

**244069-10-BC
Vancouver Registry**

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

**Vancouver, B.C.
April 19, 2023**

REX

v.

PATRICK HENRY FOX

PROCEEDINGS AT TRIAL

BAN ON PUBLICATION 486.5(1) CCC

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Crown Counsel:

**T. Laker
R. Elias**

Appearing on his own behalf:

P. Fox

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RULINGS

NIL

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CNSL T. LAKER: Yes, Your Honour. Laker, initial T., for the Crown. And I can deal with Mr. Fox's matter. It's the only matter on the list.

THE COURT: Yes. Mr. Fox. So my apologies for being late. I was in a pre-court meeting in another building and it ran late.

CNSL T. LAKER: No problem. Mr. Fox was able to get set up and he just confirmed that he does need the table that we have ordered for his closing submissions. So when I have concluded mine, we'll have to stand down briefly. Mr. Elias is actually in a continuation in Courtroom 513. He's hoping that he will finish that this -- early this morning and will be able to join us. But he's the one who's aware of where this table is, so I'll have to coordinate that.

But what I propose to do at this point is just to continue with the Crown's closing submissions, Your Honour. And -- and then at that point, once I have concluded, what we can do is maybe briefly stand down before Mr. Fox starts.

THE COURT: Thank you, Ms. Laker. I did have some comments after last day. I know that you didn't finish your submissions. But they had to do with the authorities that you were presenting. First a decision from the B.C. Court of Appeal and then the decision that was the basis of the probation order currently before the court.

CNSL T. LAKER: Yes.

THE COURT: In this prosecution Mr. Fox is presumed innocent.

CNSL T. LAKER: Yes.

THE COURT: He didn't testify. He didn't put his character in issue. Section 12 of the Canada Evidence Act didn't become engaged. I don't know how the issue will be framed in Mr. Fox's final argument. The B.C. Court of Appeal decision might have some relevance if there's any issue or argument about the meaning of that phrase, but Judge Denhoff's decision, I didn't see the relevance or admissibility of that. It was a different set of circumstances. Mr. Fox testified on that trial. The facts were different.

So I'm not going to consider Judge Denhoff's

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1 decision. I may consider the B.C. Court of Appeal
2 decision depending on what the arguments are, if
3 it's a similar argument.
4 CNSL T. LAKER: Mm-hmm.
5 THE COURT: But I don't think at this stage of
6 proceedings all -- anything else --
7 CNSL T. LAKER: Yes.
8 THE COURT: -- is properly before me --
9 CNSL T. LAKER: Yes.
10 THE COURT: -- for consideration.
11 CNSL T. LAKER: Yes.
12 THE COURT: Crown agrees? Okay.
13 CNSL T. LAKER: Yes, I do agree.
14 THE COURT: Okay.
15 CNSL T. LAKER: I had an opportunity to reflect on
16 that, Your Honour --
17 THE COURT: Okay.
18 CNSL T. LAKER: -- and I do agree with you, absolutely.
19 THE COURT: Okay. Good. Glad we're --
20 CNSL T. LAKER: With --
21 THE COURT: -- on the same page.
22 CNSL T. LAKER: With regards to Denhoff's decision, the
23 only reason why it was provided is because
24 Judge -- the Honourable Judge Denhoff outlined for
25 Mr. Fox sort of all the efforts that could be made
26 in order to deal with the website. That was the
27 only reason. Second of all, with regards to the
28 court of appeal decision, obviously without
29 knowing what Mr. Fox is going to be saying in his
30 closing submission it is the Crown's submission
31 that the court of appeal has definitively ruled on
32 their interpretation of the condition that Mr. Fox
33 was bound by. It just happens to be Mr. Fox who
34 was before the court of appeal on that particular
35 issue. Obviously if it was a different accused
36 the Crown would still be relying on that decision.
37 We are not relying on it because it's Mr. Fox;
38 we're relying on it because of how the court of
39 appeal has interpreted that condition and that's
40 it solely.
41 THE COURT: Okay. As I've said --
42 CNSL T. LAKER: Yes.
43 THE COURT: -- the court of appeal decision might be
44 relevant, it might be admissible. It depends on
45 the issues in the trial.
46 CNSL T. LAKER: Exactly.
47 THE COURT: I'm not going to further consider Judge

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1 Denhoff's decision. I don't think it's relevant
2 or admissible and it's prejudicial to Mr. Fox.
3 CNSL T. LAKER: Yes. And obviously the Crown would
4 never be arguing that because there has been a
5 previous ruling before that Mr. Fox is guilty of
6 this particular offence. That would never be an
7 argument that the Crown is advancing whatsoever
8 and I would strongly encourage Your Honour to --
9 to not consider it in that way.
10 THE COURT: No.
11 CNSL T. LAKER: I agree with you --
12 THE COURT: Of course not.
13 CNSL T. LAKER: -- that it is prejudicial. Absolutely.
14 THE COURT: The impression I was given --
15 CNSL T. LAKER: Yes.
16 THE COURT: -- by handing up a book of all -- or
17 attempting to hand up --
18 CNSL T. LAKER: Yes.
19 THE COURT: -- a book of all these prior decisions was
20 that Crown was doing that exactly --
21 CNSL T. LAKER: No.
22 THE COURT: -- which is not proper.
23 CNSL T. LAKER: No. Absolutely not.
24 THE COURT: So -- okay.
25 CNSL T. LAKER: Yes.
26
27 SUBMISSIONS FOR CROWN BY CNSL T. LAKER, CONTINUING:
28
29 CNSL T. LAKER: So where -- where I was in my closing
30 was dealing with the -- the Counts 2 and 3 where
31 the Crown is alleging that Mr. Fox has has
32 breached those conditions. That began at page 7
33 of the Crown's submissions.
34 And paragraph 26. And what I -- what I had
35 done was taken Your Honour through the evidence of
36 Ms. Meiklejohn about the -- the fact that the
37 website was available on May 16th when she
38 accessed it in her capacity as -- as an employee
39 of the Vancouver Police Department. That evidence
40 was summarized by the Crown at paragraph 29 on
41 page 8 through to the end of page 9.
42 And I had start discussing the evidence of
43 Sergeant McElroy at the bottom of page 9 where I
44 had -- where the Crown's indicated that she has
45 also provided evidence about her observations of
46 the website being available on May 16th. That she
47 was working at the same time as Ms. Meiklejohn at

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1 the Vancouver Police Department detachment at 3585
2 Graveley Street in Vancouver, was looking over
3 Ms. Meiklejohn's shoulder when the website was
4 searched and that she observed the website on
5 Ms. Meiklejohn's computer with the URL
6 www.desicapuano.com along with a header and a
7 picture. She reviewed Exhibit 5 of the -- that's
8 been entered as an exhibit, Exhibit 5 of this
9 trial, and she confirmed that that was the package
10 that was created by Ms. Meiklejohn.

11 Now, she was asked about page 22 of Exhibit 5
12 and she explained that this was regarding an
13 incident when previous investigators were dealing
14 with this case and it was learned that some
15 material was sent to Mr. Fox by accident. And
16 Sergeant McElroy estimates that that had occurred
17 around the end of last year, 2022.

18 Sergeant McElroy also indicated that she
19 checked the desicapuano.com website in the days
20 before February 27th, 2023, that was just in the
21 days before our first continuation date, Your
22 Honour, and that the website appeared to be
23 available for purchase on -- on GoDaddy.

24 In cross-examination Sergeant McElroy was
25 asked by Mr. Fox about whether any steps were
26 taken to ensure the pages were actually from the
27 desicapuano.com website and she indicated that she
28 had no knowledge of that.

29 I had also mentioned in this paragraph that
30 any steps taken or not taken by Sergeant McElroy
31 or other members of the VPD are, in the Crown's
32 submission, irrelevant to Mr. Fox's obligation to
33 take all necessary steps to take down the website.

34 She as also asked by Mr. Fox about whether
35 she had tried to access the website shortly
36 following his interview on May 16th and she told
37 Mr. Fox that she had received an internal message
38 denying her access and her explanation about that
39 instance was that the blocked access was
40 department specific because the analyst had been
41 able to search it. Sergeant McElroy confirmed in
42 her cross-examination that Ms. Meiklejohn had
43 unrestricted access to the internet because she
44 does open source searches.

45 And related to this line of questioning by
46 Mr. Fox about Sergeant McElroy's efforts to search
47 the website on May 16th, 2022, are the proxy

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1 server logs that were entered as Exhibit 12 which
2 we heard a fair bit about during the course of the
3 Crown's case. And it was Sergeant Shook and
4 Johnny Lam who assisted the court in an analysis
5 of these logs.

6 Sergeant Shook stated that from what he
7 understood the logs are of a VPD proxy and that
8 they show the proxy's activity with respect to the
9 search term desicapuano.com. And he further
10 stated, and this is at the top of page 11, that
11 the VPD network is a monitored network that looks
12 for threats, malware, et cetera, so when a use
13 tries to go to a website this background program
14 will pull in elements from that website to ensure
15 that they are not a threat. So the proxy pre-
16 surveys files or sites that are requested and
17 ensures that they are safe for a user. The entry
18 in the file names look like pieces of code that
19 have been identified by the proxy for search and
20 analysis. That was his review of the proxy server
21 logs that were put before him. And he -- he
22 indicated that references to the site indices.com
23 in the proxy logs could be indicative of a website
24 hosting company like GoDaddy.

25 Johnny Lam, who is an IT manager with the
26 Vancouver Police Department, also testified about
27 the proxy server logs. Mr. Lam, the Crown
28 submits, provided the following relevant evidence.
29 Different employees of the VPD will have differing
30 levels of access to the internet. Most employees
31 are only allowed to access white listed sites
32 which have been vetted by security analysts. So
33 if an employee tries to search a website that is
34 not on the white list they will receive a blocked
35 page. And Mr. Lam confirmed that the
36 desicapuano.com URL or website is not on the white
37 list.

38 He -- he indicated that IT personnel can have
39 more access as well as other teams within the VPD
40 such as covert teams. And he said that Hunchly
41 users will not go through this proxy. He did
42 confirm that, that they go through their own
43 covert internet pipe and he won't get logs for
44 that. The server they use is Hida [phonetic] and
45 it is hosted on a separate network for the last
46 two years. And he indicated that the server is
47 called hida.vpd.bc.ca.

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1 He indicated that Hida is a virtual server
2 that hosts Hunchly with their own firewall server
3 and that this is so that any Hunchly user who
4 could introduce viruses have their own DMZ, that's
5 a demilitarized zone, so as to not affect the rest
6 of the organization. And this access would not be
7 reflected on the proxy server log provided because
8 it is through a different system.

9 Specifically in reviewing the proxy server
10 logs, Mr. Lam noted the following. That when
11 someone tries to enter the internet the proxy will
12 always do a scan. Any access through the proxy
13 will generate logs. The proxy server logs are
14 security logs and they show the proxy trying to
15 scan the site that the VPD member had entered and
16 that it came back as negative or safe. And there
17 are 14 events because an event is created for
18 every file accessed on the site and none of the 14
19 events logged -- logged came back as a threat. If
20 it had come back as a threat, it would be
21 malicious that could harm the computer systems.

22 So in sum, all of the evidence shows that
23 both Ms. Meiklejohn and Sergeant McElroy saw that
24 the website was available on the internet on
25 May 16th of 2022, Ms. Meiklejohn used Hunchly to
26 create screen captures of the website as it was on
27 May 16th, 2022, and further, that Sergeant McElroy
28 made efforts but was not able to access the
29 website herself later in the day and this is
30 supported by the proxy server logs.

31 The other aspect for Your Honour to consider
32 in proving -- or in determining whether or not
33 Mr. Fox has breached Conditions 2 and 3 of the
34 information is whether or not Mr. Fox had some
35 control over the website. The Crown submits that
36 there is sufficient evidence for Your Honour to
37 find that he did. That's basically twofold.
38 First of all the material that was -- that is on
39 the website that is captured in the Hunchly
40 printout is unique to Mr. Fox. In reviewing the
41 material, the only reasonable inference is that
42 Mr. Fox published or contributed to the new posts.
43 Some of the material relied on in the new posts on
44 the website is unique to him.

45 As mentioned above, he was improperly
46 provided evidence from another file. This was the
47 subject of one of the new posts that's entitled

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1 "VPD and Crown counsel give Patrick someone else's
2 disclosure material." It is unlikely that any
3 member of the public other than Mr. Fox would have
4 information about this disclosure breach. Another
5 of the new posts that's entitled "Judge Katheryn
6 Denhoff and her delusional reasons for judgment"
7 quotes at length transcripts of the trial before
8 Judge Denhoff and her decision. Mr. Fox himself
9 has access to both. However, this proceeding was
10 subject to a s. 486.5(1) publication ban, and so
11 both its transcripts and its reason for judgment
12 could only be provided to a third party by way of
13 a court order. And I have a copy of the B.C.
14 Provincial Court policy with regards to that
15 specific issue.
16 This was provided to Mr. Fox previously.
17 Does Your Honour have it? Yes. Okay.
18 THE COURT: I just want to confirm. I believe you did
19 hand it to me the last day.
20 CNSL T. LAKER: Yes.
21 THE COURT: It's the effective date February 10th,
22 2023.
23 THE ACCUSED: I do. The publication ban was only the
24 identities, though, of Munoz and Capuano, not the
25 entire thing.
26 CNSL T. LAKER: Well, yes, but because there's --
27 sorry.
28 THE COURT: Let me just confirm --
29 CNSL T. LAKER: Yes.
30 THE COURT: -- that this is what --
31 CNSL T. LAKER: Yes.
32 THE COURT: -- you're -- you mean me to have.
33 CNSL T. LAKER: Yes, it is.
34 THE COURT: Okay. Thank you.
35 CNSL T. LAKER: Mr. Fox just mentioned that it only
36 related to the identity of Ms. Capuano, but the --
37 the relevant aspect, in the Crown's submission, is
38 the fact that that publication ban did exist. And
39 so an order for anyone else to get access to those
40 documents that I've referenced already is that
41 there has to be a court order. And as can be seen
42 by reference to the court's own file, no such
43 court order was ever made. No member of the
44 public has access to these transcripts or reasons
45 for judgment other than through Mr. Fox. And I've
46 referenced s. 1.3(18) and 1.3(25) as those are the
47 sections that relate to the -- the application of

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1 the publication ban to -- and the necessity for
2 obtaining a court order.

