefox is a web browser. So that is a
32 program which allows a user using a device that is
33 capable of and is connected to the internet to
34 connect to the internet to search for data, to
35 search for websites or people, whatever somebody
36 might search in Google, or Altavista or Bing, or
37 whatever other search engine they wish.

38 So web browsers are built in such a way now
39 that you can either put in a web URL, a web
40 address at the top of it, or just merely enter a
41 search term and it will conduct a search for you.
42 What it will also do in this category is, if you
43 go to Google and search for a term, it will enter
44 that into this data category.

45 So what is encapsulated in the page 6 of
46 Firefox search terms is entries within the web
47 browser database for the Mozilla Firefox program

Robin Shook (for Crown)
in chief by Cnsl T. Laker
BAN ON PUBLICATION 486.5(1) CCC

1 in which a user was conducting a search, meaning
2 entering a value and asking whatever search engine
3 -- in this case it appears to be mainly Google --
4 on, to get results for that search term.
5 Q Okay. So under the column time --
6 A Yes.
7 Q -- there is a number of -- well, there's really a
8 number of times that are referenced on May 13th
9 and May 14th.
10 A Yes.
11 Q What -- what are those times representative of?
12 A Those are the local -- adjusted to local time
13 values of when those entries were entered into
14 that database. So that indicates when those
15 search terms were entered into the Firefox browser
16 and completed for a search.
17 Q And in the column aside, that says, Entered Search
18 Term, what you have is, say at -- say at line 1
19 you have that on May 13th of 2022, at 6:27:52 p.m.
20 Google webmas --
21 A Yes.
22 Q -- w-e-b-m-a-s, was searched?
23 A Yes.
24 Q Okay. Can you just explain for the court what
25 Google Webmaster Tools are, what that -- what
26 those relate to?
27 A Google Webmaster Tools are dual -- I'm sure it's a
28 term of reference now -- is a giant company, one
29 of the most valuable companies in the world. And
30 basically, what they sell is information. And
31 what part of their online business model is they
32 allow a user to host a website and have various
33 tools for -- in allowing for the administration of
34 websites.
35 So one of the ways that a user administrates
36 their website is their ability to be searched for
37 and found on search engines. So what Google
38 Webmaster Tools is primarily a suite of software
39 tools that Google has which allows users,
40 particularly administrators, other people with
41 access to websites, to monitor their -- their
42 usage of their website through Google and how it's
43 interacting with Google. So in my -- I haven't
44 done particular -- like a course on Google
45 Webmaster, I've only come across it on files.
46 Primarily what's -- it seems to be is a software
47 suite that allows a administrator to promote or

Robin Shook (for Crown)
in chief by Cnsl T. Laker
BAN ON PUBLICATION 486.5(1) CCC

1 reconfigure or track usage of their website by the
2 general internet population at large.

3 Q And if I could just draw your attention to line 6,
4 where the time is referenced as May 14th, 2022 at
5 2:36:04 p.m. And the search appears to have been
6 desicapuano.com.

7 A Yes.

8 Q So what -- can you say anything about that
9 particular search?

10 A Yeah. That would have been -- those -- that value
11 of desicapuano.com would have been entered into
12 the address field of Firefox, and entered to be
13 searched. So this doesn't say what the results of
14 that search were. It's -- it's telling you that
15 that's what was entered by a user as a search
16 term.

17 Q And I'm just going to take you back one page of
18 your report, to page 5. And -- well, actually,
19 no. First of all, let's just cover off the fact
20 that pages 3 and 4 appear to be a glossary, so
21 that's providing definitions for the -- for the
22 reader of the report; is that correct?

23 A Yes, that's correct.

24 Q And then with regards to page 5, can you just
25 explain what that is?

26 A Page 5 is a compilation of user accounts that were
27 found within various databases on this device. So
28 previously, when I had said that I had, for
29 Firefox search terms, my police notes had the
30 source of that information, in this case I
31 provided the source within this output here.

32 So anybody with a mobile device, Android or
33 Apple, knows that it would be frustrating to enter
34 a user name and password for every service every
35 time they went to go use it on their phone. So
36 for example, if every time you had to check your
37 email, if you had to enter that information every
38 single time, it would take a lot of time and it
39 would be -- it would be annoying for a user. So
40 devices have built in the capability of storing
41 account information and pre-entering that and
42 having that accessible to a user whenever they
43 click on a program or service. So as this
44 information is stored on a device, it is able to
45 be digitally forensically analyzed and removed and
46 -- and presented in this format. So what this
47 page is showing is various accounts that were on

Robin Shook (for Crown)
in chief by Cnsl T. Laker
BAN ON PUBLICATION 486.5(1) CCC

1 -- in different databases on this device. Yes.
2 Q And so what I see at -- the way you've created
3 this table is again you've numbered your various
4 lines?
5 A Mm-hmm.
6 Q And then you have a column for user name?
7 A Yeah.
8 Q And then a column for account data?
9 A Yes.
10 Q So let's look at number one first.
11 A Yeah.
12 Q The user name is identified at
13 patrickhfox@gmail.com?
14 A That's correct.
15 Q And then you've referenced the service type and
16 source file. Can you just explain that in a bit
17 more detail?
18 A So the -- the service type is a reference to the
19 program or the application in which this value was
20 entered. So a -- a user name can be whatever a
21 developer allows a user to have a user name, so it
22 could be a name or email, phone number, or
23 whatever handle that the developer of the program
24 or the application wishes it to be. So in this
25 case, the email address, Patrickhfox@gmail.com is
26 a user account that Mozilla Firefox, the browser
27 we had spoken about before, has saved as a user
28 name. So that's where we look at service type, is
29 a Firefox account. And then the source file in
30 which this was -- this entry was saved was the
31 accounts underscore DE database.
32 Q So is that where the account is stored within the
33 phone?
34 A Yes. It's a -- the accounts DE and CE databases
35 are Android databases in which various accounts
36 are stored.
37 Q Okay. Looking at number 2, what I see is a P with
38 a number of dots.
39 A Yes.
40 Q And then, at Gmail.com Can you explain that in a
41 little bit more detail?
42 A Yes. The -- the account databases only retain
43 what information the applications allow them to.
44 So if an application is hiding the entire email
45 address from that database from seeing it, such as
46 we see with the first letter and then the stars,
47 that's what will be stored within the database.

Robin Shook (for Crown)
in chief by Cnsl T. Laker
BAN ON PUBLICATION 486.5(1) CCC

1 So the database only stores what the applications
2 allow them to. In this case it stored the value P
3 with a bunch of dots at Gmail.com.
4 Q And is this because -- and I note that this is the
5 case with numbers 3 and 4 as well, and is that due
6 to the fact that the service type is a BlueMail?
7 A Yes. Most likely. So BlueMail dot mail is a --
8 it's an application, a software suite that's
9 primarily calendar and email syncing. So it
10 allows you to -- allows you to import multiple
11 email accounts and calendars and sync them in one
12 place so you're -- you're more conveniently having
13 all of your email addresses, whether you have one
14 or two or many, in one place. So what it appears
15 is that this BlueMail service . stores their account
16 information in the accounts underscore CE database
17 with only the first initial and -- and the -- the
18 host, the at Gmail.com address.
19 Q Right. And I note that with regards to number 3,
20 it's Panda series of dots, at desicapuano.com?
21 A Yes.
22 Q So is that an email address then?
23 A It appear -- it appears to be an email address.
24 What it would have been stored as in this database
25 is a user name. So --
26 Q Okay.
27 A -- previously, when -- it's basically under the
28 entry for username but appears to be an email
29 address that was used as a username, as a email
30 address that was being used as a username.
31 Q Okay.
32 A Sorry.
33 Q And I see that number 4 is E with a series of dots
34 at desicapuano.com?
35 A Yes.
36 Q The service type was the BlueMail --
37 A Yes, that's correct.
38 Q -- service type, and I see that there's a password
39 referenced?
40 A Yes.
41 Q And what would that password be related to?
42 A So that would be the password associated to that
43 user name that is store in that database. So
44 sometimes passwords are stored in a hash value,
45 which we see or, like, a hash or a ceded term,
46 which we see in entry number 2, because you see
47 the password is a very long sequence of letters

Robin Shook (for Crown)
in chief by Cnsl T. Laker
BAN ON PUBLICATION 486.5(1) CCC