3 Yes, Your Honour. And more broadly the
4 material on the website represents a confluence of
5 interests that is unique to Mr. Fox. Of the seven
6 new posts observed by Ms. Meiklejohn, three
7 relates to his ex-spouse, Ms. Capuano; three
8 relate to Mr. Fox's past criminal proceedings; and
9 the seventh, which is entitled "B.C. government
10 admits this website is not illegal," provides
11 general commentary on Mr. Fox's legal problems and
12 the purported failure by B.C. authorities to
13 attempt to have the website removed. Five of the
14 seven posts purport to be by the same author,
15 quote, editor. Two of the posts related to
16 Ms. Capuano, instead purport to be by her, albeit
17 with a disclaimer at the bottom of the page
18 indicating that they are not in fact by her.

19 In the Crown's submission all these topics
20 are idiosyncratic to Mr. Fox. In combination,
21 there is no reasonable conclusion other than that
22 Mr. Fox is the author of the posts shown in the
23 Hunchly printouts posted on the website.

24 Now, the other area of evidence that supports
25 that Mr. Fox is -- does have some degree of
26 control over the website is the evidence that came
27 from his phone. And that relates to the analysis
28 of his phone contained that starts at page 40 --
29 sorry, paragraph 46 in the Crown's submissions.

30 So when Mr. Fox was arrested on May 16th his
31 mobile phone was seized and subsequently analyzed
32 by Sergeant Shook. Sergeant Shook created a
33 report with his findings which has been entered as
34 Exhibit 14. And at trial he was qualified as
35 an -- as an expert in digital forensics, including
36 the forensic analysis of digital devices,
37 including the identification, preservation,
38 extraction and interpretation of digital evidence.
39 Sergeant Shook described his job as to extract
40 data and prepare it for court presentation. In
41 this case he examined data that had been tagged by
42 Sergeant McElroy.

43 In sum, these are the pertinent aspects of
44 Sergeant Shook's evidence regarding the analysis
45 of the phone. Generally he stated that the same
46 card is from luckymobile.ca service provider in
47 Canada and it's usually a pay as you go, and you

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1 can buy these cards at gas stations or cellphone
2 kiosks. He said that the phone number imported
3 from the SIM card is 778-951-8542 and that the
4 device user is Patrick. He confirmed that the
5 phone can connect to the internet.

6 Now, page 6 of his report shows the internet
7 searches that had been done on the phone. Mozilla
8 Firefox is referenced and that's a web browser
9 that allows users to connect to the internet to
10 search for data/websites, et cetera. Sergeant
11 Shook said that web browsers are built in such a
12 way that you can either put a URL in the box or a
13 search term that it will search for and what is
14 searched for is -- was what was saved.

15 He said that the times are adjusted to local
16 time values for when the entries were entered into
17 the database which is when those search terms were
18 entered into the search bar. He said that, for
19 example, the search term "Google web mas" was
20 searched on May 13th, 2022, at 6:27 p.m.

21 Now, with regards to Google Webmaster Tools,
22 Google makes tools that allow people to administer
23 websites. Google Webmaster Tools is a suite of
24 software tools particularly for administrators and
25 others with access to websites to monitor the
26 usage of their website through Google and their
27 interactions with Google search. They allow a
28 site administrator to monitor usage of the site.

29 As well, specifically on May 14th, 2022, at
30 2:36 p.m. the search for desicapuano.com would
31 have been entered into the address field of
32 Firefox to be searched. It doesn't show the
33 results of the search, just that it was searched
34 for. Sergeant Shook also discussed page 5 of his
35 report. He indicated that it was a compilation of
36 user accounts that were found within various
37 databases on the device or on the phone. He
38 indicated that everyone who has a mobile device
39 knows that it would be frustrating to enter a
40 username and password every single time you want
41 to access an application, so devices have a built-
42 in capability to store account information to have
43 it available to the user whenever they click on
44 the relevant service.

45 He says we can extract and analyze those
46 accounts, and he went through the various accounts
47 that were found on the phone. So he said, for

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1 example, number 1 was patrickhfox@gmail.com and
2 this was a user account saved in Mozilla Firefox.
3 Number 2 was the P with a number of dots following
4 @gmail.com and he says that the account database
5 only retains the information the application
6 permits it to. He said this is most likely a
7 function of BlueMail, which is an application, a
8 software suite that is primarily used for calendar
9 and email syncing. It allows you to access
10 multiple calendars and email addresses in a single
11 place.

12 With regards to number 3, he said that it was
13 an email address being used as a username. And
14 with regards to number 4, he said that that was
15 also similar, plus the password being reference.
16 And he said this is the password associated to
17 that username that is stored in that database and
18 sometimes passwords are stored in a hash value or
19 a seeded term, for instance number 2 that we've
20 already discussed, or sometimes in a plain text
21 like number 3 and 4. And he indicated that
22 password [REDACTED] is what was stored in the
23 phone associated with these two usernames.

24 With regards to numbers 5, 6, 7, 10, 11, and
25 12, they were all related to patrickhfox@gmail.com
26 being used as a username for different
27 applications or services. He said, for example,
28 number 5 is from an Android calendar and number 6
29 is from Android maps. He said that number 8 was
30 the same phone number as on the SIM card for the
31 device and that it was -- here it was also the
32 primary username for SMS/texting.

33 And that, finally, number 9 shows the deleted
34 but recovered Instagram account and that this
35 version of Instagram may not have wanted a -- may
36 not have wanted a username stored or it could have
37 been lost when it was deleted.

38 So what's of particular interest, obviously,
39 are the usernames under the -- under numbers 3 and
40 4. And when he was asked more questions about
41 those, he said that those usernames ended up on
42 the phone by either being entered or authorized by
43 a user to appear on the phone and that these two
44 main methods to have the usernames on the phone,
45 one, a user enters it manually by entering a
46 username and password, and two, by migrating
47 information from another source onto -- onto a

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1 device. For example, the user has other accounts
2 and brings it onto the device in one package. And
3 he says either way there is user input of some
4 method.

5 Under cross-examination Sergeant Shook
6 explained that with respect to numbers 3 and 4,
7 the entries are what is stored for that account.
8 As to whether this provides access to an account,
9 it would have to be tested to see if they actually
10 grant access. What this data shows is that at the
11 time that the police acquired this data from the
12 device there were entries in the accounts
13 database.

14 As well, Sergeant Shook stated that when a
15 file is marked with "deleted" but is then
16 recovered, it stays flagged as having been
17 deleted, and that was in reference to number 9,
18 the Instagram account.

19 Sergeant Shook was also asked about whether
20 some of the data could have been modified post
21 extraction, and he replied that the method of
22 extraction will vary but extraction programs
23 strive for not modifying data at all or as little
24 as possible.

25 In sum, Sergeant Shook's report proves that
26 Mr. Fox had account information associated to the
27 website on his phone. He had searched Webmaster
28 Tools that are associated with maintaining a
29 website and he had also searched desicapuano.com.
30 This evidence shows that Mr. Fox had some control
31 of the desicapuano.com website.

32 Mr. Fox did not call evidence in his defence.
33 What I can say is that there appears to be a
34 suggestion that the Crown has not proven that
35 Ms. Meiklejohn properly searched for
36 desicapuano.com on May 16th and that the VPD may
37 have modified the data on his phone, but there is
38 no factual basis to either suggestion.

39 So in conclusion, Your Honour, there is no
40 question that Ms. Meiklejohn accessed the website
41 and created the Hunchly printouts. This proves
42 that the website was available via the internet on
43 May 16th when Mr. Fox was on probation. In fact
44 new posts had been uploaded. These new posts are
45 completely unique to Mr. Fox. And further, there
46 is no question that Mr. Fox had data on his phone
47 at the time of his arrest on May 16th showing that

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1 he had accounts associated to the website,
2 including passwords. As a result, there is no
3 evidence -- or sorry, as a result, there is
4 evidence that Mr. Fox had control over the
5 website. A trier of fact can reasonably conclude
6 that Mr. Fox was capable of removing the website
7 as required by Condition 4.

8 The only reasonable inference from the
9 evidence is that Mr. Fox does and is able to
10 exercise some measure of control over the website,
11 and once one comes to that conclusion, the Crown
12 says that it's an inexorable conclusion that
13 Mr. Fox was capable of removing the website and by
14 not doing so, he failed to comply with Condition 4
15 of the probation order. In fact the Crown submits
16 that the trier of fact can make a finding that
17 Mr. Fox arranged to have the website made
18 available on the internet and had the new
19 information uploaded.

20 In Mr. Fox's prior breach, Denhoff stated at
21 paragraphs 17 and 18 that it was absurd to suggest
22 that a third party would pay for a website and
23 that is entirely related -- that is entirely
24 related to Mr. Fox's harassment of Ms. Capuano and
25 his legal problems. This evidence assisted her in
26 finding that Mr. Fox had control of the website.

27 THE COURT: So I'm not going to consider --

28 CNSL T. LAKER: Yes.

29 THE COURT: -- that paragraph.

30 CNSL T. LAKER: Yes. Further, since Mr. Fox can be
31 found to have breached Condition 4, this means
32 that he also breached Condition 6, which is the
33 requirement that he not disseminate any
34 information about Ms. Capuano. Since material
35 that relates to her is still on the website, new
36 material about her and that new -- okay. Sorry.
37 Since material that relates to her is still on the
38 website and new material about her was uploaded to
39 the website after Mr. Fox's release and Mr. Fox
40 has some control over that website, in the Crown's
41 submission, and that it was still publicly
42 available on May 16th, Mr. Fox is, in the Crown's
43 submission, in breach of Condition 6.

44 So those are the Crown's submissions, subject
45 to any questions Your Honour may have. I may have
46 some reply depending on what Mr. Fox states in
47 his -- in his closing submissions, but subject to

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1 any questions Your Honour may have, those are my
2 submissions. Or the Crown's submissions, I should
3 say, since Mr. Elias isn't present at this time.
4 THE COURT: Thank you. Yes. And we need to stand down
5 now for the table. Any sense of how long that
6 might take?
7 CNSL T. LAKER: That should not take very long.
8 Mr. Elias is just next door. Once I know where --
9 where the table is in his office, I can just run
10 down --
11 THE COURT: Okay.
12 CNSL T. LAKER: -- we can plug it in. Probably ten
13 minutes at most to do that. I don't know if
14 Mr. Fox needs any additional time.
15 THE ACCUSED: It really depends if we run into any
16 complications with it actually working. If
17 everything goes smoothly, then it shouldn't take
18 more than a few moments, but if there's some
19 compatibility issue or something, then who knows.
20 CNSL T. LAKER: Do you need any other additional time,
21 though, Mr. Fox, just to prepare your...
22 THE ACCUSED: Well, admittedly I have not completed
23 preparing all of my closing submissions because I
24 have some appeal matters that are coming up. I
25 have some hearings this week and next week as
26 well, and so I ended up not having enough time to
27 do all of that preparation plus the preparation
28 for this. But the amount of the closing
29 submissions that I have done that I am prepared to
30 proceed with at this time I'm pretty sure are
31 going to take up most of the day. And so I don't
32 know that that's going to cause too much of an
33 issue, the fact that I haven't finished all of
34 them.
35 THE COURT: Well, we'll be stood down for lunch. That
36 will give some time to complete. So I'll stand
37 down now and let me know when we're ready to
38 begin. I won't take the morning break right now
39 because I'm expecting it might be fairly brief
40 assuming the technology works smoothly. But I'll
41 wait to be called. Thank you.
42
43 (PROCEEDINGS ADJOURNED)
44 (PROCEEDINGS RECONVENED)
45
46 CNSL T. LAKER: And, Your Honour, I believe Mr. Fox is
47 ready to proceed.

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1 THE COURT: Yes. Mr. Fox.
2 THE ACCUSED: Yes. First I apologize for taking so
3 long with the adapter. We did figure the problem
4 out, though, and now everything is working.
5 THE COURT: That's good.
6 THE ACCUSED: And I -- I have typed up my closing
7 submissions and I'm going to be essentially
8 reading them, same as what the Crown was doing.
9 So hopefully I don't fall into a pattern of
10 monotony and sounding too mundane as I'm reading.
11 THE COURT: Do you have a copy for me?
12 THE ACCUSED: Unfortunately no because it's on here.
13 If there was more time what I would've done, and I
14 was hoping I could've done this was send the
15 laptop back to Mr. Layton [phonetic] and then he
16 could print it for me and then I would have copies
17 for everybody, but I just have the electronic one
18 on here.
19 THE COURT: So there's no way as it's currently set up
20 for both me and the Crown to get printed out
21 copies?
22 THE ACCUSED: That is correct. That would require the
23 Crown taking the laptop and doing whatever they
24 normally do to print the documents for me and that
25 would be up to them. I don't know how they
26 normally handle that.
27 CNSL R. ELIAS: Your Honour, Ryan Elias here.
28 THE COURT: Yes.
29 CNSL R. ELIAS: I think we would need an IT person who
30 knows how to unlock the laptop and I'm not sure if
31 we have such a person at 222 Main Street. There
32 are -- usually it's the folks at Hornby who do
33 that.
34 CNSL T. LAKER: I can send -- what I'll do is I'll send
35 a quick message to a couple of people and just see
36 if that's something that we can accommodate over
37 the lunch break.
38 THE COURT: Yes. I appreciate that. All right. So
39 that's fine. Often closing submissions are made
40 without typed copies provided, but if they're
41 lengthy and there's the possibility of having a
42 written copy available, everyone does appreciate
43 that, including me.
44 THE ACCUSED: Right. Now, one thing I could propose is
45 since we have the shared screens now, of course I
46 could always just put the file on the shared
47 screen. My only hesitation with that is these

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1 were -- well, I was going to say these were
2 written with -- there might be a sentence or two
3 here or there that I might not want to state at
4 this point, like, that I might --
5 THE COURT: Okay.
6 THE ACCUSED: At the time that I was typing it it
7 might've seemed appropriate, but I might see it
8 now and go, maybe I'll skip that.
9 THE COURT: Okay. Well, that's your choice.
10 THE ACCUSED: Right.
11 THE COURT: Well, why don't you start. And I
12 appreciate Crown making the offer. I'm going to
13 ask you just before we break to lunch if you would
14 like them to continue to pursue whether a printed
15 out copy could be made and they'll only do that
16 if -- if you say yes. So otherwise we'll
17 just -- we'll just proceed --
18 THE ACCUSED: Right.
19 THE COURT: -- with you.
20 THE ACCUSED: I could say I absolutely would definitely
21 want them to continue to pursue that because it
22 would be beneficial I believe, for everybody to
23 have the printed copy. The only concern I was
24 expressing was that if it's on the screen there's
25 no way to -- how can I say? Well, yes, I would
26 prefer that everybody have a printed copy.
27 That -- that would be better rather than just
28 relying on me reading it and hoping everybody
29 remembers everything I said.
30 So regardless now, let me --
31 THE COURT: Okay.
32 THE ACCUSED: I'll begin.
33
34 SUBMISSIONS BY ACCUSED:
35
36 THE ACCUSED: I'm going to start with addressing Counts
37 2 and 3 rather than Count 1. And with respect to
38 Counts 2 and 3, the Crown's case is built entirely
39 on Ms. Meiklejohn's testimony that on May 16th,
40 2022, she entered the host name
41 www.desicapuano.com in the address bar of the web
42 browser on her VPD computer and was able to access
43 the Desi Capuano website at that location. The
44 Crown's case is further bolstered by Detective
45 McElroy's testimony that she stood behind
46 Ms. Meiklejohn and observed her doing that. The
47 Crown argues that the facts that Ms. Meiklejohn

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1 was able to do that proves the website was online
2 and publicly accessible at that time. That's my
3 understanding, anyway, of the Crown's arguments
4 and their case.