1 and numbers, and sometimes it's stored in what's
2 called plain text, in what we see in entry 3 and
3 4. So the password of liz2munez8 is what was
4 stored in this database as the associated password
5 to these two user names.
6 Q And then with regards to numbers 5, 6, 7, 10, 11,
7 and 12, those all appear to be related to the
8 Patrickhfox@gmail.com?
9 A Yes.
10 Q So that's the same user name but are they
11 referenced under different lines because the
12 account data is different?
13 A Yes. They're different references because
14 different applications or different services are
15 using the same email address as that user name.
16 Q Okay.
17 A For example, if we look at -- if we look at entry
18 6, line 6, the source for that is Android maps.
19 So that will be your Google Maps application. So
20 the user name for Google Maps in this case is
21 Patrickhfox@gmail.com. And then if we go up one
22 line to line 5, the source file for that one is
23 Android Calendar, so it would be a Google
24 Calendars user name, would be the same email
25 address as Patrickhfox@gmail.com.
26 Q And under line 8 there's a phone number that's
27 referenced. That's the phone number that's
28 associated to this phone; is that correct?
29 A Yes. It was the same phone number that was on the
30 SIM card with this device, and in this case it's
31 the phone number that has the user name under the
32 MMS/SMS database, which is the primary database in
33 which regular text messages are stored.
34 Q And line 9, the user name is blank there. Can you
35 explain what that line 9 means?
36 A Yeah. Sometimes the database is only retaining
37 what information is allowed to it or it still
38 retains. In line 9, in this case if you look at
39 the user account information, this was from
40 Instagram, and this was a deleted but recovered
41 entry. So the -- I can't say for certain what it
42 -- the reason is. If -- if Instagram -- this
43 version of Instagram didn't want a user name being
44 stored in the database, but in this case it was
45 probably due to that account being deleted. So
46 the user name no longer showed up.
47 Q And Sergeant Shook, I'm just going to give you a

Robin Shook (for Crown)
in chief by Cnsl T. Laker
BAN ON PUBLICATION 486.5(1) CCC

1 chance to just quickly review your report and see
2 if there's anything else that you've missed in
3 advising the court about this report. I'm just
4 going to check in with my colleague here.

5 Was there anything else that you wanted to
6 add, Sergeant Shook?

7 A No.

8 Q No? So my colleague just wanted me to clarify
9 that with regards to numbers 3 and 4, under user
10 accounts on page 5, are you able to draw any
11 conclusion as to how those user names ended up on
12 this particular device?

13 A Yes. Those -- those user names would have had to
14 be either entered or authorized by a user to up to
15 -- to appear on this device. So primarily, the
16 two main methods of an account being entered on a
17 device would be, one, a user enters it manually by
18 entering a user name and password on a device and
19 storing it; or two would be migrating information
20 from another source onto a device in which, for
21 example, if they had other email accounts and they
22 bring it over all in one package to put onto this
23 device. So those are the two main methods of it,
24 but both of them would be through user input in
25 some method.

26 CNSL T. LAKER: Those are all my questions for Sergeant
27 Shook. I am just going to get him some water.
28 He's talking a lot.

29 A Oh, thank you.

30 CNSL T. LAKER: And I'll give Mr. Fox a chance to --
31 THE ACCUSED: No, thank you.

32 CNSL T. LAKER: -- consider his questions.

33 THE ACCUSED: Oh, question.

34 CNSL T. LAKER: Do you want any water?

35 THE ACCUSED: I'm good for water, thank you.

36 CNSL T. LAKER: All right.

37 THE COURT: Would you like to take the break before you
38 cross-examine Sergeant Shook?

39 THE ACCUSED: Yes, I would, thank you.

40 THE COURT: Okay. We'll take the afternoon break, now.

41 If everybody could return, please, at 3:20.

42 CNSL T. LAKER: Thank you, Your Honour.

43 THE ACCUSED: Thank you, Your Honour.

44 THE SHERIFF: Order in court. All rise.

45

46 (WITNESS STOOD DOWN)

47

Robin Shook (for Crown)
in chief by Cnsl T. Laker
BAN ON PUBLICATION 486.5(1) CCC

1 (PROCEEDINGS ADJOURNED)
2 (PROCEEDINGS RECONVENED)
3

4 CNSL T. LAKER: Yes, Your Honour, and it's Laker,
5 initial T., for the Crown and -- and Mr. Elias is
6 present, as is Mr. Fox. And I'm just confirming
7 that the Crown did conclude our direct examination
8 of Sergeant Shook. I believe Mr. Fox does have
9 some questions for him.

10 THE ACCUSED: Yes, I do.

11 CNSL T. LAKER: Okay.

12 THE COURT: All right. Go ahead. Cross-examination.
13

14 **ROBIN SHOOK, recalled.**
15

16 **CROSS-EXAMINATION BY THE ACCUSED, PATRICK FOX:**
17

18 Q The first thing that I'd like to clarify, on page
19 5 of your report it has the user accounts table.

20 A Okay.

21 UNIDENTIFIED SPEAKER: Have a moment, please.

22 THE ACCUSED: Sure.

23 Q I believe that you had stated earlier that the
24 values that appear under user name aren't
25 necessarily identical of verbatim the actual user
26 account, for example, the email address, but
27 rather a nickname, if you will, that the user puts
28 in?

29 A The user names that are stored in that value are
30 what is being stored as a user name for that
31 application. So I think I see where your -- your
32 question is going. It would depend on what the
33 user entered as a user name and what that
34 application was storing as a user name. Whether
35 -- in these cases it's an email address but if
36 it's a program that doesn't use an email address,
37 then it would be a nickname or something similar.

38 Q Okay. So let me ask you. An email program, for
39 example, like BlueMail, if person creates an
40 account within something like BlueMail, they can
41 often give that account a name, a pretext name.
42 Like, for example, if I was going to create one
43 for Patrickhfox@gmail.com, I could call that my
44 Gmail account, and that's how it would appear
45 within the application to the end user, in the
46 user interface.

47 A Okay

Robin Shook (for Crown)
cross-exam by the Accused, Patrick Fox
BAN ON PUBLICATION 486.5(1) CCC

1 Q Of course, the actual email account would still be
2 Patrickhfox@gmail.com?
3 A Yeah.
4 Q So should I understand this to mean the values
5 listed under user name here would be those plain
6 text or free text descriptions as opposed to the
7 actual account name?
8 A That would be -- so what you're asking, is it --
9 is it the descriptor of the account that's being
10 stored in the user name, or the actual user name
11 itself; is that what you're asking?
12 Q Sure. Okay, yeah, that would be a good way of
13 putting it.
14 A I believe that would vary from application to what
15 application is. Primarily, what, in my training
16 experience and looking at Android databases, the
17 purpose of the account CE database, is for
18 prefills. So if you had a -- if you had an
19 account in which it was patrickhfox@gmail, and
20 then link that email address within BlueMail to
21 another account that's, you could just say
22 Patrick, with an associated name, if that
23 credential of Patrick and a password allowed you
24 to access that further account, like that step in
25 the door of the other account, then that is what
26 would be store. It would be the -- it would be
27 the prefill for getting into that first step.
28 Another example would be if you -- if you had
29 a master admin account and within that admin
30 account, so you could just say admin@gmail.com,
31 for example, and within that admin account that
32 you used to log in, that admin would be the one
33 that would be stored in this database. If -- once
34 within that account, if there was 10 other email
35 addresses or user names associated, those wouldn't
36 necessarily be associated to this user accounts
37 database, would be that initial prefill one, the
38 admin one.
39 Q Okay. But looking at items 3 and 4 of your table,
40 the two that referred to a desicapuano.com domain.
41 A Mm-hmm.
42 Q I see that there's Panda number of dots, and
43 then there's E and a number of dots. I mean,
44 clearly those are not valid email addresses. So
45 what exactly is it that we're looking at here?
46 Like what -- what do these two values represent?
47 A Those represent -- the user name is what the entry

Robin Shook (for Crown)
cross-exam by the Accused, Patrick Fox
BAN ON PUBLICATION 486.5(1) CCC

1 is stored at within the database for that single
2 cell. So --
3 Q Oh.
4 A -- it depends on what the permissions are and what
5 the application is allowing it to save. For
6 example, it could only be displayed as a user for
7 privacy sake. It doesn't show you the full user
8 name. But that is what this database is storing
9 as a user name.
10 Q Okay. Two things that I want to say. First, I'm
11 very familiar with databases and relational
12 databases and SQL. So feel free to use technical
13 terminology if that's easier for you.
14 Unfortunately, though, there are some good people
15 in the room who might not be familiar with it,
16 might have some issue if we do that.
17 THE COURT: Yes. I'll just stop you right there, Mr.
18 Fox, to say, that that's true. Your invitation
19 only really goes as far as yourself. I want to
20 understand what Sergeant Shook is talking about
21 and I'm sure the Crown wants to be perfectly
22 clear, too.
23 THE ACCUSED: Right. Right.
24 THE COURT: So if there are terms that I don't
25 understand, I'll stop you, and I'm sure the Crown
26 will do the same, but go ahead.
27 THE ACCUSED:
28 Q Okay. Now, for the purposes of your testimony
29 here today, it seems to me that these two entries
30 in this one table are really the most, if not the
31 only, relevant part or important part of your
32 testimony. So I really want to make sure that
33 we're very clear on what exactly this information
34 is. Like does this mean that the device had these
35 two accounts actively enabled on it at that time,
36 such that from that device the user was able to
37 access two email addresses that started with an E
38 and a P?
39 A To speak accurate, I'm not sure what the overall
40 case is so I'm not going to speak to the
41 importance of some information over --
42 Q Sure.
43 A -- other information. I don't have investigatory
44 knowledge, I don't know. I'm just presenting the
45 evidence. I don't know what's important, what's
46 not.
47 As far as if this provides access to an