5 So at this point I'm -- I put a web browser
6 onto the shared screen and I've typed in
7 www.desicapuano.com, just making sure I've got the
8 spelling correct. And I hit "enter." And as we
9 can see the website comes up. I can click on the
10 links. These are the same artefacts or the same
11 articles or pages that the Crown included in
12 Exhibit 5. So as you can see everything is there.
13 Certainly it appears that I'm able to access the
14 website.

15 CNSL T. LAKER: And, Your Honour, I'm just going to
16 express a bit of a concern about Mr. Fox doing
17 this right now because it appears that he may be
18 giving evidence and he is closing. And whether or
19 not Your Honour can actually take this into
20 account is -- is questionable.

21 THE ACCUSED: I -- I had considered that and my
22 response to that would be I'm not doing this to
23 show that I'm -- or how can I say it? My
24 intention here, what I'm trying to show, is the
25 fact that Ms. Meiklejohn was able to do that from
26 her computer doesn't necessarily by itself prove
27 that the website was actually online and publicly
28 accessible at that time. I'm not -- by doing this
29 I'm not trying to show that the website is
30 publicly online. So in that respect I would say
31 this is just to support my argument, not actually
32 evidence.

33 THE COURT: It seems like evidence to me.

34 THE ACCUSED: Okay. I would have -- hmm. Well, I --
35 honestly I don't know what I could say in response
36 to that. The next thing that I was going to say,
37 though, I was going to point out that even though
38 I am able to bring it up on this laptop, there are
39 two issues that -- that should become immediately
40 apparent. The first is that the website isn't
41 actually online. The Crown, and I assume you have
42 the computer up there as well, Your Honour. Oh,
43 okay.

44 THE COURT: I just have the screen right now.

45 THE ACCUSED: Oh, no actual laptop or anything?

46 THE COURT: No.

47 THE ACCUSED: Oh.

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1 THE COURT: I don't have it with me.
2 THE ACCUSED: Okay. But if you did, and the Crown has
3 one here, anybody would be able to see that the
4 website isn't actually online if you were to try
5 to pull it up. And the other issue that should
6 become apparent from this is that this laptop
7 doesn't have access to the internet. The network
8 interfaces on this have been disabled.
9 Sorry. I'm contemplating this issue of
10 showing the website here being accessible -- or
11 being accessible on the laptop but certainly
12 appearing that I'm accessing it from the internet
13 because I've put in the URL. The problem that the
14 Crown raised as me giving evidence -- sorry. I
15 was -- I was intending during my cross-examination
16 of some of the witnesses to present this to them
17 at that time, but you may recall at that time we
18 were having some compatibility issues with sharing
19 the screens and so that's why at that time I moved
20 on from it because we weren't able to figure out
21 how to get it to -- how to share the screens at
22 the time.
23 Okay. Well, I guess then I will have to
24 accept that this would be giving evidence and I'll
25 have to assume that Your Honour won't be able to
26 consider this information, then, and I'll move on.
27 THE COURT: Yes. You chose not to testify, which means
28 that you are making submissions based on the
29 evidence that I've heard, including anything that
30 you believe you established by cross-examining the
31 Crown witnesses. The difficulty with wanting to
32 rely on something that you're introducing now
33 which is evidence is you're not subject to cross-
34 examination, so it's not -- it's not properly
35 before me, then --
36 THE ACCUSED: Right.
37 THE COURT: -- because it's not coming in the right
38 manner.
39 THE ACCUSED: And at this point it's my understanding
40 it would be too late for me to give evidence
41 anyway. Is that correct? I mean for me to
42 testify.
43 THE COURT: Well, it would have to be an application by
44 you, and the difficulty with it is that I've heard
45 the Crown closing submission. But it would be
46 something -- I don't know. Something that you
47 could consider applying. But we've gone past that

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1 point.

2 THE ACCUSED: Right. Right.

3 THE COURT: I tried to explain to you at the time, I
4 think, not knowing how you wanted to frame your
5 closing submissions, the importance of testifying
6 yourself, if there was any evidence that you
7 hadn't yet heard that you felt was important to
8 your case. So --

9 THE ACCUSED: I understand.

10 THE COURT: Okay.

11 THE ACCUSED: So during my cross-examination of
12 Ms. Meiklejohn and I believe also of Detective
13 McElroy, I had brought up the possibility or the
14 theory that somebody had set up a fake version or
15 fake copy of the website within VPD's network and
16 that perhaps maybe that's what she was accessing.
17 So the submissions that I'm going to make moving
18 forward, then, would be based on having brought
19 that up during those cross-examinations and not
20 necessarily referring specifically to what is on
21 the screen right now with this website that's on
22 the screen.

23 So -- sorry. There's a whole section of my
24 submissions here that is kind of dependent on what
25 I just demonstrated with the website here, and so
26 I have to skip over all of that and I'm
27 contemplating now how that's affecting -- that is
28 unfortunately having a very adverse effect on my
29 submissions. But I accept that this is my own
30 fault.

31 During my cross-examination of Ms. Meiklejohn
32 and Detective McElroy I had proposed to them the
33 possibility that a fake version of the website may
34 have been set up within VPD's network and that I
35 had asked them if it was possible that that's what
36 they could have been accessing on that day and not
37 actually a copy of the website that was publicly
38 available on the internet. Unfortunately they had
39 no knowledge of that, but they were pretty certain
40 that that's not what was -- was happening.

41 Okay. So during the interview of me on
42 May 15 -- or May 16th, 2022, Detective McElroy
43 claimed that she tried to access the website from
44 a computer in the next room. And I know that
45 the -- the video of that interview was not
46 admitted because I didn't testify and I didn't
47 seek to admit that. However -

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1 THE COURT: I was just about to --
2 THE ACCUSED: I knew that --
3 THE COURT: -- interrupt you.
4 THE ACCUSED: Because of that I made sure that I
5 questioned Detective McElroy about her bringing
6 that up.
7 THE COURT: Okay. Good. And I do recall that cross-
8 examination. So yes, any subject that properly
9 came before me in evidence, yes.
10 THE ACCUSED: Right.
11 THE COURT: Okay. So you understood what I was
12 explaining to you about neither of the statements
13 came before me in evidence because they were each
14 only going to come before me should you testify?
15 THE ACCUSED: Right.
16 THE COURT: Right? Okay.
17 THE ACCUSED: And so anything in those recordings that
18 wasn't also brought up in the cross-examinations
19 would not be admissible.
20 THE COURT: Exactly.
21 THE ACCUSED: Or I cannot bring up at this point.
22 THE COURT: Exactly.
23 THE ACCUSED: Or I could bring it up but you wouldn't
24 be able to consider it.
25 THE COURT: So -- but I do remember you did cross-
26 examine Sergeant McElroy about that. I do
27 remember that.
28 THE ACCUSED: And so she claimed that she had tried to
29 access it from a computer in the next room in
30 order to prove to me that the website was actually
31 online, but she was unable to access it and she
32 claimed that it was because the VPD's network was
33 blocking her access.
34 Now, the time that that occurred was between
35 2:20 to 2:20 p.m., and unfortunately the reason
36 that we know that that was the time was that was
37 the timestamp in the video. But in the --
38 THE COURT: Sorry. You said from 2:20 to 2:20?
39 THE ACCUSED: 2:20 to 2:28 p.m.
40 THE COURT: Okay. 2:20 to --
41 THE ACCUSED: That's while --
42 THE COURT: -- 2:28. Thank you.
43 THE ACCUSED: That's when she was out of the room.
44 THE COURT: Okay.
45 THE ACCUSED: And since that's information that I got
46 from the video, from the timestamp at the bottom
47 of the video, technically I guess that would not

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1 be admissible.
2 THE COURT: No. It would -- oh, that's true.
3 THE ACCUSED: But I'm about to refer to what we've been
4 referring to as the proxy logs.
5 THE COURT: Mm-hmm.
6 THE ACCUSED: Because those also have the times in
7 there. And I was going to be pointing out how the
8 timestamp in the video corresponds with some
9 entries in the proxy log.
10 THE COURT: Okay.
11 THE ACCUSED: I just need to find where it went. Oh,
12 here it is. Twelve. Exhibit 12.
13 THE COURT: Yes.
14 THE ACCUSED: Which contains the proxy logs. So during
15 the interview she left the room to go try to pull
16 up the -- the website and that was between 2:20 to
17 2:28 p.m. And we also received in the proxy log
18 that there were some entries which referred to
19 desicapuano.com.siteindices.com at 2:25 p.m. and
20 2:22 p.m. So that corresponds to the time that
21 she was out of the room when she said that she was
22 going to try to pull that up for me.
23 But what we see in the proxy log is that
24 there are no corresponding entries to
25 desicapuano.com, only to desicapuano dot --
26 desicapuano.com.siteindices.com. My submission on
27 that would be that Ms. McElroy -- Detective
28 McElroy already knew -- at the time when she went
29 into the other room to try to pull up the website,
30 she knew that the website wasn't online and so she
31 didn't even bother trying to -- to access the
32 website. I would suggest that she went in the
33 other room, Googled the domain name
34 desicapuano.com, and as we saw from Exhibit 5, I
35 believe it was, when you Google the domain name,
36 the first thing that comes up is that site. Oh,
37 sorry. Exhibit 6. The first entry that came up
38 was the siteindices.com webpage.
39 And so what I believe occurred was she went
40 in the other room, she Googled it, she clicked on
41 that first link that came up which was
42 siteindices.com, but she never actually attempted
43 to pull up the website.
44 And there's been a lot of talk about the
45 indices that shows in these proxy logs, but I
46 would suggest that if -- if Detective McElroy had
47 attempted to access the website but was locked by

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1 VPD's network, then there would be an entry in
2 this log or in some log on the network showing
3 that that access was blocked.

4 During the interview when Detective McElroy
5 told me that she was unable to access the website
6 from the computer in the other room, I had
7 suggested that she could pull it up or try to
8 access it from any other device which wouldn't go
9 through VPD's network, and she refused to do so.

10 THE COURT: So was that in cross-examination or just in
11 the interview?

12 THE ACCUSED: I think it was in cross-examination.

13 THE COURT: Okay.

14 THE ACCUSED: I'm not a hundred percent certain,
15 though. But I would think that that would be
16 something that I would want to make sure I got on
17 the record. And I believe the reason -- or my
18 submission would be the reason that Detective
19 McElroy refused to bring it up on her cellphone or
20 on any other device is because she knew that it
21 wouldn't have shown that the website wasn't online. It
22 wasn't accessible at that time.

23 I believe -- I believe that before Detective
24 McElroy went into the other room to try to pull up
25 the website she may have believed the website was
26 online from having seen -- on Ms. Meiklejohn's
27 computer, having seen it come up on there. But
28 when she tried to pull it up on the other computer
29 it didn't come up because in reality it wasn't
30 online. And for some reason perhaps it was able
31 to be -- an internal copy of it was able to be
32 accessed from Ms. Meiklejohn's computer.

33 Getting back for a moment to the Exhibit 12
34 and the proxy log. There was some -- there was
35 some discussion, if I recall correctly,
36 during -- I think it might've been during
37 Mr. Lam's testimony, but there was some discussion
38 about the possibility that the siteindices.com
39 website would've been logged in here, but perhaps
40 the desicapuano.com website simply wasn't logged
41 in here. Mr. Lam had explained that the users,
42 for example Detective McElroy, are only able to
43 access websites that are explicitly included in
44 what he referred to as the white list, and the
45 Crown had also mentioned that in her submissions.

46 It would seem to me, then, that if that were
47 the case that would only work if desicapuano.com

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1 was not in the white list but desicapuano.com.
2 siteindices.com is in the white list and that
3 seems very unlikely to me that desicapuano.com.
4 siteindices.com would be in the white list but
5 desicapuano.com would not be. But also it gets
6 back to this issue that if her access to the
7 website was blocked by something on VPD's network
8 there should be a corresponding log entry in some
9 computer or some device on the network showing
10 that she attempted to access something that she
11 wasn't authorized to access.

12 So I have been putting forth the possibility
13 that somebody within the VPD may have set up a
14 fake copy of the website internally on VPD's
15 network and that perhaps that might be what
16 Detective -- or what Ms. McElroy -- Ms.
17 Meiklejohn -- sorry, these two names are so close
18 that I keep mixing them up. That may potentially
19 be what Ms. Meiklejohn was accessing on May 16th
20 when she thought she was pulling up the actual
21 website. And that would raise the question,
22 though, of why somebody within the VPD would go
23 through the effort or try to make it appear that
24 the website was online if it wasn't really online.

25 My response to that would be that over the
26 past few years I have been publishing proof, a lot
27 of proof and a lot of concrete evidence of
28 corruption and misconduct that has been going on
29 in the cases against me. And I also have
30 published proof of things, for example, like the
31 VPD inadvertently giving me somebody else's
32 disclosure material and of Detective Dent
33 committing perjury at one of my prior trials, the
34 trial before Judge Rideout and then admitting on
35 the witness stand at the trial before Judge
36 Denhoff that yes, he did actually make false
37 statements at that previous trial. And then
38 there's also been -- I've been publishing proof of
39 Crown counsel lying in court or making deliberate
40 misrepresentations in court.

41 And the articles that the Crown has brought
42 up that they're saying were on the website, the
43 Desi Capuano website, on May 16th, the ones that
44 were included in Exhibit 5, I believe it was, for
45 example, the one about Judge Denhoff and her
46 delusional reasons for judgment, the VPD and Crown
47 giving me somebody else's disclosure material. I

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1 admit that I did write those articles and I did
2 publish those articles, but I did not publish
3 those to the Desi Capuano website. I do have
4 other websites and I would have to think that the
5 Crown must be aware of this, that I have them.
6 CNSL T. LAKER: Well -- and, Your Honour, I'm just --
7 like, I -- I'm hearing what Mr. Fox is saying, but
8 I'm also concerned about the fact that he is
9 making quite a number of admissions here, but at
10 the same time he's also potentially giving
11 evidence. And I just want that to be -- to be
12 noted to him.
13 THE COURT: I mean, that's certainly -- thank you,
14 Ms. Laker. For you to say "I admit I wrote and
15 published those articles but I didn't" -- that's
16 evidence.
17 THE ACCUSED: Okay. Let me think how I can rephrase
18 this, then, so that instead of it being evidence
19 it's -- if I phrase it as it's my submission,
20 well, I -- I could say that it is my submission
21 that I do have other websites that -- would that
22 be evidence?
23 THE COURT: Well, if you want me to consider it in
24 reaching a decision on the charges against you
25 here, yes. The closing submissions are meant to
26 summarize what the evidence proves --
27 THE ACCUSED: Right.
28 THE COURT: -- from the perspective of either the Crown
29 or you, Mr. Fox. So it's -- at this stage you're
30 limited to what's been put before me by the Crown
31 witnesses and anything that you believe you
32 secured by cross-examining those witnesses.
33 THE ACCUSED: The point that I'm trying to make is that
34 some of the content that appears to be on this
35 website without considering whether the website
36 was online or it was an internal website, but some
37 of these articles -- I don't dispute that I would
38 have written them. The Crown is alleging that I
39 did write them and I'm not disputing that I wrote
40 those particular ones. What is in dispute, what I
41 am disputing, though, is whether or not I had
42 published those to the desicapuano.com website.
43 Because I'm trying to show that -- that the Crown
44 has failed to step or has failed to prove that I
45 published those on -- sorry. So much of this is
46 dependent on what I was expecting to present
47 earlier about the website, even though the website

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1 appeared to be online, it actually isn't online,
2 and so now this is kind of complicating everything
3 that's coming after it.

4 I had assumed that the issue of the website
5 not being online wouldn't really be evidence
6 because it would be a given. I mean, it's a
7 simple fact that it's not online. And so I had
8 assumed that by showing that I'm able to bring up
9 on this laptop what appears to be the website and
10 it appears to be online in fact isn't in order to
11 show that if Ms. Meiklejohn had typed in the URL
12 on her computer and appeared to bring up the
13 website that that by itself doesn't necessarily
14 mean that the website was online. And so that's
15 why when I was preparing this it didn't seem to me
16 that this was actually evidence. It was more
17 argument.

18 THE COURT: It is evidence because what -- what it's --
19 what I think it's trying to establish is undermine
20 the reliability or the credibility of Ms.
21 Meiklejohn's evidence. And it's -- it's the same
22 observation. You -- you could have presented that
23 evidence and be subject to cross-examination on
24 it, but what's not permitted is to introduce it at
25 the end and not be subject to cross-examination on
26 it.

27 THE ACCUSED: Right. And I have no objection to
28 testifying and being cross-examined on the
29 testimony that I make. My concern is as what's
30 happened in some of the previous trials where
31 Crown counsel then cross-examines me on other
32 things that have absolutely nothing to do with it
33 and so that was part of the reason I decided not
34 to testify in this case. I didn't want a similar
35 situation to arise.

36 THE COURT: Well, the rules of cross-examination are
37 guided by relevance, but they can often go beyond
38 what someone chooses to focus on when they
39 testify. There's a latitude allowed as long as
40 it's relevant.

41 THE ACCUSED: Mm-hmm. Okay. Then I would say the
42 Crown argues that there were some articles that
43 appear to be published on the website at the time
44 that Detective -- at the time that Ms. McElroy --
45 at the time that Ms. Meiklejohn appeared to be
46 accessing the website. And it is clear that some
47 of those articles -- I'm referring not to the ones

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1 about Ms. Capuano -- yes, Ms. Capuano, but the
2 ones relating to my legal proceedings. It is
3 clear that some of those articles raise some
4 issues about allegations of corruption and
5 misconduct and impropriety that have been going on
6 in the cases, the prosecutions against me and that
7 certain parties are named in there and evidence is
8 provided against those certain parties, including
9 some staff of the VPD such as Detective Yingling
10 and Detective Dent.

11 I do want to emphasize, though, that I am --
12 I am not saying that I had any involvement in the
13 three articles that the Crown is claiming were on
14 the website that pertain to Ms. Capuano. I would
15 unequivocally state I have --

16 THE COURT: So --

17 THE ACCUSED: Right.

18 THE COURT: This -- this is evidence.

19 CNSL T. LAKER: Your Honour, perhaps we could just
20 stand down very briefly and I could just have a
21 quick conversation with Mr. Fox.

22 THE COURT: Yes. I mean, you asked me, can I apply? I
23 said you can, and then I said, you know, we've
24 come beyond that. But I'm expecting perhaps
25 that's what the Crown might wish to -- and I'm not
26 going to get into it. I'll stand down. I'll let
27 you talk about it.

28 CNSL T. LAKER: Yes.

29 THE COURT: It just seems as though, Mr. Fox, what --
30 what you want to say in submissions keeps coming
31 across and in fact is evidence. So I can't
32 consider it unless it was evidence in the trial.
33 I'll stand down. Please call me --

34 CNSL T. LAKER: Yes.

35 THE COURT: -- when -- when we're ready to resume.

36 CNSL T. LAKER : Yes. Thank you.

37 THE CLERK: Order in court.

38

39 (PROCEEDINGS ADJOURNED)

40 (PROCEEDINGS RECONVENED)

41

42 CNSL T. LAKER: Your Honour, Laker, initial T., for the
43 Crown. Recalling the Fox matter. We've had a
44 discussion with Mr. Fox. What we've determined is
45 that the Crown is prepared to make a couple of
46 admissions at this point that will assist Mr. Fox
47 in continuing his closing submissions. If we run

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1 into an issue again with regards to him starting
2 to give evidence what we can certainly do is
3 reconsider whether or not it's necessary for --
4 for him to reapply to reopen his defence case.
5 But at the same time in speaking about it all and
6 taking into account that we're now on day 7 of the
7 trial, our proposed suggestion is that we just try
8 and get through his closing submissions and if
9 it's necessary, we can sort out whether or not
10 some admissions can be made to facilitate that.

11 That's -- I think that that's how we're going
12 to proceed. What we can do is advise Your Honour
13 the admissions that we're prepared to make at this
14 time, and we can certainly type those up over the
15 lunch break so that Your Honour has those in hand.
16 And then the hope is that we can continue. I
17 think -- what I was -- what we were discussing
18 with Mr. Fox is that in many respects a lot of his
19 argument if he's just framing it in a slightly
20 different way, they are submissions. And so what
21 we can certainly do is if the issue keeps coming
22 up, certainly sort of address it in that way. In
23 that -- in that he can certainly just -- for
24 instance -- sorry. For instance, when he was
25 discussing the fact about who was the author of
26 certain articles and whether or not certain
27 articles were posted to the website, what the
28 Crown advised him is that he -- that his argument
29 is that the Crown hasn't proven that he is the
30 author of certain articles.

31 So -- so hopefully what we can do is sort of
32 rein in Mr. Fox's submissions so that he's not
33 inclined to give evidence and that he's going to
34 focus on attacking the strength of the Crown's
35 case, and -- but if we keep sort of delving into
36 the -- the issue of him wanting to give evidence,
37 we can certainly revisit whether or not it's
38 necessary for him to take the stand. But --

39 THE COURT: Okay. And, Mr. Fox --

40 CNSL T. LAKER: But we will find out.

41 THE COURT: -- you're content with this, this
42 discussion and the admissions that I'll hear about
43 now, and then you can continue making your
44 submissions?

45 THE ACCUSED: Yes, I am content with it and I do want
46 to say for the record that at this point I don't
47 have any objection to taking the stand if that is

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1 going to be necessary.
2 THE COURT: Right. Well, that would have to be an
3 application that --
4 THE ACCUSED: Right.
5 THE COURT: -- you would make and I would consider it
6 after hearing from the Crown. And it's in my
7 discretion to permit it. The issues would be
8 trial fairness broadly speaking, is there any
9 prejudice to the Crown by permitting it. If I
10 hear that application, those are chief -- the
11 chief things I would be considering.
12 But for now why don't we -- why don't I hear
13 those admissions, what they are, and then invite
14 you to continue, Mr. Fox.
15 CNSL R. ELIAS: So, Your Honour, the two admissions
16 that we -- that we drafted up in discussion with
17 Mr. Fox is, first, that it is possible that a
18 website can appear to be accessed even when it is
19 not online as a general proposition.
20 THE COURT: Okay.
21 CNSL R. ELIAS: And that, again as a general
22 proposition, the second admission is that the VPD
23 as an organization has the capability to easily
24 check what IP address a URL results to. That's
25 the language that Mr. Fox discussed with us. And
26 so he can argue on the basis of that general
27 proposition, I think make the arguments he wishes
28 to make which the Crown admits sort of the
29 underlying principle.
30 THE COURT: All right. And you'll get those to me in
31 writing as well.
32 CNSL R. ELIAS: Yes, of course.
33 CNSL T. LAKER: Yes.
34 THE COURT: I've taken note, but I want to -- and those
35 are -- that confirms what you expected the Crown
36 to admit?
37 THE ACCUSED: Yes. I'm content with that for now.
38 Yes.
39 THE COURT: Okay. All right. Please continue.
40
41 SUBMISSIONS BY ACCUSED, CONTINUING:
42
43 THE ACCUSED: Sorry. I'm just looking through my notes
44 here and seeing -- incorporating these recent
45 developments now into the submissions that I
46 should be making here.
47 So it would be my submission that on

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1 May 16th, 2022, when Ms. Meiklejohn appeared to
2 access the website from her VPD computer even
3 though it appeared to her that she was accessing
4 the website, she was in fact accessing some other
5 website, perhaps some fake or dummy website set up
6 within the VPD's network and not actually
7 something that was publicly accessible out on the
8 internet. And I would say that this would explain
9 why it was that there were no log entries showing
10 any attempted accesses to the domain name
11 desicapuano.com at that time in the logs that we
12 had seen in Exhibit 12.

13 If those requests -- sorry. I need to think
14 if this was explained. If the requests from
15 Ms. Meiklejohn's web browser were being directed
16 to -- sorry. There's -- there's no evidence for
17 that. Okay. Then I would -- I would submit that
18 if those requests were being directed to an
19 internal computer that had a fake copy of the
20 website running on it, then those requests,
21 meaning at the network level, the -- the IP
22 packets on the network, would not have been
23 forwarded out to the internet and therefore there
24 would be no log entries corresponding to them in
25 any of the security or network devices on VPD's
26 network. And again that would explain why there
27 was nothing showing in the network logs that we
28 saw in Exhibit 12.

29 Earlier I had referred to when -- during the
30 interview when Detective McElroy had gone into the
31 other room to try to access the website, but then
32 she was unable to and she came back in. And it's
33 just I'm not sure if I had completed this train of
34 thought in my submissions earlier, and so I'm kind
35 of going over it again. When she came back, when
36 she explained that she was unable to access the
37 website, and I had proposed to her that she could
38 use another device like a mobile phone or some
39 other device that wouldn't go through VPD's
40 network and she refused to at that time -- oh,
41 yes. Okay. I remember now I did --

42 THE COURT: Yes.

43 THE ACCUSED: -- cover this earlier.

44 THE COURT: Yes.

45 THE ACCUSED: And that it was my submission that the
46 reason she chose not to do that was because she
47 knew that if she did, then it would show that the

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1 website wasn't online. Ah yes, okay. And then I
2 got into the discussion of why somebody within the
3 VPD would go through the trouble of setting up a
4 fake website internally. And I believe that's
5 kind of where we -- that would've required
6 additional evidence. So now I can proceed with
7 some of these submissions.

8 I had mentioned earlier about how I had
9 published articles or I published on the internet
10 evidence about certain parties within the VPD
11 making false statements at one of my trials which
12 I had said that they had committed perjury. And
13 at a subsequent trial then on the witness stand
14 they admitted that they had made those false
15 statements. And of course the issue about VPD
16 inadvertently giving me somebody else's disclosure
17 material which the article about that was included
18 in the material the Crown had provided as an
19 exhibit.

20 Now, I would say that the Crown -- it is my
21 submission that the Crown has failed to prove that
22 I published those articles on the Desi Capuano
23 website. I'm not disputing that the articles were
24 published on the internet, but I'm saying that it
25 is my position that the Crown has failed to prove
26 that I published them on the Desi Capuano website.

27 Sorry. We're getting into an area here that
28 I had discussed with the Crown while we were stood
29 down that it seems to me -- it seems to me if I
30 just leave it at that, the explanation is not very
31 plausible without explaining that they were
32 published to a different site, but then there's no
33 evidence of that. Well, it would be my submission
34 that those articles were in fact published to a
35 different site that I do run and that they were
36 copied either onto the Desi Capuano site by
37 whoever's running the Desi Capuano site, or since
38 I'm saying that what Ms. Meiklejohn accessed on
39 that day wasn't actually the Desi Capuano site, it
40 was just some fake site set up internally within
41 VPD's network, that they were copied into that
42 fake site.

43 THE COURT: I mean, I think the piece about it was
44 published to a different -- you published them to
45 a different website, that's evidence.

46 CNSL T. LAKER: Yes. And I -- I think the way we
47 could address that is that it's an alternative

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1 theory that -- that Mr. Fox is proposing as to how
2 those articles could have ended upon the
3 desicapuano.com website, which again goes to his
4 assertion that the Crown hasn't proven that those
5 articles were in fact published by him on the
6 desicapuano.com website.

7 THE ACCUSED: You see, the thing is I -- I don't want
8 to claim that I didn't write those articles
9 because, I mean, that would be unbelievable. That
10 would be unrealistic and it would be silly for me
11 to try to deny that. And if I stand here before
12 you and say I didn't write those, then even I
13 wouldn't believe that.

14 CNSL T. LAKER: And I'm -- the Crown is certainly
15 content with that admission being made by Mr. Fox
16 and there's no need for the Crown to further
17 cross-examine him on that assertion. So we can
18 certainly include that in -- in possible
19 admissions that Mr. Fox was -- did -- was the
20 author of the articles that relate to government
21 corruption on the -- on the desicapuano.com
22 website. Or that you were just the author of
23 the --

24 THE ACCUSED: I was the author of them.

25 CNSL T. LAKER: Yes.

26 THE ACCUSED: I just wasn't involved in them being put
27 onto the Desi Capuano website. That's --

28 CNSL T. LAKER: Yeah.

29 THE ACCUSED: -- my submission.

30 CNSL T. LAKER: Which ultimately is that he's saying
31 that the Crown hasn't proven that he was the
32 individual who posted the articles -- those
33 articles on the desicapuano.com website.