Robin Shook (for Crown)
cross-exam by the Accused, Patrick Fox
BAN ON PUBLICATION 486.5(1) CCC

1 account, that is something that would have to be
2 tested to see if it actually allows a user to log
3 into an account and whether if that grants access.
4 What this data shows is at the time that the
5 police -- the digital forensics unit were able to
6 acquire the data from the device, these were
7 entries within the accounts database and the
8 associated information from it. So what it shows
9 is that through the means that I spoke to earlier,
10 this information of a user name, as well as an
11 associated service, so those two email addresses
12 which are P and E dot-dot-dot at desicapuano.com
13 are from the BlueMail mail application, and that
14 they have associated plain text passwords stored,
15 and that this information was stored within the
16 account's database. So what it shows is that
17 first step. It shows that the data is there and
18 it would have existed on the phone through some
19 input of a user prior to the police acquiring this
20 data. And the next step in which you're asking
21 is, did this data actually allow a user access to
22 those accounts is something that -- that I didn't
23 see an authorization to do, and something that --
24 a step that I did not take. So I can't tell you
25 whether or not allowed access to this account, but
26 what I can tell you is that these are the entries
27 within an account's database that were on the
28 device at the time that we acquired the data from
29 it.

30 Q Okay. When -- if a user adds some account
31 information through a third party application --
32 by third party I mean an app that isn't part of
33 the Android operating system but something like,
34 for example, Instagram or BlueMail, those are both
35 third party applications, so if a user adds some
36 account information using a third party
37 application like that, and then subsequently
38 deletes that account information, again, from
39 within that third party application, will the
40 corresponding records in the underlying database
41 tables or database files be immediately deleted or
42 would they just be marked as being deleted?

43 A Interesting question, and it would depend. So
44 this is underlying questions on the functionality
45 that would be not only specific to a specific
46 device, saying a Motorola X Play, but to a
47 specific-specific device, being this exact

Robin Shook (for Crown)
cross-exam by the Accused, Patrick Fox
BAN ON PUBLICATION 486.5(1) CCC

1 Motorola X Play.

2 Data deletion and freeing up of storage space
3 on a -- on a device is called, commonly called a
4 garbage collection. Basically, for the court, how
5 devices store data on silicon chips nowadays, say
6 within your cell phone, is there are, just for an
7 example, one million positions in which it can
8 store a piece of data. And chips can't -- those
9 positions can only be used a finite amount of
10 times; say, for example, 10 times. So that is
11 when, if people have been using their phones
12 overtime, they get slower and slower, the more
13 device -- the more you use a phone. It eventually
14 gets slower to a point where you have to upgrade.
15 It's because the -- the actual chips that are
16 storing the data only have a finite amount of
17 storage, on-and-off switches, within those
18 presets. So having said that, these chips have e
19 a -- a very base layer of technology that is
20 called wear levelling or garbage collection in
21 which, when you delete a file, this very base
22 level of operation of a chip which nobody -- a
23 user doesn't have access to it's the base chip
24 function itself, is looking at positions on the
25 chip that have had -- been used a lot. So say if
26 you -- if you had an analogy of a filing cabinet,
27 if the first two drawers in your filing cabinet
28 were getting used so much the hinges stopped
29 working, then the base of this wear levelling is
30 going to take the information that was in those
31 two drawers and move them to, perhaps, to drawer
32 three and four that haven't been used as much. So
33 your phone stays quicker because now, instead of
34 using the old drawers that are getting worn out,
35 it -- it's moved that information to new drawers,
36 less used spaces within the chip.

37 So this becomes relevant that when a user
38 deletes an entry in a file, such as a SQLite
39 database and Write-Ahead Log, the underlying
40 functionality of the chip will look at that
41 available space and either mark it for reuse or
42 move that information totally independent on base
43 factors of the user. So it could stay there for
44 weeks, months, or it could be gone
45 instantaneously, totally dependent on how the
46 application is set up to run, and the usage of the
47 chip and these underlying factors.

Robin Shook (for Crown)
cross-exam by the Accused, Patrick Fox
BAN ON PUBLICATION 486.5(1) CCC

1 So to get to the question that Mr. Fox
2 presented, how long would data stay within the
3 database being deleted without being totally
4 irrevocable, being able to parse and retrieve,
5 would be dependant on the device and that specific
6 device.

7 One thing that is notable, though, that the
8 -- when a file is marked as deleted and hasn't
9 been deleted and is recovered, there is a data set
10 that shows it as being deleted and recovered.

11 So for example, if you look at my report,
12 page 5, the entry number 9, for that entry it has
13 deleted, yes. So that means that that entry was
14 deleted but was recovered because that underlying
15 garbage collection working so the chip hadn't
16 actually purged that information out and we were
17 able to recover it.

18 Does that answer your . . .

19 Q That was a very thorough --

20 A Mm-hmm.

21 Q -- response, and if -- it was a very good answer.
22 Unfortunately, though, I think that it didn't
23 really address the particular question I was
24 asking because I wasn't asking about the deletion
25 of a file but, rather, the deletion of a single
26 record within the SQLite -- well, within the
27 database files. So within

28 A Mm-hmm.

29 Q -- accounts underscore CE, that's the database
30 file. That's made up of a bunch of tables or one
31 or more tables, and the tables are made up of
32 columns and rows. So if one of those records, one
33 of those rows, is deleted, if the user account is
34 deleted, what I want to know is, will the
35 corresponding row in the database table be
36 immediately deleted or will the -- the row, the
37 record in the database remain, but a particular
38 column, for example, that would be cog deleted or
39 something like that would be set to true, thereby
40 signifying that the row has been deleted but the
41 data will still remain?

42 A Yes. True. It would be written to the Write-
43 Ahead Log, and then, when the Write-Ahead Log goes
44 to activate run through, then it would be deleted.
45 And you're saying it would be marked for deletion,
46 it wouldn't actually purge that information in
47 most cases.

Robin Shook (for Crown)
cross-exam by the Accused, Patrick Fox
BAN ON PUBLICATION 486.5(1) CCC

1 Q Right. But again, though, the important part is
2 we're talking about within the SQLite databases --
3 A `Yeah.
4 Q -- not in the file system?
5 A Yeah.
6 Q Okay.
7 THE COURT: Okay. Sorry, got to stop you there.
8 THE ACCUSED: Sure.
9 THE COURT: Written to the Write-Ahead Log?
10 A This is - this is how we're delving into. So --
11 THE COURT: So that I did not follow.
12 A So how a SQLite database has -- think of a
13 database as your *Criminal Code*, a great big thick
14 book of information, and a user is making changes,
15 which might be one or two pages. Rather than
16 constantly making that change to the big -- the
17 main database, take out page 100 and replacing
18 page 100, that kind of thing, how databases work,
19 SQLite, rights to a file called a Write-Ahead Log,
20 a wall file, in which it makes those changes. So
21 it would be -- it would -- you have your main
22 database and then a little sub-file which right in
23 the -- might, for an indeterminate period of time,
24 have all the revisions in it. So when that Write-
25 Ahead Log has a predetermined set of variables,
26 say 20, then it goes ahead and makes that one
27 change. So it's writing to a smaller revisionary
28 file instead of the main database. So when a file
29 is marked for deletion, it's written into the wall
30 file. The Write-Ahead Log is being marked for
31 deletion. This is really getting into the weeds.
32 THE COURT: It is. It is.
33 A So it's -- yes, I see -- so it is marked for
34 deletion within a SQLite database. The time in
35 which it takes is a variety of factors in which I
36 didn't -- for your -- this particular file, I
37 didn't do any testing to see how long the entry
38 remains in it. If that's what you're asking, how
39 long an entry remains in the database before being
40 purged after being marked for deletion.
41 THE ACCUSED:
42 Q My next question would be, are you aware that some
43 applications, for example, BlueMail, make --
44 sorry, I shouldn't have phrased it as, are you
45 aware.
46 Is it possible that some applications, when
47 you delete a user account or an account that was

Robin Shook (for Crown)
cross-exam by the Accused, Patrick Fox
BAN ON PUBLICATION 486.5(1) CCC