34 THE ACCUSED: Right.

35 CNSL T. LAKER: Yes.

36 THE ACCUSED: I should also mention, though, as a
37 caveat because I'm admitting that I did write
38 those articles. In the versions that I wrote, any
39 references to Desiree Capuano were replaced with a
40 placeholder. I didn't put her name in there
41 because I'm prohibited from doing that and so
42 instead wherever her name would've appeared,
43 instead it just had the initials DC. When that
44 information was copied over to what's on here,
45 whoever copied it would've replaced those with her
46 name. Of course -- well, yeah, I guess that would
47 be relevant because even if I published those to a

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1 different website, if I mention her name in the
2 article that breaches the probation conditions.
3 So I would want to be clear about that that I
4 didn't use her name.

5 Okay. So getting back to my submissions
6 about why I believe somebody in the VPD would
7 create a fake website internally, et cetera, for
8 this. I don't believe there is any question
9 that -- that the content that I have been
10 publishing about the corruption and misconduct in
11 my cases and in the justice system in general is
12 very provocative and very likely to subject me to
13 retaliation from police, prosecutors and possibly
14 even some judges. And I don't think that setting
15 up a fake website, basically a facade of the
16 website in order to support arresting me --
17 arresting and imprisoning me again is all that
18 farfetched of an idea considering the potential
19 damage that is being caused by exposing the
20 corruption and misconduct.

21 For example, publishing the fact and proof
22 that Detective Nancy Yingling who also performs
23 the extraction of the data from my phone in this
24 matter, Detective Kyle Dent and Crown Counsel
25 Chris Johnson were all involved in mistakenly
26 giving me someone else's disclosure materials
27 which included personal information about the
28 victim in that other case and that Detective Kyle
29 Dent committed perjury in one of my trials and
30 admitted to it while on the witness stand in
31 another of my trials, a fact which by itself, it's
32 my belief anyway, is enough to end his career in
33 law enforcement. Given that I published that type
34 of information and the proof of it on the
35 internet, I believe it provides a clear incentive
36 for certain members of the VPD to throw together a
37 simple fake mockup of the Desi Capuano website in
38 order to justify arresting me and commencing yet
39 another prosecution resulting in yet another year
40 or more in custody.

41 So the point of all of those submissions was
42 to explain why I believe it is plausible that
43 somebody within the VPD would have put together a
44 simple fake mockup of the website so that it would
45 appear that it's online in order to justify my
46 arrest and then another prosecution and another
47 extended period of time in custody basically as

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1 retaliation for -- for publishing information that
2 could have seriously adverse consequences to some
3 members of the VPD.

4 In addition -- in addition to the possibility
5 that the VPD -- oh -- threw together a fake
6 website to justify my arrest, it is just as
7 feasible that the Crown did so. Crown has been
8 prosecuting and imprisoning me over the past seven
9 years for what I believe is to save face because
10 they falsely believe I am thumbing my nose at the
11 system, playing a game of chicken with them and
12 defying them and defying the justice system as a
13 whole and because I have been publicly exposing
14 their corruption and misconduct and possibly, in
15 my opinion, ineptitude. Sorry. That was one of
16 the parts there that I thought maybe I might not
17 want to have on the screen as I'm reading this,
18 but it's -- it's my belief that that is part of
19 it, so...

20 That claim is supported by the following.
21 One, Crown Counsel Chris Johnson admitted on the
22 record in court -- oh. There was -- okay. I
23 wasn't sure about this. I know that the Crown --
24 like, I know that the Crown can provide and the
25 court can accept previous judgments that were made
26 by the courts without it having to go through
27 evidence. I'm not sure, though, if that applies
28 to transcripts as well of previous proceedings.

29 THE COURT: No. And I wouldn't necessarily -- I mean,
30 the general rule is decide this case based on the
31 evidence presented in this case. I wouldn't
32 consider transcripts or what was said in prior --

33 THE ACCUSED: Right, right.

34 THE COURT: -- proceedings regarding you or regarding
35 anyone else.

36 THE ACCUSED: Right. Well, what I'm about to get into
37 here is I'm making submissions to show why I
38 believe that it's plausible that the Crown would
39 have some involvement in going along with setting
40 up this fake website, you know, so they can
41 justify another prosecution. And I'm going to be
42 referring to statements that were made by Crown
43 counsel in some of my previous hearings that are
44 contained in the transcripts.

45 THE COURT: That wouldn't be admissible in front of me.

46 THE ACCUSED: Oh. Can I -- would it be admissible for
47 me to say that the Crown did make these admissions

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1 or did make these statements in court and because
2 of these statements, in my mind it -- it shows
3 that -- that the Crown's purpose in these
4 prosecutions is improper. That they're doing this
5 as retaliation because based on these admissions
6 that they've made, I mean, they clearly believe
7 that I'm playing a game of chicken with them. I
8 mean, literally that's how he stated it in -- in
9 court. He said that the government believes that
10 Mr. Fox is engaging in a game of chicken and that
11 they can't back down.

12 THE COURT: Well, I can confirm that I read that
13 statement in relation to this prosecution when the
14 matter was first before the court and it was being
15 considered for bail.

16 THE ACCUSED: Yes.

17 THE COURT: So that is properly before me.

18 THE ACCUSED: Okay. But the statements of Mr. Johnson,
19 in the matter that was before Judge Rideout he
20 stated in court one time on the record that the
21 reason I'm in court, the reason I'm being
22 prosecuted, is because my disclosure material
23 keeps ending up on the internet. That, though,
24 was not brought up previously in the trial. So is
25 that admissible?

26 CNSL T. LAKER: Your Honour, I would also just sort of
27 question the relevance of that at this particular
28 trial --

29 THE ACCUSED: Right.

30 CNSL T. LAKER: -- that's before Your Honour. I -- I
31 recognize that what Mr. Fox is saying is that
32 there are sort of almost alternate suspects with
33 regards to who is -- as to how this website came
34 about on May the 16th. And -- and that that is
35 the -- that is the bulk of his submission relating
36 to Counts 2 and 3. So I certainly don't take
37 issue with him making those submissions to Your
38 Honour.

39 I don't think it's necessary for him to
40 necessarily go into what Mr. Johnson may or may
41 not have said in previous matters.

42 THE ACCUSED: The reason I believe it's relevant is
43 because I believe it shows a pattern on the part
44 of the Crown that they acknowledge that these
45 prosecutions are really about either retaliation
46 against me for publishing stuff that's making them
47 look bad or because they have this belief that I'm

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1 playing this game of chicken and that they don't
2 want to be the ones to back down. This is --
3 these are admissions that have occurred over a
4 period of time. It's not just one statement made
5 one time. Mr. Johnson's statement was from an
6 appearance in February of 2021.
7 THE COURT: Okay. So have you -- I'm just looking at
8 the time. We're going to stop for lunch now.
9 THE ACCUSED: Sure.
10 CNSL T. LAKER: Oh, okay.
11 THE COURT: But it may be that -- essentially as I'm
12 understanding your submission it is that others,
13 not you, have motive here. And you want to give
14 me examples of how you say that that has happened.
15 It may be that this could also be approached in
16 the same way. Crown might look at what it is
17 perhaps that -- you know, a few discrete -- you
18 want to give some examples and maybe it could be
19 dealt with in the same way. If -- if it's
20 something Crown has knowledge of they might be
21 prepared to admit it and you can then give the
22 example to me.
23 THE ACCUSED: Okay.
24 THE COURT: I wouldn't normally hear that. I would
25 hear what -- what Crown has said in a previous
26 prosecution, but I understand your position of why
27 you want me to hear it. And I also think may be
28 crown won't -- isn't necessarily prejudiced and
29 could be able to perhaps admit that.
30 CNSL T. LAKER: Yes.
31 THE COURT: So we'll -- we'll stand down, returning at
32 2:00. And I'll come back at 2:00 unless you think
33 you would like a few minutes just around 2:00 to
34 talk about that.
35 CNSL T. LAKER: Yes. Thank you, Your Honour.
36 THE COURT: Okay. So why don't I come back at 2:10,
37 okay?
38 THE ACCUSED: Thank you.
39 THE CLERK: Order in court.
40
41 (PROCEEDINGS ADJOURNED FOR NOON RECESS)
42 (PROCEEDINGS RECONVENED)
43
44 CNSL T. LAKER: Your Honour, Laker, initial T., for the
45 Crown. We've got the admissions. I'm just --
46 sorry. I just realized I hadn't signed them.
47 I'll have Mr. Fox just quickly review.

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1 So I will hand that up. Would Your Honour
2 like another copy?
3 THE COURT: Yes.
4 CNSL T. LAKER: Okay. I'll just...
5 THE COURT: So I'll give the original to -- and I -- by
6 consent I take it these would be filed as an
7 exhibit -- the next exhibit on the trial even
8 though we're in closing submissions.
9 CNSL T. LAKER: Yes. Yes.
10 THE COURT: Yes. I'll grant that. And what exhibit
11 number is this?
12 CNSL T. LAKER: It is -- I think it's 13.
13 THE CLERK: Fifteen.
14 CNSL T. LAKER: Oh, 15. Goodness.
15 THE COURT: Exhibit 15. Thank you.
16
17 EXHIBIT 15: Admission of fact document dated
18 April 19, 2023
19
20 THE COURT: All right. So, Mr. Fox, I see something up
21 on the screen there. Is this where there is
22 another admission that was going to be made, or...
23 CNSL T. LAKER: Yes. Mr. Fox does want to bring the
24 court's attention to a comment made by Mr. Johnson
25 previously. The Crown takes no issue with it. I
26 haven't drafted that into the admissions of fact
27 because they just came up, but we can certainly
28 facilitate possibly printing off this page and
29 attaching it to another admission of fact if
30 necessary or -- depending on how Your Honour wants
31 to deal with it.
32 THE COURT: All right. Well, Mr. Fox, where -- where
33 is this excerpt taken from?
34 THE ACCUSED: This --
35 THE COURT: What date? What --
36 THE ACCUSED: This was part of what we were discussing
37 before we broke for lunch. This was the
38 February 2nd, 2021, appearance before Judge
39 Rideout in that matter, the 244069-7-B case.
40 THE COURT: Was this at the trial?
41 THE ACCUSED: No, no. This was -- this was after the
42 trial, prior to the sentencing. What -- what kind
43 of --
44 CNSL T. LAKER: A fix date for sentencing, Your Honour.
45 THE ACCUSED: Okay.
46 THE COURT: Oh. Thank you. Okay.
47 THE ACCUSED: And -- yes. The relevant part here that

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1 was highlighted is just where it's my submission
2 that Mr. Johnson is admitting here is that the
3 reason he believes that I'm being prosecuted or
4 that I'm in jail in going through all of this is
5 because my disclosure material keeps getting
6 published on the internet. And this was -- this
7 goes with what I was saying earlier before we
8 broke for lunch. I was pointing out some of the
9 prior statements that Crown counsel has made over
10 the past few years which lead me to believe that
11 the reason they're prosecuting me is more about
12 saving face and about retaliation for things that
13 I've published that might embarrass them or make
14 them look bad.

15 THE COURT: So if you could just -- you've highlighted
16 a portion. I haven't had a chance to read that
17 portion yet. What -- what does it say? It looks
18 like it's you that's talking.

19 THE ACCUSED: Yes. First it's -- it's me. We were
20 discussing -- I was explaining that I still needed
21 a copy of the disclosure to prepare for sentencing
22 because the Crown had taken the disclosure
23 material back. And so the part that I've
24 highlighted here, I'm explaining to the court and
25 to Mr. Johnson that if Mr. Johnson's concern is
26 that I'm going to publish the disclosure material
27 and that's why they don't want to give me the
28 disclosure material back, he can rest assured that
29 I already have another copy of it. I just don't
30 have it here in the jail, and so it's going to be
31 published whether he gives me another copy or not.
32 And so that's -- that paragraph where I'm speaking
33 that's what I'm explaining to him.

34 THE COURT: Okay. Do you want to read what you've
35 highlighted into the record just so --

36 THE ACCUSED: Oh.

37 THE COURT: And I can read it at the same time as you
38 because as I've said, I haven't had a chance to
39 read it.

40 THE ACCUSED: Sure. Certainly. So I say [as read in]
41
42 Wonderful. And if Mr. Johnson has any
43 concerns about me publishing the material or
44 such he can rest assured I already have a
45 copy of that material. I just don't have it
46 here in the jail. So it is going to be
47 published. I mean -

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1
2 THE COURT: Oh.
3 THE ACCUSED: Sorry. Screensaver. "I mean, providing
4 a" -- [as read in]:
5
6 So it is going to published. I mean,
7 providing me a copy, not providing a copy to
8 me here right now isn't going to affect that
9 at all.
10
11 And then the judge, Judge Rideout, responded yes.
12 And Mr. Johnson said [as read in]:
13
14 I think that maybe why you're here today,
15 Mr. Fox, is because it was published.
16
17 And then Judge Rideout again said yes.
18 THE COURT: Okay. So in this context, what material
19 are you speaking about?
20 THE ACCUSED: That was the disclosure material from
21 that case, from the 244069-7-D, which was the
22 trial that was before Judge Rideout.
23 THE COURT: Okay.
24 THE ACCUSED: And I'm not saying that I believe that
25 this has any direct relevance to the current
26 charges or to the current trial, but it's my
27 belief that this shows that there's a history on
28 the part of the Crown of using these prosecutions
29 as a way to either get back at me or as
30 retaliation for having published information and
31 evidence that would make them look bad. Which I
32 further argue, then, provides the incentive for
33 them to go along with this idea of creating
34 this -- or allowing the VPD to rely on this fake
35 version of the website or this facade, really, of
36 the website in order to justify the current
37 charges.
38 I can close this window or I'll just leave it
39 there, if you want.
40 THE COURT: That's fine.
41 THE ACCUSED: Okay. So then my next point, again what
42 we were discussing before we broke for lunch.
43 Another statement or group of statements made by
44 the Crown in my judicial interim release hearing
45 in this matter, I had mentioned earlier about
46 Mr. Flanders saying that he believes -- or that
47 the government believes I'm engaging them in a

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1 game of chicken. And you had mentioned that you
2 recall reading that from the transcripts from the
3 bail hearings. But in those bail hearings there
4 was actually another statement made by
5 Mr. Flanders which I believe also shows that the
6 Crown's real purpose with these prosecutions
7 against me and shows that they would be inclined,
8 or that I believe they would be inclined to
9 proceeding with this fake website, or allowing
10 this fake website as evidence.