1 created within that application, so you delete the
2 account, they will flag the record in the database
3 in some way to indicate that it's been deleted but
4 they deliberately will not actually remove the
5 underlying data?
6 A No, I haven't -- I haven't tested BlueMail to that
7 level to have that level of knowledge.
8 Q But would you say that that is a possibility?
9 Sorry, that was a poorly phrased question
10 because obviously it would be possible.
11 A Is it --
12 Q I withdraw the question. There's no real --
13 there's no good way that I could ask it because to
14 ask if it's possible is kind of ridiculous
15 because, of course, it's possible. It should have
16 been is it likely or is it probable, but I think
17 that -- I'm guessing that you don't have that
18 extent of knowledge with BlueMail to know whether
19 or not.
20 A Yes, that's correct.
21 Q Right. Okay. Do you know when it was that I had
22 first obtained or purchased this -- this mobile
23 device, this phone?
24 A No. The -- the level of review that I did on this
25 device, one, I -- personally, I don't attribute it
26 to a person, so I don't know if it's yours or
27 whose it is. I -- I present the data on a device
28 and allow the court to put whatever weight on the
29 data within the report.
30 For the second part of that question, when it
31 was acquired --
32 Q When -- when I obtained or purchased it?
33 A There may be a date on the front. No. In this
34 case, I didn't extract any data that's -- that
35 would have outlined a purchase date.
36 Q Okay. Do you know whether the BlueMail
37 application uses the changing of characters like
38 how the -- the characters appear in these two
39 email addresses, and P and then a bunch of dots,
40 and E and a bunch of dots, does BlueMail use that
41 as a way of signifying that those accounts have
42 been deleted so it knows not to have them appear
43 within the application anymore?
44 A No, I'm not aware of that.
45 Q Okay. Would you accept that that may be a
46 possibility?
47 A I would have to do some testing to see that, but

Robin Shook (for Crown)
cross-exam by the Accused, Patrick Fox
BAN ON PUBLICATION 486.5(1) CCC

1 more likely, in my training and experience, what
2 I've run into, if a file -- if an entry was marked
3 for deletion, it would have the deleted flag as
4 shown in line 9, with Instagram, that would --
5 Q Mm-hmm.
6 A - it as being deleted rather than -- than
7 replacing characters with stars.
8 Q Right.
9 A There's --
10 Q Unfortunately, though, in this instance, you
11 didn't specify what value the deleted column was
12 set to for those records, so we can't say.
13 A The only -- if it had a value of yes, if it had a
14 value of no, then I didn't include it. It's only
15 for that value of yes in this that I did include
16 it.
17 Q Okay. And that would -- it would be my
18 understanding that would only be relevant if the
19 application in question utilized that convention
20 as opposed to using some own -- one of it's own
21 internal conventions for -- for indicating that an
22 account has been deleted?
23 A Yes. Maybe internally it did, but what this
24 database was from an overall Android database
25 rather than a BlueMail database, so what this
26 information is being pulled from is a -- you're
27 looking at hierarchy of files. This is Androids,
28 this is the operating systems accounts database.
29 Q Mm-hmm.
30 A So whatever BlueMail is doing in their section of
31 software, it didn't translate to the overall
32 Android database.
33 Q So can you tell me, do you know whether these
34 three accounts here that seem to be associated
35 with the application BlueMail, that's items 2, 3,
36 and 4, do you know if these are valid current
37 accounts?
38 A No. What I was pulling out for this report is
39 accounts that were on the device at the time,
40 accounts that had these entries within this
41 database at the time of acquisition. I didn't
42 conduct follow-up investigation. That's not the
43 role of forensics examination. It would be an
44 investigator to do, see if they were valid --
45 remain to be valid accounts.
46 Q And do I understand it correctly that you have no
47 knowledge as to when these accounts would have

Robin Shook (for Crown)
cross-exam by the Accused, Patrick Fox
BAN ON PUBLICATION 486.5(1) CCC

1 actually been put into the phone; is that correct?
2 I think I asked you that already, but I'm not
3 certain.
4 A No. These entries didn't have the -- the dates on
5 them, or I didn't produce them for this report.
6 Q Okay. And also, it's my understanding that you
7 have no knowledge as to why the characters of the
8 email addresses have been replaced with dots?
9 A No. Without further testing, I would have to see
10 why it's saved in that way.
11 Q Just out of curiosity, have you actually -- how --
12 how did you access the accounts underscore CE dot
13 DB database? Like, did you use an SQL tool, or
14 did you use that Cellebrite program that you
15 mentioned earlier?
16 THE COURT: Sorry did you say the account dot CE DB?
17 Is that what you're asking about?
18 THE ACCUSED: Accounts underscore CE. Yeah.
19 A Yes. In this instance there was two versions of
20 Cellebrite that I was using. And within
21 Cellebrite -- Cellebrite is a company, physical
22 analyzer is the product. It's a -- I would say
23 one of the largest digital forensic companies in
24 the world. They offer a lot of tools for the
25 extraction of data as well as the interpretation
26 and the viewing of data from digital devices, and
27 physical analyzer is the program that I used in
28 this instant, which allows a user to ingest
29 information. In this case it was the entire image
30 or extraction from this device, and then parse
31 that information out to make it viewable.
32 Mr. Fox's question refers to how did I look
33 at a specific database within that image, and the
34 application suite of Cellebrite physical analyzer
35 has a specific tool that's a SQLite browser, which
36 is a tool that, within Cellebrite physical
37 analyzer itself, allows you to -- a user to look
38 at a SQLite database and look at the data within
39 various cells and columns within it.
40 THE COURT: Can you spell SQLite?
41 A S-k -- S-q-l-i-t-e.
42 THE COURT: Oh, so S-q-l-i-t-e.
43 A Yeah.
44 THE COURT: Okay. Not what I was thinking. Thank you,
45 okay.
46 While we're paused, can I just ask a
47 question? Is it fair to infer, looking at the

Robin Shook (for Crown)
cross-exam by the Accused, Patrick Fox
BAN ON PUBLICATION 486.5(1) CCC

1 user accounts and looking at item 9 where it says,
2 deleted, yes, that if any of the other accounts
3 had been deleted that I would expect to see a
4 similar notation underneath account data?
5 A Yes, Your Honour. If they had been deleted and
6 recovered, they would have that same variable.
7 THE COURT: Okay.
8 THE ACCUSED:
9 Q I'm -- I'm sorry, you said if they had been
10 deleted and recovered?
11 A Yes. So if they were recovered within Cellebrite,
12 they would show you as deleted, yes, such as line
13 number 9 has.
14 Q If they were recovered from within Cellebrite?
15 A So the entries that were deleted within a
16 database, or within a file system, if they can be
17 parsed out from -- they still remain on the device
18 and are able to be covered through a forensic
19 program, even though a user has indicated to
20 delete them --
21 Q Mm-hmm.
22 A -- they would be indicated as this deleted, yes,
23 entry.
24 Q Okay. When -- when data is being extracted from a
25 device, is it expected that the data on the phone
26 will be changed in some way?
27 A The -- the standard operating practice, so
28 forensic best practices, state to get a -- the
29 most accurate version of information possible
30 closest to the time of seizure. So I previously
31 spoke about wear levelling and garbage collection,
32 how chips will automatically change when they're
33 powered on. So with modern chip-based technology,
34 if you acquire the data on a Monday, then on a
35 Friday reacquire the data, the data will be the
36 same, but it might be in slightly different places
37 within the overall file because it has moved --
38 that that chip moving has moved it from drawer one
39 to drawer three. However, the data itself should
40 be as close to possible as being the actual data
41 at the time of seizure. So whether or not it's
42 changed or not will vary with the device, with the
43 operating systems, with things like encryption and
44 the method of acquisition. But what our -- and at
45 least I can speak to the Vancouver Police's best
46 practices is, is the acquire the data as soon as
47 possible and as accurately as possible to the

Robin Shook (for Crown)
cross-exam by the Accused, Patrick Fox
BAN ON PUBLICATION 486.5(1) CCC

1 device at time of seizure.
2 Q Okay. So in the process of extracting the data
3 from the -- from the device, is it expected that
4 some of the database files should be written to?
5 A When extracting, no. They shouldn't be written
6 to.
7 Q Okay. Can you clarify, then, why it is --
8 THE COURT: So can I just make sure I understand that
9 question. You're basically asking the same
10 question a different way? You're -- you're saying
11 if the database file is written to, that means
12 it's changed in some way, right?
13 THE ACCUSED: Well, the database file could be written
14 to without changing the actual data contained
15 within it.
16 THE COURT: Okay. Okay.
17 THE ACCUSED: Like, for example, a particular cell
18 within a table may have a certain value, the value
19 10, and then the application could rewrite the
20 value 10, so the file then would have been written
21 to, even though the -- the data within it is still
22 the same as it was before.
23 THE COURT: I see. Okay.
24 THE ACCUSED: The reason I'm asking about that is, I'd
25 like to know about the file modification time
26 stamps on the stuff that was extracted from the
27 phone because I noticed that some of the databases
28 had more recent time stamps, which led me to
29 believe that the database files must have been
30 notified in some way.
31 A So the methods of extraction vary from device to
32 device, and like I said, they deal with things
33 like what operating system, the method of
34 acquisition, and primarily what dealing with now
35 is encryption. So it is -- and dates and times
36 are -- it's -- it's hard to say exactly what would
37 modify a date and time modification date as well.
38 But again, without knowing the exact specifics and
39 I know what these forensic programs do as well is
40 they strive for not modifying the data if at all
41 possible. So the same -- so these companies are
42 worldwide giant billion-dollar forensic companies,
43 so they hold the standards that we also hold, is
44 that you're trying to get an accurate -- an
45 accurate representation as possible of that device
46 when you acquire the data from it. Whether or not
47 dates and times change within the metadata, I

Robin Shook (for Crown)
cross-exam by the Accused, Patrick Fox
BAN ON PUBLICATION 486.5(1) CCC

1 can't speak to it. I just know what the processes
2 we have in place will be to extract the data
3 without making any modifications as possible.

4 Something, like one example that I might
5 think that might change is if there is a -- there
6 is databases that track power usage, so being
7 plugged in and plugged not -- and unplugged. If a
8 data -- if a device is kept on power after
9 seizure, so say if it's seized in an investigation
10 and then kept on power, that will change the
11 values of that database after the point of seizure
12 because it's kept on and it has power going to it,
13 and that's possible.

14 But again, what we strive to do is to keep
15 that data as accurate to the time of seizure as
16 possible, where practicable.

17 Q Okay. So would it surprise you to learn, then,
18 that accounts underscore CE dot DB in the archive
19 or the image that was provided to me, has a date
20 modify -- has a date modified time stamp of 2022-
21 08-18, which would be August 18th, which I assume
22 is the day, probably, that the data was extracted
23 or searched from the phone. I noticed that there
24 were a number of files that had that.

25 THE COURT: Do you -- is there a place where -- where
26 that date appears? Do you --

27 THE ACCUSED: I don't think that appears in the report.

28 THE COURT: No?

29 CNSL T. LAKER: No, this would be from the raw data, if
30 we can characterize it that way, that was provided
31 to Mr. Fox at his request, that which is all the
32 data that was seized from the phone.

33 THE COURT: Okay.

34 CNSL T. LAKER: So what he's looking at is something
35 that's not in evidence.

36 THE COURT: Okay.

37 CNSL T. LAKER: As of yet, Your Honour.

38 THE COURT: Okay. So, thank you. So you want to
39 basically suggest that the raw data you received
40 has this date stamp on it?

41 THE ACCUSED: Yes. Yes, the -- some of the database
42 files in what I've received have this interesting
43 date modification time stamp, being that files had
44 been modified on that date, at a given time.
45 Because my hook -- wondering if I can say this --
46 when I saw that my first assumption was somebody
47 had changed something because accounts underscore

Robin Shook (for Crown)
cross-exam by the Accused, Patrick Fox
BAN ON PUBLICATION 486.5(1) CCC

1 CE dot DB, not only could I not open it on the
2 laptop, everything else I could open fine, but
3 that file, which is, of course, the critical file,
4 because that's the one that contains this
5 information, wasn't accessible to me and it wasn't
6 until today that I was able to open it on the
7 other laptop from the external hard drive. But,
8 so I was very troubled that that had this newer
9 time stamp which was months after I had been
10 arrested and in jail. So clearly, it's not
11 something I could have had any involvement in, so
12 I was wondering if the officer would have any
13 explanation for why that file and a few other
14 database files had a more recent time stamp on
15 them.

16 THE COURT: So I just want to make sure Sergeant Shook
17 has that raw data. If he has -- you know, do you
18 have any knowledge of that? Can you speak to
19 that? Is that something you have with you
20 or . . .

21 A No. It wouldn't be something -- it would be
22 something that would be available to digital
23 forensics unit, or on secure servers in the lab,
24 but it's not something I have with me today, and
25 it's not something I -- it's not something I was
26 aware of or that I looked at previously, so not
27 sure to the extent that I can speak about that.

28 THE ACCUSED: Okay. So I don't -- I don't think
29 there's much more that I could ask about the email
30 addresses, but let me just quickly glance over my
31 notes here.

32 THE COURT: Yes.

33 THE ACCUSED:

34 Q Oh, Sergeant Shook, I wanted to ask, because we've
35 been talking about SQL or -- SQL is S-Q-L or
36 Structured Query Language, is the database query
37 language, but I noticed that that's not mentioned
38 at all in your curriculum vitae. Would you --
39 would you say that you would consider yourself an
40 expert in SQL, in particular SQLite?

41 A Could I be a SQLite developer, no. Do I know how
42 -- do I know basically how it functions and I can
43 write simple queries of Python. So what I would
44 say is if we would attribute SQLite to use an
45 analogy of a car, I would be -- I would be a base
46 level mechanic where I could look at things and
47 see if it makes sense and things are where they're

Robin Shook (for Crown)
cross-exam by the Accused, Patrick Fox
BAN ON PUBLICATION 486.5(1) CCC

1 supposed to be, but I'm not at the level of an
2 engineer that could rebuild an engine, for
3 example.
4 Q So based on that, then, I just want to clarify
5 with respect to the testimony that you have
6 provided so far regarding SQL and the database
7 files, is that expert testimony that you've been
8 providing or is that just your understanding or
9 your opinion of those matters?
10 A Well, my -- my training/experience have given me a
11 lot of exposure to SQLite. It's a -- it's a
12 database format that's found on a lot of mobile
13 devices. I've done hundreds and hundreds of
14 examinations with SQLite databases and seeing how
15 they work and how they query. Being able to look
16 at it and see what data is in the -- within the
17 database is something I can do. However, I will
18 acknowledge I'm not a SQLite developer. That
19 level of expertise was not something that I
20 believe I was qualified for. So I can provide a
21 general level of knowledge to inform the court and
22 to provide an overview of the report that I -- I
23 did do, but I'm not at the level of where I could
24 be a SQLite developer.
25 Q Right. And let me say it, I'm not -- I'm not
26 questioning your competence or your skills in this
27 matter, I just want to make sure that I'm clear on
28 whether the testimony you're providing with
29 respect to SQL would be considered expert
30 testimony.
31 A Well --
32 Q I mean, my understanding would be, like when I --
33 when I noticed there was mention of SQL in your
34 résumé, I assumed that you would not be providing
35 expert testimony about SQL or relational databases
36 or relational data modelling from -- as it
37 pertained to the Android device.
38 A Well, I would say my expertise allows me to speak
39 about the functionality of devices and how they
40 work and applications and how they work.
41 Q Mm-hmm.
42 A But I believe what you're asking is if I'm at a --
43 such an in-depth knowledge about a specific
44 programming language, that I would be qualified
45 expertise and be like a software developer
46 specifically working with that language is, no, I
47 wouldn't --

Robin Shook (for Crown)
cross-exam by the Accused, Patrick Fox
BAN ON PUBLICATION 486.5(1) CCC

1 Q Okay.
2 A -- SQLite is not -- I'm not proficient enough with
3 SQLite to have employment that would be solely
4 based on that.
5 Q Sure, sure. Fair enough. Thank you.
6 I would like to turn the page to page 6, your
7 Firefox search terms. And I know this came up
8 earlier, but I just want to repeat it or make sure
9 I'm clear on it. So it's my understanding that
10 what you're saying is the search terms that appear
11 in the third column of this table that you have
12 here are not URLs that I actually accessed or went
13 to but, rather, these are just key words that I
14 had searched, presumably in Google or some other
15 search engine; is that correct?
16 A Yes. These were entries that were tagged as
17 search terms. Whether or not they were the search
18 query terms within Google or another -- or in the
19 search field. So this doesn't indicate that these
20 websites were visited. It -- this is the search
21 term that was entered within that search field.
22 Q Right. So specifically number 6, that means that
23 I searched for desicapuano.com, I didn't actually
24 go to desicapuano.com; is that correct?
25 A Yes. This is --
26 Q Okay.
27 A -- the search term. So that would have been what
28 was searched for.
29 Q Correct. Thank you. Okay, that's all the
30 questions that I had with respect to the data that
31 was -- or with respect to my phone. It's my
32 understanding, though, that you may have some
33 knowledge about another matter that we have
34 outstanding, the proxy logs. Has anyone mentioned
35 anything to you about that?
36 A Yes. Crown had asked me about some proxy logs.
37 Q And can I ask you, is that -- do you have any
38 particular knowledge of Cisco -- Cisco proxy log
39 or Cisco device logs?
40 A Well, what I can say is that, again, with my
41 analogy of a mechanic, where I can look at it and
42 tell you generally what it means. But I am not a
43 sys admin. I'm not a network administrator. I
44 can't tell you specifically what every single
45 entry means. I can --
46 Q Sure.
47 A -- give a general overview of what a log might

Robin Shook (for Crown)
cross-exam by the Accused, Patrick Fox
BAN ON PUBLICATION 486.5(1) CCC