11 In the bail hearing he mentioned about how
12 these proceedings against me have gotten a lot of
13 media attention. Oh, and he said that I have
14 basically been thumbing my nose at the system and
15 because I have received a lot of media coverage
16 over this, it would bring the administration of
17 justice into disrepute if I were to be released.
18 And that was in the transcripts from that bail
19 hearing, which I don't have an electronic copy of,
20 so I couldn't put it on the screen.

21 So, in my submissions, this also proves that
22 the B.C. Prosecution Service is prosecuting me
23 because they believe I am playing games with them
24 or playing a game of chicken and because of the
25 media coverage that it has gotten, and for those
26 reasons they feel like or they believe that they
27 cannot be the ones to back down on this.

28 THE COURT: So does Crown have any issue with the
29 paraphrasing of what Mr. Fox just said was said at
30 that bail hearing here?

31 CNSL T. LAKER: No, I don't, Your Honour.

32 THE ACCUSED: If -- if you'd like I could actually read
33 in verbatim what it was that Mr. Flanders had said
34 about the news media coverage. I mean, I don't
35 know if it's really too important, but...

36 THE COURT: No. You've summarized it fine.

37 THE ACCUSED: Okay.

38 THE COURT: I just wanted to see if the Crown had any
39 objection to you referring to it.

40 THE ACCUSED: So I go on, then, to say -- and this is
41 my submissions now. I'm talking about -- from a
42 transcript. Sorry. I need to change what I have
43 written down here.

44 It is my belief that the Crown knows about
45 the R. v. Fox website where I've been publishing
46 all of the material about my legal proceedings
47 along with the very sarcastic and antagonistic

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1 commentaries.
2 And while I was -- sorry. And from May 12th
3 through May 14th of 2022 while I was out of
4 custody -- sorry. I'm seeing something here that
5 I believe amounts to evidence. Well -- so while I
6 was out of custody between those dates May 12th
7 through the 14th, a few days before I was
8 arrested, there was a huge amount of new content
9 added to the R. v. Fox website which really made
10 the VPD, the RCMP, the BCPS and possibly certain
11 judges look very, very bad and foolish, and I
12 believe that that would be evidence because there
13 wasn't actually anything --
14 CNSL T. LAKER: Sorry.
15 THE ACCUSED: -- supporting that.
16 CNSL T. LAKER: What -- what dates were you referring
17 to?
18 THE ACCUSED: May 12th through the 14th. And then I
19 was arrested on the 16th.
20 CNSL T. LAKER: Well, I think that relates to the
21 Hunchly printouts. Doesn't -- does it not?
22 THE ACCUSED: No. No. The Hunchly printouts were on
23 the 3rd. It showed that the website was offline
24 and then on the 16th -- but, see --
25 THE COURT: So that is -- that is evidence, though.
26 THE ACCUSED: Yeah.
27 THE COURT: I mean, the Crown wasn't objecting to that,
28 but you're suggesting that -- you're saying, if
29 I'm understanding you correctly, that you did
30 something between May 12th and 14th and that
31 provoked a reaction. You believe that provoked a
32 reaction.
33 THE ACCUSED: Yes. Yes. And --
34 THE COURT: That's evidence, though.
35 THE ACCUSED: Right. So let's forget all of that.
36 Sorry. I mean, some of that content that was
37 published at that time on the other website is
38 actually now what the Crown is saying was on the
39 Desi Capuano site.
40 THE COURT: I -- this is the first I've heard about
41 this other website. There was no evidence about
42 in the trial.
43 THE ACCUSED: Right.
44 CNSL T. LAKER: Yes.
45 THE COURT: And I don't know...
46 THE ACCUSED: That is correct. There was no evidence
47 of it at the trial. It didn't come up at all. I

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1 didn't bring it up because it simply wasn't
2 relevant to the lines of questioning I was
3 pursuing. And --

4 THE COURT: So it can't be relevant now --

5 THE ACCUSED: Right.

6 THE COURT: -- unless it was spoken about, unless it
7 was in evidence at the trial.

8 THE ACCUSED: Understood. And again, though, this all
9 just goes back to my position that the reason the
10 B.C. Prosecution Service is allowing this thing to
11 go on with this fake website is because of this --
12 because I made them look bad publicly, et cetera.
13 So I might even be able to just move on from that
14 whole line of reasoning.

15 Okay. So I'll skip over that stuff. And
16 then I'll say that considering statements that
17 have been made by me publicly in the news media
18 and on various websites, but I'm not referring to
19 the Desi Capuano website. I'm talking about other
20 websites in general.

21 So I -- I submit that there are parties
22 within the B.C. Prosecution Service whom I have
23 made look very bad and I have caused notable --
24 notable embarrassment for over the past few years.
25 And given the copious evidence I have -- I have of
26 those parties lying to the court, including in a
27 sworn affidavit, it is not such a far stretch for
28 them to claim certain content which was published
29 on another website was published on the Desi
30 Capuano site -- website.

31 Sorry. I was changing the wording of that as
32 I was reading it. So --

33 THE COURT: It's --

34 THE ACCUSED: My --

35 THE COURT: It's your belief that you're, I suppose,
36 giving me in the form of an argument insulated
37 from any sort of cross-examination or testing of
38 that belief. It's problematic.

39 THE ACCUSED: Well, I would say, then, let's ignore
40 that completely for the time being because any
41 actions related to what appears to be the website
42 that Ms. Meiklejohn may have accessed on that day
43 I believe would have been engaged in by the VPD,
44 not by the Crown.

45 I -- I don't believe that the -- that the
46 Crown had somebody in the VPD go in and set up a
47 fake website and stuff. I'm sure it was somebody

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1 inside the VPD that would've done it. So whether
2 or not the Crown had any incentive or motive to
3 conspire or be involved in that probably doesn't
4 really matter that much. I mean, it's more an
5 issue of whether it's plausible that someone in
6 the VPD would've -- would've done that. And -- so
7 I'll move on from that, then.

8 So the next issue, though, that I would bring
9 up would be regarding the IP address of the
10 website. During my cross-examination of
11 Ms. Meiklejohn and Detective McElroy I asked them
12 about what steps they had taken to verify the IP
13 address of the computer the website was running
14 on. They both said they had not taken any such
15 steps. They made no attempts to determine the IP
16 address of the webserver whatsoever.

17 I personally find this very extremely -- or
18 find this extremely difficult to believe with all
19 the child pornography-type cases the VPD has
20 investigated and all the cases where a person was
21 accused of having certain content on their
22 computer and sharing that content with others
23 illegally, cases where the VPD used the IP address
24 of the accused's computer in order to prove that
25 that was the computer the content came from, yet
26 we're to believe that in this case the VPD
27 expressly did absolutely nothing to determine or
28 record the IP address of the computer they claim
29 the website was being accessed from.

30 A host name such as www.desicapuano.com is
31 like an alias or a nickname. It doesn't
32 necessarily refer to any particular computer at
33 any particular time. A host name is...

34 THE COURT: Are you pausing 'cause it sounds like
35 evidence again?

36 THE ACCUSED: Yes. And I apologize. It's starting to
37 become apparent to me that part of what happened
38 here is a lot of this seems very obvious or second
39 nature to me because my career as a software
40 engineer, I work in computers, and I would take a
41 lot of this for granted as just being common
42 knowledge that everybody would know. But as I
43 read it now, I realize that it probably isn't.

44 THE COURT: Well, I suppose the question is, is what
45 you want to say based on the evidence I've heard
46 in the case? If you cross-examined about this, if
47 you gave these suggestions to the Crown witnesses

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1 and I have their answers to consider, that's a
2 fair area for you to go to.

3 THE ACCUSED: I did cross-examine them about the IP
4 address. I'm trying to remember, though, if we
5 really went into any detail about why the -- I
6 didn't make notes about that.

7 Well, it would be my submission that a host
8 name, for example, www.desicapuano.com, is -- can
9 be associated with an IP address but that
10 association can be changed at any time by anybody
11 who would have administrative access to the name
12 resolution service being used on a given computer.
13 And I would say that what was shown earlier by
14 showing that I was able to appear to pull up the
15 website from this computer, so the Crown's
16 admission that --

17 THE COURT: So the -- the whole idea that an IP address
18 can be changed by somebody who has certain
19 credentials that wasn't in evidence before me.

20 THE ACCUSED: But not actually changing the IP address
21 but changing the host name associated with that IP
22 address. When I was speaking at the trial about
23 somebody going in and changing the DNS entries,
24 for example, so that it would point to a different
25 server, Sergeant Shook would've had knowledge of
26 that but I don't think that I questioned him on
27 that. I was going to question Mr. Lam on that,
28 but -- I'll move on from that, then.

29 It is simply incomprehensible that when
30 investigating a 1 legations of internet-related
31 crimes the VPD would only record the DNS host
32 name, not the IP address. As we've seen earlier,
33 the host name -- the host name proves absolutely
34 nothing. What I mean by -- as we've seen earlier,
35 that would be referring to when I was able to pull
36 up the website which...

37 THE COURT: Well, you do have the admission that it's
38 possible that a website can appear to be accessed
39 even when it is not online.

40 THE ACCUSED: Right. And given that admission I think
41 then it -- that I -- well, I think it's
42 reasonable, then, to conclude that the Crown would
43 be admitting that a host name -- I'll move on.

44 Okay. The IP address of the computer
45 www.desicapuano.com was associated with at the
46 time Ms. Meiklejohn accessed it would have told
47 us, A, whether it was internal to the VPD's

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1 network or external on the internet; and B, if it
2 was on the internet, who currently as of the time
3 it was checked owns that IP address and what
4 computer or server it was assigned to. What I
5 mean by that, what my point is with that is if
6 they had recorded the IP address, then at any
7 point during -- like, leading up to the trial or
8 even at the trial it would have been able to be
9 determined which computer on the interne the
10 website was actually running on and who -- for
11 example, like, which -- which hosting provider,
12 let's say GoDaddy or some other hosting provider,
13 actually owned that IP address.

14 So in other words it would've been possible
15 to do some investigation and verify what computer
16 it was actually running on and whether or not it
17 was actually online at that time. As opposed to
18 what happened where they only recorded the URL and
19 so there's no way to go back and check which
20 computer it was on or whether it was on the
21 internet or internal or who may have owned the
22 computer that it might have been running on.

23 So -- so with that, the IP address I mean,
24 the VPD could have said, for example, it was
25 running on the computer with such and such IP
26 address which was owned by, for example, GoDaddy,
27 or they could have said it was running on this
28 computer with this other IP address which is
29 actually internal to our network.

30 THE COURT: So I'm -- I'm having a hard time following
31 you here.

32 THE ACCUSED: Okay.

33 THE COURT: I didn't hear evidence about this. It
34 sounds as though it's getting into evidence that
35 would be expert evidence, the IP address being
36 owned by GoDaddy.

37 THE ACCUSED: Right. Right.

38 THE COURT: I didn't think IP addresses were owned by
39 anybody. I thought they were ways that the
40 location of a device -- but again, then I'm just
41 telling you what -- what I personally understand.

42 THE ACCUSED: Right.

43 THE COURT: I didn't hear evidence about this --

44 THE ACCUSED: Right. Right.

45 THE COURT: -- I suppose is -- is my main reason for --

46 THE ACCUSED: Okay. And I -- I can explain that what
47 I'm explaining here is that if the police did have

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1 an were able to provide an IP address, this is
2 information that -- at the trial that we would
3 have been able to determine, but because they
4 didn't have the IP address and they didn't
5 disclose that, there was no way for the defence or
6 Crown or anyone to actually investigate these
7 matters and to determine things like, for example,
8 who -- and I put quotes around -- even in my notes
9 here around "owns the IP address." Because you're
10 correct, nobody actually owns an address but they
11 lease the right to use a block of addresses for a
12 period of time. And so that's what I meant by
13 "own." It's just easier to say that they owned
14 the address.

15 So these -- these aren't matters that came up
16 at the trial because since there was no IP address
17 there was no -- since -- since the police
18 didn't --

19 THE COURT: Well --

20 THE ACCUSED: -- have the IP address, there was no line
21 of questioning to pursue with it.

22 THE COURT: I think it -- my recollection is that
23 discrete issue came up in the sense that you did
24 cross-examine two witnesses about whether -- about
25 the IP address.

26 THE ACCUSED : Right.

27 THE COURT: So to the extent that you're saying there
28 wasn't an IP address, that wasn't -- didn't form
29 part of the investigation. Yes, I --

30 THE ACCUSED: Right. And --

31 THE COURT: That's -- I think that that's -- that's
32 what you're telling me and I should consider that
33 and say that's lacking; it should've been there.

34 THE ACCUSED: Yes. And I do have further submissions
35 that I'm going to get to in a moment dealing with
36 my belief that things like the IP address are
37 information that the police should have obtained
38 and they should have known because as I've said,
39 they've investigated similar things before where
40 they would use the IP address to determine which
41 computer somebody was gaining material from.

42 THE COURT: I just want to make sure Crown agrees with
43 me that there was evidence before me about the IP
44 address. I'm having a look at --

45 CNLS R. ELIAS: Your Honour, I -- I reviewed the cross-
46 examination, at least my notes of Catherine
47 Meiklejohn just now, and that was discussed with

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1 her.

2 THE COURT: Okay. Thank you.

3 CNSL R. ELIAS: And my recollection is it was with
4 Constable -- with Sergeant McElroy as well,
5 although I didn't find that note.

6 THE COURT: Thank you. That was my recollection too,
7 but -- okay.

8 THE ACCUSED: And next I go -- this next part I was
9 going to demonstrate something else on the laptop
10 here, but you said the Crown has already made an
11 admission about it, so...

12 I was going to make the point about how
13 simple and quick it would have been for the VPD to
14 determine the IP address that was associated or
15 that the host name www.desiree -- desicapuano.com
16 was associated with. I showed the Crown earlier
17 and it literally took only a few seconds to open a
18 command window and type in the command. And so
19 they agreed that and -- they agreed with me on
20 that and so that's why admission number 2 was
21 made.

22 As part of the investigation in this matter,
23 the VPD should have determined the actual IP
24 address, the host name www.desicapuano.com. And I
25 should say at this point all the references I'm
26 making to www.desiree -- or .desicapuano.com apply
27 equally to desicapuano.com because if you access -
28 - if you --

29 THE COURT: Equally to Desiree Capuano?

30 THE ACCUSED: No, no. Meaning without the WWW part.

31 THE COURT: Oh, see. Okay.

32 THE ACCUSED: Like, because they were both pointing to
33 the same IP address. And so whether you tried
34 to -- like, if I were to go in the web browser
35 that I have open here I could also access it
36 without the WWW.