1 mean.
2 THE ACCUSED: Right. The reason I'm asking you is
3 because we have this document. And so we're
4 hoping to have somebody provide more insight or
5 more official insight into it, and so we thought
6 there might be a possibility that you might be
7 able to do that. But I would not personally
8 recommend that we proceed with that because I'd
9 rather have the Cisco sys admin coming in because
10 he can give a definitive answer. And again,
11 though, I'm not questioning your competence or
12 anything. From what I've seen from your answers,
13 you -- you're -- you are very competent and very
14 knowledgeable about what you've been testifying
15 about.
16 I don't have any further questions.
17 THE COURT: Would you like to try your questions,
18 though? Because --
19 THE ACCUSED: About the proxy logs?
20 THE COURT: -- you know, Sergeant Shook has said he has
21 like a basic mechanics knowledge of the proxy
22 logs.
23 THE ACCUSED: Okay, sure.
24 THE COURT: Just to see, because it's perhaps --
25 THE ACCUSED: Sure.
26 THE COURT: -- if you get your questions answered, that
27 addresses another issue.
28 THE ACCUSED: Would anyone happen to have a copy that
29 you could show him?
30 CNSL T. LAKER: Well, I think -- I think it's been
31 entered as an exhibit. So the exhibit --
32 THE ACCUSED: Oh, yes.
33 CNSL T. LAKER: -- the exhibit should be shown to
34 Sergeant Shook. Thank you.
35 THE COURT: While you're being shown that, I just want
36 to ask a clarifying question. You were asked --
37 A Yes, Your Honour.
38 THE COURT: -- Sergeant Shook, page 6, that it showed
39 the search terms, number 6, Mr. Fox took you to
40 number 6, and he asked you: that shows that I
41 searched for that, he said, but that I did not go
42 to the website. And you said, yes, that's right.
43 Are you able to answer both parts of that
44 question?
45 A So this particular field shows search terms as is
46 entered into the web browser, but what it doesn't
47 show is if, at a date and time, if that was --

Robin Shook (for Crown)
cross-exam by the Accused, Patrick Fox
BAN ON PUBLICATION 486.5(1) CCC

1 website was then returned or not.
2 THE COURT: Okay. Thank you.
3 THE CLERK: [Indiscernible] talking about?
4 CNSL T. LAKER: Yes, that's right. Thank you. It was
5 the -- the email followed by the -- yeah.
6 THE CLERK: [Indiscernible].
7 A Take the case book?
8 CNSL T. LAKER: And I think, just for Mr. Fox's
9 benefit, he's going to want to ask Sergeant Shook,
10 think if we flip over two pages. Yes.
11 A Okay.
12 CNSL T. LAKER: So to the third page of that document.
13 Thank you.
14 THE ACCUSED:
15 Q First, let me ask, is this a report that you've
16 ever seen before or?
17 A Yes. Crown had provided me with this -- these
18 logs.
19 Q Oh, okay. So you've actually seen this very
20 document?
21 A I believe so.
22 Q So do you -- do you have any understanding about
23 what this information is or what this document
24 purports to -- to show or to report?
25 A What my understanding is, these are logs from the
26 VPD network proxies that are in relation to a term
27 -- the term desicapuano.com. And what these logs
28 show is that that proxy's activity in relation to
29 that URL being entered.
30 Q Okay. So there are 14 entries that I found that
31 it returned in this report. In each of those
32 entries there's a field that says "Filing", and
33 then within square brackets there's some -- some
34 data, some string. Would you have any knowledge
35 or understanding of what that means, the -- the
36 text that appears in between those square brackets
37 after the -- the label or the -- the field name,
38 file name?
39 A So my understanding of this proxy is the VPD
40 network is a monitored network that looks for
41 potential threats to the VPD network, including
42 malware, viruses, that kind of thing. So when a
43 -- a user using the network goes out onto the
44 internet to conduct a search or to go to websites,
45 such in this case desicapuano, what this proxy,
46 this background program will do, will pull
47 elements from that website, piece of code or

Robin Shook (for Crown)
cross-exam by the Accused, Patrick Fox
BAN ON PUBLICATION 486.5(1) CCC

1 files, or the website itself, to ensure that they
2 don't -- they don't contain malware, there's no
3 hidden risks within that website and if it matches
4 lists that allow access to that website by a user.
5 So for example, there could be underlying --
6 underlying part of code on a website that, if
7 somebody clicked on it, it could gain access for a
8 third party to a network. What this proxy is
9 doing is -- is preserving, so it's going out and
10 looking at websites or files that are requested
11 for and making sure that they're basically safe
12 for the network to serve to the user.

13 Q Okay.

14 A As well -- okay.

15 Q Go ahead.

16 A So what the -- the entry in the file names looks
17 like it's going through -- it looks like it's
18 pieces of code or what has been designated as
19 files by the proxy to -- for a subsequent search
20 and analysis.

21 Q Okay. So in that first entry where it says file
22 name, and then desicapuano.com.siteindices.com,
23 what is your understanding of
24 desicapuano.com.siteindices.com? What does that
25 represent or what does that value mean?

26 A That looks like a URL -- a website address to me.

27 Q Okay. Do you understand that to be the domain
28 name, desicapuano.com? Or do you understand that
29 to be -- the desicapuano.com part being a
30 subdomain of siteindices.com?

31 A That -- being a subdomain is entirely a
32 possibility. I don't -- I don't know how this was
33 set up at the date and time. So it could be that
34 siteindices.com was the main address and
35 desicapuano.com was a sub-address is what he's --
36 like a sub-site within it. It would depend on how
37 it was configured at the time of the search.

38 THE ACCUSED: I wonder if it would be acceptable to
39 show the witness Exhibit 6, the one that's
40 desicapuano.siteindices.com.

41 THE CLERK: Is this the [indiscernible]?

42 THE COURT: Thank you.

43 THE ACCUSED:

44 Q If you would, please, can you turn to page 5?

45 A Okay.

46 Q So this is a page that was generated by the
47 Hunchly software that Ms. Mieklejohn, the crime

Robin Shook (for Crown)
cross-exam by the Accused, Patrick Fox
BAN ON PUBLICATION 486.5(1) CCC

1 data analyst, that she used when she accessed
2 these pages. And you see the URL there says,
3 https://desicapuano.com.siteindices.com. Do you
4 agree?
5 A Yeah, that's what it says.
6 Q Okay. And then if you turn the page, there's the
7 printout of the page that actually comes up at
8 that particular domain name or URL.
9 A Okay.
10 Q So based on this, do you agree that
11 desicapuano.com.siteindices.com refers to this
12 page that we're looking at right now with that
13 fungusy [phonetic] toe thing?
14 A I believe that would be -- the way you've asked
15 that question is -- I think would be better served
16 for the person who made this capture at that date
17 and time. That is what it appears to be in this
18 report, but I don't want to speak for somebody
19 else's evidence about their capture and at what
20 date and time --
21 Q Sure.
22 A -- and what they viewed, as it wasn't me that was
23 doing it.
24 Q Certainly. And I would like to mention, for the
25 benefit of the court and for the Crown, that when
26 Ms. Meiklejohn testified she did agree that that's
27 what this page was and that this is an analytic
28 site that isn't related to the desicapuano.com
29 site.
30 CNSL T. LAKER: I don't know if Mr. Fox is looking for
31 a response, but I think that that's probably best
32 left for argument rather than during his --
33 THE COURT: Think he's summarizing testimony for
34 Sergeant Shook but I'm not sure if there's a
35 question coming at the end of it.
36 THE ACCUSED: Oh, no. I was just reminding both the
37 court and the Crown that that was her testimony
38 when -- because the witness had said that this
39 would be a question more appropriately --
40 THE COURT: No, no, that's true.
41 THE ACCUSED: -- posed to her. And so she was asked
42 that question and that was her response.
43 Q Okay. So getting back to the proxy log that we
44 have here, would it be your understanding that all
45 of the entries in here, if you glance at each one
46 you'll see that the -- the file name for each one
47 refers to desicapuano.com.siteindices.com aside

Robin Shook (for Crown)
cross-exam by the Accused, Patrick Fox
BAN ON PUBLICATION 486.5(1) CCC

1 from three of them on page -- the second and third
2 one on page 2 and the first one on page 3 refer to
3 something else. But do you agree that all the
4 other entries relate to
5 desicapuano.com.siteindices.com?
6 A Yes. There are the three that are dot ICO. The
7 rest are desicapuano.siteindices.com, yes.
8 Q Okay, great. With respect to those three that are
9 dot ICOs, are you familiar with what a dot ICO
10 file is?
11 A An ICO file is typically what's called an icon
12 file, yes.
13 Q Right. That's correct. And are you familiar --
14 is it your understanding that a website or a
15 webpage can have an icon associated with it --
16 well, that would be my first question.
17 A Yes.
18 Q Okay. And has it been your experience that when
19 you access a website within a web browser, the
20 tabs that appear across the top, there's a tab for
21 each page you have open. The icon is usually what
22 appears in there, next to the page title?
23 A Yes.
24 Q All right. So then would it be your understanding
25 that the dot ICO files that we're looking at here
26 would be related to that, the page icon?
27 Actually, it would be understandable that you
28 can't really say about that, you can only
29 speculate, so let's not worry about that.
30 So based on what we see in this proxy log
31 here, is it your understanding that this proxy log
32 is showing that on this day there were nine
33 accesses to desicapuano.com.siteindices.com and
34 then three accesses for some icon file?
35 THE COURT: Eleven and three.
36 THE ACCUSED: I'm sorry?
37 THE COURT: Eleven and three.
38 THE ACCUSED: Oh, sorry. Yes, right. Oh, yes, yes,
39 you're right. My mistake, sorry.
40 THE COURT: No, no.
41 A Yes. That's what it appears to be, is that this
42 is a log that shows the VPD proxy program and
43 looking at those elements, of which three are the
44 ICO dot ICO files and the rest are web address of
45 a desicapuano.siteindices.com, yes.
46 Q Okay. And are there circumstances in which
47 somebody on the VPD's network would access the