37 THE COURT: Right. I heard that from Sergeant Shook
38 and know that from...

39 THE ACCUSED: I see. I just wanted to clarify that in
40 case there was some question later about --

41 THE COURT: Okay.

42 THE ACCUSED: So as part of the investigation in this
43 matter, the VPD should have determined the actual
44 IP address the host name www.desicapuano.com was
45 resolving to and they should have recorded that
46 information. Their failure to do so means that it
47 is now impossible to determine what computer, if

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1 any, Ms. Meiklejohn was actually connecting to
2 when she supposedly accessed the website.

3 I believe, or I submit, that what happened
4 here was that they did -- and when I say "they" I
5 mean Ms. Meiklejohn and Detective McElroy. They
6 did check the IP address, but when they found that
7 it was an internal address and that the website
8 wasn't actually on the internet, they decided to
9 simply claim they never checked it. But I
10 obviously have no evidence to support that.
11 That's just my own belief on the matter.

12 And next I go into a discussion or I make
13 some submissions now regarding the network logs,
14 or what we've been referring to as the proxy logs.
15 This part, it gets a little bit lengthy, so I just
16 want to check with everybody. Should I proceed,
17 or...

18 THE COURT: Go ahead. No.

19 THE ACCUSED: Okay. In addition to the foregoing there
20 is the fact that the network logs which were
21 searched by Mr. Lam for any references to the
22 string desicapuano.com show there were no attempts
23 to access the domain name desicapuano.com on
24 May 16th, 2022.

25 Crown argues that the logs which were
26 searched were only for a particular security
27 device and the lack of any entries on that device
28 don't necessarily mean one accessed -- no one
29 accessed the website on that day. The Crown says
30 certain users such as Ms. Meiklejohn may not have
31 been required to go through that particular
32 device. The device I'm referring to here would be
33 the Chancellor 2, which is what appears in those
34 logs that we have.

35 THE COURT: At Exhibit 12.

36 THE ACCUSED: However, as Mr. Lam testified, the
37 software called Splunk which was used to generate
38 the report he provided and that record being what
39 was -- what's Exhibit 12. The report he provided
40 consolidates the information from the entire
41 network so that when they search for something
42 they don't need to go to each computer or device
43 and do a separate search on each device.
44 Therefore the search results Mr. Lam provided were
45 not just for that security device, Chancellor 2,
46 but for the entire network. In other words, the
47 search he performed didn't only prove that there

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1 were no references to desicapuano.com on
2 Chancellor 2. It proved there were no references
3 on any computer or device on the entire network.

4 It would seem to me that if someone had
5 accessed desicapuano.com on that day from the
6 internet or from VPD's network and desicapuano.com
7 was on the internet there would be some record of
8 it in the logs of some device on the network.

9 There are multiple references to
10 desicapuano.com.siteindices.com in the logs
11 that -- or in the search that was returned by
12 Mr. Lam. It just seems very, very unlikely to me
13 that there would be absolutely no trace of anyone
14 going to desi -- desicapuano.com on that day,
15 especially since one of those accesses was
16 supposedly blocked by the VPD's network security
17 configuration.

18 Crown also argues that it is possible that
19 the log entries referencing desicapuano.com had
20 already been rolled over and that's why there
21 weren't any in the logs. However, the fact that
22 there were entries on Chancellor 2 referencing
23 desicapuano.siteindices.com from May 16th, 2022,
24 means that there should also have been entries
25 referencing desicapuano.com from when Detective
26 McElroy claimed she tried to access the website
27 during the interview. The presence of the
28 siteindices.com entries proves that the logs on
29 Chancellor 2 had not rolled over.

30 Mr. Lam had testified that something like
31 access logs, as opposed to error logs or security
32 logs, which might grow very large would probably
33 roll over every month and a half or two months.
34 However, Detective McElroy's supposedly blocked
35 attempt to access the website during the interview
36 would've been logged as an error or security
37 exception, not as a regular access. It would've
38 been logged as a VPD employee using VPD resources
39 to attempt to access a website she was not
40 supposedly authorized to -- she was supposedly not
41 authorized to access. Therefore it would not have
42 been rolled over, or I submit it would not have
43 been rolled over.

44 I believe it would -- it would've still been
45 present in the logs of Chancellor 2 or some other
46 network device.

47 THE COURT: So -

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1 THE ACCUSED: It is simply unfathomable that not one of
2 the attempts by Ms. Meiklejohn or Detective
3 McElroy to access desicapuano.com on May 16th was
4 logged by any of the devices on their network.

5 Just as with the IP addresses, this type of
6 information, meaning the network logs,
7 establishing whether or not VPD personnel did
8 actually attempt to access particular resources on
9 the internet which was evidenced in a criminal
10 investigation and which subsequently became
11 evidence in a criminal prosecution is information
12 which may be critical to either the Crown's or he
13 defence's case depending on what those logs
14 would've shown and therefore should've been
15 treated like any other evidence in a criminal
16 proceeding. And while I realize this is technical
17 information which a layperson such as a police
18 detective could not be expected to be aware of,
19 the personnel within the VPD who deal with
20 technical aspects of internet-related crimes
21 certainly must be expected to know these kinds of
22 things.

23 I first requested the disclosure of the
24 firewall logs, and I put quotation marks around
25 "firewall logs." And the reason I originally
26 referred to them as firewall logs was that was the
27 term that Detective McElroy had used during the
28 interview and subsequent to that even though they
29 aren't technically firewall logs.

30 So I first requested disclosure of the
31 firewall logs -- firewall log records in a letter
32 to Mr. Poll, the prosecutor who previously had
33 conduct of this matter, on July 27th, 2022. Once
34 that disclosure request was made, VPD should have
35 been informed by Crown to not destroy or allow the
36 destruction of those types of records, yet it was
37 not until October 12th, 2022, that Crown informed
38 the VPD of my disclosure request.

39 I submit that any network logs or any network
40 log records which may have been destroyed or
41 rolled over between July 27th, 2022, and
42 October 12th, 2022, are completely due to the
43 Crown's failure to inform the VPD of the
44 disclosure request and I should not be penalized
45 because of the Crown's refusal to perform their
46 duties in that respect.

47 So I would submit the Crown's argument that

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1 the access logs from the day in question may have
2 already been rolled over should not be an
3 acceptable explanation for the lack of any network
4 logs showing that anybody attempted to access the
5 website on that day because as I pointed out, it
6 wasn't until three months after I submitted the
7 disclosure request to the police that the -- to
8 the crown that the Crown actually informed the
9 police about it and in that three months plus the
10 two months between when I was arrested and when I
11 requested that there was five months that elapsed
12 there. And so if the logs were destroyed because
13 so much time had passed, it's my position that
14 it's the Crown's fault or the Crown's failure to
15 act on my disclosure request that caused that
16 delay.

17 There is case law that deals with the issue
18 of the Crown and/or the police failing to retain
19 important evidence. And I recall from the
20 research that I'd done in the original -- the
21 index offence, the criminal harassment matter, but
22 unfortunately I don't have access to searchable
23 case law at the North Fraser Pretrial Centre at
24 this time, so I'm unable to cite the specific
25 cases that deal with -- with that. Nevertheless,
26 if I recall correctly, the precedent was that if
27 the Crown or the police fail to adequately retain
28 evidence which was important to the defence, then
29 any possible findings with regard to that evidence
30 should be in favour of the defence.

31 So, for example, if -- or in this case it
32 must be presumed that network log entries which
33 could have shown that nobody attempted to access
34 the website on that day but which were lost due to
35 the VPD failing to ensure they were adequately
36 retained should be presumed to have shown that
37 nobody accessed the website on that day.

38 Crown further claims they spoke with someone
39 from VPD who informed them that Hunchly users such
40 as Ms. Meiklejohn did not go through any devices
41 which would've been included in the Splunk report
42 in order to access the internet. They claim that
43 that is why the report did not contain any log
44 entries or -- yeah, log entries relating to
45 Ms. Meiklejohn accessing the website on May 16th.
46 But Crown --

47 THE COURT: Do not -- sorry. Do not go through any

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1 devices? You mean firewall?

2 THE ACCUSED: Well --

3 THE COURT: Crown says the Hunchly users do not go
4 through any devices.

5 THE ACCUSED: They do not go through any devices which
6 would have been included in the Splunk report, the
7 Splunk report meaning the proxy log or what we've
8 been referring to as the proxy log. Because I
9 did -- I did question Mr. Lam about it briefly
10 when he came to testify the first time before we
11 adjourned. I asked him about whether their access
12 to the internet would have gone through a device
13 that would have been included in the Splunk report
14 because this report only includes the devices that
15 are included in however it's configured. And so
16 if there are additional devices outside of the
17 Splunk configuration they wouldn't be included in
18 here. And at that time he had said that they
19 would -- that the Hunchly users would be going
20 through a different device or a different server,
21 being the Hida server, that at that time he was
22 saying that that wouldn't be included in the
23 Splunk report.

24 But what I'm talking about right now is about
25 after Mr. Lam came back a second time on
26 March 28th and then after he was finished and he
27 was excused, the Crown had referred to some
28 discussions they'd had with some folks from the
29 cybercrime department, I believe it was, that had
30 had provided them some information. And so that's
31 what I'm referring to here is that information.

32 And then I say, but the Crown was not
33 prepared to identify who it was that they spoke to
34 and neither they, nor the VPD, was willing to
35 allow that person to come and testify on those
36 matters.

37 THE COURT: Right. So that wasn't evidence before me,
38 what Crown says to me that a discussion they had.
39 I have -- I have Mr. Lam. That was the evidence I
40 had.

41 THE ACCUSED: Right. Okay. Yes. I just wanted to
42 make sure that what they had said about the
43 discussion they had with VPD afterwards, that that
44 was not --

45 THE COURT: Right it's the same for them as it is for
46 you. Mm-hmm.

47 CNSL T. LAKER: And I -- I believe that it -- this was

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1 also subject of an application for further
2 disclosure by Mr. Fox --
3 THE ACCUSED: Yes.
4 CNSL T. LAKER: which was denied.
5 THE COURT: Right. So -- and Crown was -- was
6 answering that and trying to give me --
7 applications for disclosure do you sometimes rely
8 on the representations of counsel just for
9 expedience and moving through the process. But
10 just so it's clear that didn't come before me
11 as -- as evidence that I'm going to consider.
12 THE ACCUSED: Right. Okay. And when Sergeant Shook
13 testified, he testified that although he's not an
14 expert on the matter, it is an understanding that
15 all users on the VPD network go through a proxy
16 server or some such security device to access the
17 internet. And that -- and that is a reasonable
18 presumption because the purpose of the proxy
19 server or security device in that respect is not
20 necessarily to block access by the users but to
21 prevent viruses and other malicious software from
22 getting into the VPD's network. So for that
23 reason even the Hunchly users and the so-called
24 covert users would still need to go or would still
25 need to be protected from such potential threat --
26 potential threats, meaning that they would still
27 have to go through some kind of proxy device.
28 And now I have some submissions regarding
29 Mr. Lam's testimony. Sorry. Before I talk about
30 that let me get some more water.
31 When -- when Mr. Lam first testified on
32 March 7, 2023, he answered Crown's questions
33 regarding various technical matters regarding the
34 information in the Splunk report he had generated
35 regarding the typology of the VPD's computer
36 network and -- and regarding the security policies
37 and practices in place in VPD's computer network.
38 And I should clarify, sorry. The word "typology"
39 is commonly used in network or computer network
40 technologies. I'm not sure if that's a word that
41 would be known outside of computers, or -- it just
42 has to do with the configuration and the high
43 level layout of the -- or conceptual layout of the
44 network.
45 THE COURT: Sure.
46 THE ACCUSED: Initially Mr. Lam testified that the
47 Hunchly users do go through a security device such

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1 as Chancellor 2 to access the internet. In my
2 submission realizing that statement made under
3 oath and presumably from Mr. Lam's intricate
4 knowledge of VPD's computer network, being that
5 he's an IT manager in the VPD, Crown immediately
6 requested a recess. Court stood down. Crown and
7 Mr. Lam exited the courtroom. When we reconvened,
8 Mr. Lam testified that he was incorrect earlier.
9 That he had called the -- he had called the office
10 and was informed that the Hunchly users don't
11 actually go through Chancellor 2.

12 However, I believe it is critical to note
13 here that Mr. Lam's second or revised testimony
14 was not based on his own first hand knowledge but
15 rather hearsay in that it was information told to
16 him by an unidentified party who was not available
17 to testify. So I'm referring to after we stood
18 down and then Mr. Lam had testified that he was
19 mistaken in his first testimony about the Hunchly
20 users going through Chancellor 2, his statements
21 after that were based on information provided to
22 him over the telephone by another party who wasn't
23 identified and who wasn't available to testify.
24 So I would argue that that information should be
25 considered hearsay.

26 We then adjourned so I could investigate
27 Mr. Lam's claims regarding the network
28 configuration because they were inconsistent with
29 my own firsthand knowledge of VPD's computer --
30 computer network configuration and typology.

31 When we reconvened on March 28th, Mr. Lam
32 then claimed he had no knowledge of whether the
33 Hunchly users go through Chancellor 2 or any other
34 network device and no knowledge of what network
35 services the server or host Hida provides and no
36 knowledge of the Hunchly software or how it works.
37 That all seemed completely implausible to me given
38 that knowing these kinds of things is exactly what
39 Mr. Lam's job as the IT manager would require.

40 Given Mr. Lam's claims on March 28th, 2023,
41 that he had no knowledge of those matters and
42 given that his revised testimony on March 7th was
43 actually just hearsay, it seems to me that very
44 little, if any, of Mr. Lam's testimony can really
45 be considered credible or admissible in this
46 matter.