Robin Shook (for Crown)
cross-exam by the Accused, Patrick Fox
BAN ON PUBLICATION 486.5(1) CCC

1 internet without going through the proxy server?
2 A Not that I'm aware of. That would -- I believe
3 the network is configured in such a way as to
4 prevent -- to provide security to the network as a
5 whole.
6 Q Yeah.
7 A So being able to access the internet through the
8 VPD network without going through this proxy in
9 this instance shouldn't be. There -- there may be
10 cases if -- I'm sure there are -- I'm sure there
11 are other methods of acquisition the internet
12 other than through the VPD network, but it would
13 be up to that specific investigator to provide
14 that evidence rather than me.
15 Q Okay. So looking at this log, would you say it's
16 reasonable to assume that what's showing in the
17 log here would be all -- would -- sorry, let me
18 rephrase that.
19 Is it reasonable to assume that what we see
20 in the log here are all the attempts that were
21 made in this 48-hour period to access any URLs
22 containing the string desicapuano.com? Oh, from
23 within the VPD network.
24 A I would think that would be a better question for
25 the person who generated that log. I don't
26 believe it would be my evidence to speak to if
27 something was complete when I wasn't the one
28 conducting the search.
29 THE ACCUSED: Okay. Your Honour, I would say that his
30 responses have been very helpful and very
31 informative. The only issue -- the only problem
32 is this last one, of course, to get the definitive
33 -- oh, sorry.
34 CNSL T. LAKER: Well, just -- just before Mr. Fox goes
35 into this, I'm just curious if he's done his
36 questions of Sergeant Shook at this point.
37 THE ACCUSED: I believe I am, because to go further
38 with this I think is going to require Mr. Lam --
39 THE COURT: Okay.
40 THE ACCUSED: -- he was the one that generated the
41 report.
42 THE COURT: Okay, fair enough. So that completes your
43 cross-examination, then, right now, for Sergeant
44 Shook?
45 THE ACCUSED: Yes, it does.
46 THE COURT: Okay. Any re-examination?
47 CNSL T. LAKER: Might have one question for redirect --

Robin Shook (for Crown)
cross-exam by the Accused, Patrick Fox
BAN ON PUBLICATION 486.5(1) CCC

1 THE COURT: Okay.

2 CNSL T. LAKER: -- but let me just ask Mr. Elias.

3

4 **RE-EXAMINATION BY CNSL T. LAKER:**

5

6 Q So, Sergeant Shook, when you were being taken
7 through the proxy log it was -- what was drawn to
8 your attention was the fact that there were two
9 file names that were created. One was
10 desicapuano.com.siteindices.com, and then the
11 other one was desicapuano.com.ico?

12 A Mm-hmm.

13 Q So my first question is that you referenced the
14 fact that that dot ICO is an icon file. Can you
15 just explain for the court what an icon file is?

16 A An icon file is a small picture that a website
17 will serve to a user to make -- to just add to the
18 user experience. For example, if you go to
19 Google, your web browser will have a little G
20 it. That little G is just a tiny little picture.
21 That's an icon file so it -- looking at the tab
22 you could just have that, the picture along with
23 the name from it. It's basically just a very,
24 very small picture, typically is what an icon is.

25 Q Okay. And then with respect to siteindices.com.

26 A Mm-hmm.

27 Q What's your understanding what that is?

28 A My understanding is siteindices.com is a website
29 hosting company. So a provider where you can host
30 a website.

31 Q And is that like a company name or is that a . . .

32 A It could be a company name, it could be just a
33 URL. A lot of -- there are a lot of hosting
34 websites. Google -- you can host a website with
35 Google or Amazon, or siteindices. It's basically
36 if you don't have the servers and infrastructure
37 yourself, you can, like, sublet space on another
38 provider's services. So siteindices is one of
39 those services where, say if I wanted to have my
40 website vpd.ca but I didn't want to have all the
41 infrastructure myself, I could pay siteindices or
42 Google or Amazon to host that website for me. So
43 it would all -- all the infrastructure, the
44 computers, and all the internet access and
45 everything would be there. But I didn't have to
46 maintain that myself.

47 Q What about GoDaddy?

Robin Shook (for Crown)
re-exam by Cnsl T. Laker
BAN ON PUBLICATION 486.5(1) CCC

1 A Yes. GoDaddy is another one, as well.
2 Q Okay. And so can you say anything about if -- if
3 somebody, on May 16th of 2022, searched up
4 www.desicapuano.com, just that website, is it
5 possible that these two results would come up?
6 A Yes. It would depend on how the website was
7 configured in the back end to serve to a browser.
8 So basically the infrastructure on the internet,
9 there are providers that have a list of website
10 names, and then the actual address or the IP
11 address where that website can be found. So if a
12 user types in -- user would rather type in
13 google.com, then like 173.7.12.8, that kind of
14 thing. So that's -- but that string of numbers is
15 how computers actually talk to each other. And
16 that's not a real IP address. I just made it up.
17 So it depends on how that website at the end
18 on that hoster is configured to serve when that
19 URL is typed in. So a user can type in
20 desicapuano.com, and then the website on the end,
21 it can be totally re -- set up to go to redirected
22 to desicapuano.com, or it could redirect to
23 desicapuano.siteindices.com, or it could redirect
24 to another third party itself. It totally depends
25 on how that site is structured to receive those
26 requests when it receives it.
27 CNSL T. LAKER: Those are all my questions.
28 THE COURT: Thank you. All right. Thank you, Sergeant
29 Shook, you're excused.
30 A Thank you, Your Honour.
31 Madam Clerk, that -- two for you.
32 [Indiscernible] be enough.
33
34 (WITNESS EXCUSED)
35
36 THE COURT: Okay.
37 CNSL T. LAKER: We have another day set for March the
38 7th. I think probably what's best is that we
39 address this issue that Mr. Fox has highlighted
40 just at the conclusion of Sergeant Shook's
41 evidence that he may be asking for another witness
42 to be produced. I don't know if Your Honour wants
43 to deal with that now.
44 THE COURT: Yes, I think we could perhaps. What I'm
45 hoping to do in the interests of time --
46 CNSL T. LAKER: Yeah.
47 THE COURT: -- and everything's long, I think we could

Proceedings

BAN ON PUBLICATION 486.5(1) CCC

1 address that. And then I -- I think I could
2 address voir dire #2 --
3 CNSL T. LAKER: Yes.
4 THE COURT: -- as well.
5 CNSL T. LAKER: Yes.
6 THE COURT: Okay. So I listened to that cross-
7 examination, Mr. Fox. Would you still like Mr.
8 Lam to come as a witness?
9 THE ACCUSED: Well, response I would like to give to
10 that would be, if it is necessary to clarify those
11 points, then yes, I would. However, if, at this
12 point, the Crown and the court agree about the
13 meaning of the information in the proxy log, and
14 that it proves that nobody on the VPD's network
15 actually went to the site on that day, then it's
16 not necessary. But I suspect that the Crown is
17 going to be resisting to that.
18 THE COURT: Right. I think that's certainly what --
19 what you want to argue, but I wouldn't say that
20 you have evidence yet that supports that. You've
21 asked questions. You did what I asked you to do,
22 to see if Sergeant Shook could answer your
23 questions.
24 THE ACCUSED: Hmm.
25 THE COURT: But I could see, at the end, that you had a
26 question you wanted to ask Mr. Lam. So I guess my
27 question to Crown would be, I know from the -- the
28 brief appearance we had in between that there was
29 some resistance to Crown subpoenaing Mr. Lam, but
30 I can see a relevance to what Mr. Fox seems to
31 want to ask him. I think -- I think you agree,
32 Ms. Laker, is it --
33 CNSL T. LAKER: Yes. And -- and the situation we're in
34 is that VPD have -- have advised us that they
35 won't simply produce Mr. Lam as a witness because
36 he's a civilian member.
37 THE COURT: Right.
38 CNSL T. LAKER: And -- and the nature of his job makes
39 it difficult for him to leave his work, I would
40 submit. However, should a subpoena be ordered for
41 Mr. Lam's attendance, then obviously we will
42 advise Mr. Lam of that.
43 THE COURT: I mean, that's usually -- I mean Crown
44 usually issues subpoenas.
45 CNSL T. LAKER: We do.
46 THE COURT: That's why I'm just trying to --
47 CNSL T. LAKER: We do.

Proceedings

BAN ON PUBLICATION 486.5(1) CCC

1 THE COURT: -- understand. Are you requiring --
2 CNSL T. LAKER: Or -- or if we -- Yes. I think what
3 would almost be easiest in this situation is if we
4 were able to articulate that -- that this witness
5 is being deemed necessary by the court, and as a
6 result that this is -- that, if necessary, we will
7 ask for a -- a subpoena.
8 THE COURT: Do you need a subpoena from a justice?
9 CNSL T. LAKER: I -- I --
10 THE COURT: I mean, that's why I was asking you. I was
11 saying, can you see, listening to the questions,
12 that there's a area -- Mr. Fox hasn't testified.
13 I don't know if he's going to choose to testify.
14 I don't, at this point, fully appreciate his
15 defence --
16 CNSL T. LAKER: Mm-hmm.
17 THE COURT: -- but at the same time I don't want to
18 foreclose an avenue of inquiry --
19 CNSL T. LAKER: Yes.
20 THE COURT: -- or some possible defence. And so
21 in . . .
22 CNSL T. LAKER: Why don't we do this, Your Honour: I
23 -- let us go back to the VPD and indicate to them
24 that questions were asked of Sergeant Shook that
25 did not resolve the current issue that's at play,
26 and that it does appear that Mr. Lam's evidence is
27 necessary.
28 And then if there is a subsequent issue, what
29 we can do is possibly come back before Your Honour
30 very briefly, later this week --
31 THE COURT: Yes.
32 CNSL T. LAKER: -- to address that.
33 THE COURT: I mean, the test for a subpoena in 698,
34 where a person is likely to give material evidence
35 in a proceeding.
36 CNSL T. LAKER: Mm-hmm.
37 THE COURT: I wouldn't use the word necessary, but I
38 would say what I've already said.
39 CNSL T. LAKER: Yeah.
40 THE COURT: That I can certainly see that it's a line
41 of questioning Mr. Fox would like to ask a few
42 questions at least of Mr. Lam. Would Crown be
43 then asking that he come and present him as the
44 last Crown witness, almost as a courtesy to let
45 Mr. Fox cross-examine him because that's what Mr.
46 Fox wants to do?
47 CNSL T. LAKER: To -- to be honest, I'm not inclined to

Proceedings

BAN ON PUBLICATION 486.5(1) CCC

1 do that, Your Honour. I think that the Crown's
2 case is essentially closed at this point.
3 THE COURT: Do you want to not formally close the
4 Crown's case --
5 CNSL T. LAKER: Mm-hmm.
6 THE COURT: -- to consider that --
7 CNSL T. LAKER: Yes.
8 THE COURT: -- further, because --
9 CNSL T. LAKER: Sure.
10 THE COURT: -- certainly it happens in cases, and Crown
11 doesn't have to do it, but it does happen on cases
12 where defence has the burden, that Crown still
13 produces the witness.
14 CNSL T. LAKER: Yes.
15 THE COURT: And ask --
16 CNSL T. LAKER: Absolutely.
17 THE COURT: -- a few questions and then allow --
18 because it does seem to me that certainly the
19 questions are more in the nature of cross-
20 examination --
21 CNSL T. LAKER: Cross-examination.
22 THE COURT: -- than --
23 CNSL T. LAKER: Yes.
24 THE COURT: -- than examination in chief. Okay. I
25 think Mr. Lam should come on the next day. And I
26 -- I'm going to leave it with Crown for now as to
27 the mechanics of how that happens. If it needs to
28 come back in front of me, you can put it back in
29 front of me in the next few days.
30 CNSL T. LAKER: Mm-hmm.
31 THE COURT: And then the other question is whether
32 Crown just presents him almost as a courtesy as
33 the last witness in their case so Mr. Fox can then
34 ask any questions he has.
35 CNSL T. LAKER: Mm-hmm.
36 THE COURT: But that's, again, that's a Crown decision,
37 which I'll let you consider more.
38 We're just past 4:30. I don't know if the
39 sheriff needs to leave. I just wanted to quickly
40 address voir dire #2, even though we're just past
41 the end of the day.
42 CNSL T. LAKER: Yes, and I'll let my colleague, Mr.
43 Elias, just step forward to deal with that. That
44 was the bulk of his.
45 CNSL R. ELIAS: And if it assists, Your Honour, my
46 submissions are going to be exceedingly brief. I
47 did some research and was unable to find any sort

Proceedings

BAN ON PUBLICATION 486.5(1) CCC

1 of exclusionary rule, so my position was going to
2 be that this previous statement is just a previous
3 statement. It wasn't compelled. It's -- having
4 been found voluntary, in my submission it's just
5 wording that Mr. Fox said in the past and can be
6 given weight as to that.

7 THE COURT: Well, Mr. Elias, it's interesting because
8 my -- my reflection came to a similar conclusion.
9 This is what I thought about the use of statements
10 to which that statement could be put.

11 Once a statement is ruled voluntary, Mr. Fox
12 is like any other witness who has given a previous
13 statement about the same subject matter. While I
14 wouldn't have permitted the statement to form part
15 of the Crown's case against him, I will permit the
16 Crown to use the identified extracted portions of
17 Exhibit B on voir dire #2, that's the statement on
18 September 17th, 2020, to be held in reserve by the
19 Crown, to be used for the purpose of cross-
20 examining Mr. Fox if he chooses to testify.

21 As a matter of housekeeping, the identified
22 portions should be marked, I think --

23 CNSL T. LAKER: Yes.

24 THE COURT: -- as an exhibit on -- on the trial, just
25 for clarity of the -- or, alternatively, could be
26 marked only if Mr. Fox testifies. But I'm just
27 flagging that for counsel, just so you know, don't
28 forget --

29 CNSL T. LAKER: Yes.

30 THE COURT: -- about that.

31 CNSL R. ELIAS: Thank you, Your Honour. And then the
32 only other thing from voir dire #2 is that there
33 were two pieces of general evidence that Constable
34 Dent testified to. One is that identification in
35 court of Mr. Fox, and the second is the file
36 number that he was the lead investigator on that
37 resulted in the probation office -- in the
38 probation order, rather, that is before you. So
39 I'd ask that those two discrete pieces of evidence
40 be made -- be -- be imported into the trial proper
41 rather than me calling Constable Dent to get him
42 to testify to those two things.

43 THE COURT: Right. Okay. So that's just because the
44 Crown just wanted the ruling of voluntariness and
45 then the purpose that not having to call Detective
46 Dent again for the fact that it was you talking to
47 him on September 17th, 2020, and the file number

Proceedings

BAN ON PUBLICATION 486.5(1) CCC

1 with which he was conducting investigation.
2 Mr. Fox, do you have any objection to that
3 evidence going in as part of the trial proper?
4 THE ACCUSED: I have no objection to that.
5 THE COURT: Okay, thank you. So that evidence will go
6 in, that Detective Dent was speaking to Mr. Fox on
7 September 17th, 2020, and the file number in
8 connection with which he was having that
9 interview.
10 CNSL R. ELIAS: Thank you. To clarify, it was actually
11 a subsequent file that the -- the statement was on
12 two investigations prior and then he was -- the
13 file number he provided was for the most recent
14 investigation.
15 THE COURT: Okay. Do you want to, to be -- for it to
16 be clear, to say what file number you want to be
17 part of the record?
18 CNSL R. ELIAS: Yes. So it's police file number 21-
19 132224. That was Constable Dent's investigation.
20 THE COURT: Did you say one three two --
21 CNSL R. ELIAS: One -- yes, sorry. 132224.
22 THE COURT: 132224.
23 CNSL R. ELIAS: And then the prefix 21, for 2021.
24 THE COURT: Okay. So those two pieces of evidence will
25 form part of the trial proper with the consent of
26 Mr. Fox as well.
27 CNSL R. ELIAS: Thank you very much.
28 THE COURT: Okay. And you're going to not mark the
29 identified portions now, you're going to hold and
30 wait? Okay.
31 CNSL R. ELIAS: Yes, please.
32 THE COURT: That's fine. All right, so we will
33 continue on March 7th. Mr. Fox to be brought in
34 person that day. If there needs to be another
35 brief appearance in front of me before then, you
36 know, we've already discussed you can do that
37 and . . .
38 CNSL R. ELIAS: Yeah, thank you.
39 THE COURT: All right. Thank you.
40 CNSL T. LAKER: Thank you, Your Honour.
41 THE SHERIFF: Order in court.

42
43 (PROCEEDINGS ADJOURNED TO MARCH 7, 2023, AT
44 9:30 A.M.)
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46
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Proceedings

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Transcribers:

J. Harding - Start to Noon Recess
C. King - Noon Recess to End

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