47 THE COURT: Well, it's admissible. It's a question of

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1 the weight to be given to it.
2 THE ACCUSED: It is -- it is my submission -- no.
3 I'll -- I'll skip that.
4 Now, at this point the submissions that I go
5 into differ somewhat in that all of my submissions
6 up to this point have to do with whether the Crown
7 met its burden of proving that the website was
8 even publicly accessible on the internet on that
9 day. Because if the Crown does not sufficiently
10 prove that or if the evidence doesn't prove that,
11 then the rest of these submissions aren't really
12 relevant, they don't matter because they're only
13 relevant if the court decides that that has --
14 that that burden has been met.
15 And there are -- there are quite a number of
16 issues and unfortunately I didn't get to finish
17 the rest of it. Like, I have a few of them here.
18 It goes on a bit.
19 THE COURT: Okay. So I -- I consider the evidence in
20 its totality. We can take -- and I'll hear
21 submissions altogether as well. We'll take the
22 afternoon break now. I am expecting you to
23 finish, though, this afternoon, Mr. Fox, just
24 given that this is day 7 and --
25 THE ACCUSED: Mm-hmm.
26 THE COURT: -- the Crown took about an hour to give me
27 their submissions. So we'll come back at 3:20.
28 We'll have just over an hour of court time left,
29 then. An hour and 10 minutes. I hope that
30 we'll -- we'll finish then.
31 THE ACCUSED: Sure. Thank you.
32 THE COURT: Thank you.
33
34 (PROCEEDINGS ADJOURNED FOR AFTERNOON RECESS)
35 (PROCEEDINGS RECONVENED)
36
37 THE COURT: When you're ready.
38
39 SUBMISSIONS BY ACCUSED, CONTINUING:
40
41 THE ACCUSED: These following submissions I should be
42 able to get through much more quickly because I
43 don't think that there's going to be any more
44 issues of potential evidence.
45 If we accept the Crown's argument that there
46 was sufficient evidence that the website was
47 online on May 16th, 2022 -- obviously I don't

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1 accept that, but for the sake of argument the
2 Crown acknowledges and their witnesses testify
3 that the website was offline from the time of my
4 release until the time -- until around the time of
5 Ms. Meiklejohn checking it on May 16th, 2022. I
6 don't think there's any objection there of saying
7 from the time of my release, right?

8 THE COURT: No. I heard evidence --

9 THE ACCUSED: Okay.

10 THE COURT: I'm jumping in, but I think that was the
11 evidence before me, when you were released and
12 then questions were asked of witnesses.

13 THE ACCUSED: And --

14 THE COURT: Sorry. Ms. Laker, Mr. Elias, did you want
15 to add something, or --

16 CNSL T. LAKER: Go ahead.

17 CNSL R. ELIAS: Go ahead.

18 CNSL T. LAKER: Okay. Yes, Your Honour. The only
19 thing that I would reference is that I believe
20 there was some evidence from Ms. Meiklejohn that
21 she did search the website earlier in May.

22 THE COURT: May 3rd.

23 CNSL T. LAKER: And had noted that it was password
24 protected.

25 THE COURT: That's correct.

26 CNSL T. LAKER: Yes.

27 THE ACCUSED: Yes. There was -- there was some debate
28 about whether password protected met the
29 requirements of it being no longer available,
30 et cetera. But I believe both the VPD and the
31 Crown did decide that they were satisfied that it
32 being password protected met the requirement of it
33 being no longer available.

34 And so when I say offline, I mean it was no
35 longer available on the internet or by any other
36 means. That being the case, it means that someone
37 would've had to do something to cause it to become
38 available again. Crown's position with respect to
39 Count 2 means to be that it's not their burden to
40 prove that I caused it to become available again.
41 The mere fact that it was available again
42 constitutes a breach of Condition 4. That's my
43 understanding of the Crown's position on the
44 matter.

45 The first issue I have with that is if I
46 don't even know the website was -- has been made
47 available again, then how can I be expected to

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1 instantaneously take all necessary steps to ensure
2 it is no longer available. I would submit that
3 that is unreasonable, if not -- that is an
4 unreasonable, if not impossible, expectation.

5 The police claim they confirmed the website
6 was online around 9:30 a.m. on May 16th, 2022, and
7 they came and arrested me for it at around 12 p.m.
8 that same day. No one provided me any notice that
9 the website was online. The police did not
10 contact me first and say hey, the website is
11 online, as of this point you are aware it is
12 online, so you now have 24 or 48 hours, or
13 whatever duration of time, to take all necessary
14 steps to ensure it is no longer online.

15 The second problem with this --

16 THE COURT: So just -- I just pause you there.

17 THE ACCUSED: Sure.

18 THE COURT: I can see the Crown speaking to -- and
19 what -- again, you haven't testified to say that
20 you didn't know it had been made available.
21 You're just giving me a hypothetical, if I didn't
22 know.

23 THE ACCUSED: Right. Right. I understand that.
24 Because my -- my point that I'm trying to make
25 there is they seem to be of the position that if
26 the website goes online regardless of whether or
27 not I had anything to do with it, the precise
28 moment it becomes available, I'm required to take
29 all necessary steps to ensure it's no longer
30 available regardless of whether or not I even know
31 it's online.

32 And in a moment here we'll get to the
33 argument about -- my submissions about whether or
34 not there was any evidence that I had any
35 involvement in it or could've had any knowledge
36 that it was online, if it in fact was online.

37 So the second problem that I have with the
38 Crown's position is that in my opinion or in my
39 submission there was absolutely no evidence
40 provided at the trial that I even have any
41 involvement with the website or that I've had any
42 involvement with it since the first probation
43 order came into effect in December 2018.

44 THE COURT: Your Honour, that -- that's more of a legal
45 issue. There's a presumption that a probation
46 order is based on -- on proven facts and you don't
47 have to go back in and prove all the underlying

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1 facts on a breach of probation. You presume a
2 lawful order.
3 THE ACCUSED: Yes.
4 THE COURT: So I just want to make sure -- I'm just
5 answering you right away.
6 THE ACCUSED: Okay.
7 THE COURT: That isn't part of the Crown's burden
8 necessarily on this -- or it isn't --
9 THE ACCUSED: Right.
10 THE COURT: -- on this prosecution to prove the
11 underlying facts from which the probation order
12 flowed.
13 THE ACCUSED: But I believe the -- the underlying facts
14 were that I had involvement in creating the
15 website initially. There can't be an underlying
16 fact that from this point and forever into the
17 future I am the person putting the website online.
18 And this has been the problem with all of
19 these prosecutions so far is that the police have
20 openly admitted there's no evidence that I have
21 had any involvement in putting the website online
22 or keeping it online and they've openly admitted
23 they have no knowledge of if I'm the one doing it
24 or if I have any involvement or influence over the
25 website whatsoever. Regardless, I'm still -- I've
26 still been found guilty each time.
27 THE COURT: But you didn't testify this time --
28 THE ACCUSED: Right.
29 THE COURT: -- to give any -- the Crown's case is
30 circumstantial. They're saying all of the
31 evidence points to there only being one reasonable
32 inference from all of the evidence. And you
33 didn't take the stand and say, this is what I say
34 about that.
35 THE ACCUSED: Right.
36 THE COURT: So...
37 THE ACCUSED: And I -- I will just say in response to
38 that, the reason I didn't is because I did at the
39 previous trial and that did not work out so well.
40 THE COURT: It's always your decision whether you want
41 to or not, but -- but what it does do is it does
42 have consequences for what you're able to argue
43 and as you've seen as we've gone through these
44 submissions, I've had to stop you and --
45 THE ACCUSED: Right.
46 THE COURT: -- you've had to stand down and talk to
47 Crown and -- so it does limit what you can say

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1 if -- if you haven't put it before the court in
2 your evidence.
3 THE ACCUSED: Okay.
4 THE COURT: Detective Shook testified that he found
5 references to two possible email addresses
6 associated with the domain desicapuano.com in an
7 account database on my phone. And here I'd be
8 referring to Exhibit 14. Oh, not to say that we
9 need to go to Exhibit 14. I'm just --
10 THE COURT: No.
11 THE ACCUSED: -- mentioning that there's information in
12 there about it. But he acknowledges that -- he
13 acknowledges they seem to be -- they seemed to
14 have been created by a program called BlueMail and
15 he had no particular knowledge of that
16 application. He cannot say whether the
17 information pertained to any actual real email
18 accounts or whether such accounts were still
19 active or still existed. He had no knowledge
20 of -- for how long -- no. This -- sorry. No.
21 Sorry. This next point didn't come up. He had no
22 knowledge of whether the information had been put
23 into the phone before it had been seized by the
24 VPD from me in 2019 and was just old lingering
25 data as opposed to something that had been put
26 into the phone subsequent to my most recent
27 release.
28 I realize I put a little bit more detail in
29 there than what came up at the trial, but the
30 important point I'm making is that he had no
31 knowledge of whether the information that he found
32 in the phone had been put in the phone during the
33 four weeks that I was out or if it had been put in
34 there years before and it just hadn't been
35 deleted.
36 He had no knowledge of whether it was
37 information explicitly entered by me or
38 automatically by the BlueMail application and he
39 had no knowledge of whether the information had
40 been added to the phone after it had been seized
41 from me on May 16th, 2022. He could not say
42 whether those were actual email addresses in the
43 desicapuano.com domain or just usernames for some
44 other unrelated type of account. And he said that
45 the -- he said that the little string used for the
46 username field was not necessarily an actual user
47 account name or email address. It was just some

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1 string that that associated service, in this case
2 BlueMail, used to identify the given account
3 information.

4 Since the values appearing in the username
5 field of the table provided by Sergeant Shook,
6 which are on page 5 of Exhibit 5 here, were merely
7 a string literal used by the associated service to
8 identify the account information, then the two
9 accounts in question, that is Panda bunch of
10 dots@desicapuano.com and E followed by a bunch of
11 dots@desicapuano.com, could actually refer to
12 almost anything. For example,
13 E....@desicapuano.com may be an IP or an IMAP
14 folder I created in BlueMail to store any email
15 messages between myself and
16 editor@desicapuano.com. Or it may be a separate
17 Gmail account I created solely for the purpose of
18 trying to communicate with editor@desicapuano.com
19 so that, if necessary, I could provide the police
20 or the Crown access to that account so they could
21 confirm I have been making attempts to try to get
22 the website shut down without giving them access
23 to my entire real email account.

24 THE COURT: Okay. But, again, that's -- you're not
25 giving evidence about that.

26 THE ACCUSED: Oh, no.

27 THE COURT: That's --

28 THE ACCUSED: I'm saying hypothetically those things
29 that -- E...@desicapuano.com that he found in
30 there, since that's just a name assigned or a
31 username assigned to the account, it's not an
32 actual email address or something, what I'm saying
33 is it could actually refer to any account
34 information, including, for example, it could be
35 referring to a separate email account that I've
36 created for the purpose of communicating with
37 editor@desicapuano.com so that if a situation
38 arose like what happened in the previous trial
39 where I said I had emails that I had sent there to
40 prove that I'm trying to get the website taken
41 down, they wanted the password for my email
42 account or for my phone and laptop so they could
43 go in and check. And I said well, I'm not going
44 to give you the password for the entire account.

45 So by creating this separate email account
46 and using that and then linking it with that
47 username, E@desicapuano.com, that way I could give

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1 them access to that account without having to give
2 them access to all of my emails.

3 THE COURT: I think what I have is what Sergeant Shook
4 put in the document and then your submission that
5 P... could be anything.

6 THE ACCUSED: Yes. It wasn't necessarily -- I had
7 asked him about if it had referred to an actual
8 email address and he wasn't sure about that. And
9 I pointed out that the dots that were used in
10 those account names aren't actually periods,
11 they're like -- they're bullet dots which would be
12 an invalid character in an email address. And so
13 based on that they can't actually be real email
14 addresses. But my point now is that that
15 information isn't necessarily -- it doesn't
16 necessarily mean or refer to the account
17 editor@desicapuano.com. It could actually refer
18 to anything because it's just a string that
19 represents some account information.

20 And the point is Sergeant Shook simply did
21 not know what those two apparent accounts really
22 were; he only knew that the username string, which
23 ultimately is an arbitrary string and it means
24 nothing at all, or doesn't necessarily mean
25 anything at all, contained the substring
26 desicapuano.com.

27 And that's as far as I got with respect to my
28 submissions for Counts 2 and 3. I have notes
29 prepared -- they're rough notes, though -- for the
30 submissions that I was going to make with respect
31 to Count 1.

32 THE COURT: Okay.

33 THE ACCUSED: So I could proceed with those. And my
34 apologies, these are rough notes. I'm not just
35 reading verbatim.

36 THE COURT: No, that's fine. And I'm glad you're going
37 there. I was going to ask you about Count 1, but
38 you've already prepared to speak to that.

39 THE ACCUSED: Yes.

40 THE COURT: So with respect to Count 1, first I would
41 say that I did -- I did report on April 19th -- I
42 was released from custody on April 17th and I was
43 required to report within 72 hours. So I reported
44 on April 17th which was within the 72 hours, and
45 the wording in the probation condition required me
46 to report to a probation officer. And this came
47 up during my cross-examination of Ms. Seath and

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1 Mr. Trimis, that the probation condition did not
2 require me to report directly or specifically to
3 the probation officer assigned to me but just a
4 probation.

5 So on April 17th I did report to Ms. Seath.

6 THE COURT: April 19th.

7 THE ACCUSED: Or on the 19th. Yes. I'm sorry. I did
8 report to her and I informed her of the steps that
9 I had taken to cause the website to be no longer
10 available.

11 THE COURT: So here.

12 THE ACCUSED: Yeah.

13 THE COURT: You didn't testify about that.

14 THE ACCUSED: Ah, but I -- I was about to mention that
15 that is actually proven by the C-log entries that
16 Mr. Trimis had made.

17 THE COURT: Okay. So the C-log entries -- I was going
18 to ask you about Exhibit 4.

19 THE ACCUSED: Yes.

20 THE COURT: They're double hearsay. I mean, it's
21 Mr. Trimis writing down what Ms. Seath told him
22 you said, right?

23 THE ACCUSED: Yes. But wouldn't the fact that he made
24 a C-log entry in the computer on -- I believe it
25 was on the 20th he made that entry stating that
26 Ms. Seath had told him that I had said that I'd
27 taken no steps, et cetera. Wouldn't that be
28 evidence that I must have told her that? I mean,
29 otherwise how would he know to write that in
30 there?

31 THE COURT: I think perhaps you're suggesting that that
32 evidence should be reliable because of how it came
33 about. Is that --

34 THE ACCUSED: I'm suggesting that it should be
35 considered reliable because the time that it was
36 put in there, it was on April 20th. I had never
37 spoken to Mr. Trimis by that point. In fact I had
38 never spoken to Mr. Trimis until I cross-examined
39 him here in court.

40 And so with C-log entries, and I realize
41 there's no evidence to support this, but a C-log
42 entry, once it's entered, the information on it
43 can't be changed. And so once he enters -- enters
44 it in there it's impossible for him to change the
45 date or the time stamp or anything in it. But in
46 addition to his C-log entry there was also a note
47 in Detective McElroy's notes, a handwritten note

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1 that she had made, where she states that -- I
2 believe it was Mr. Trimis had told her that I had
3 said that to Ms. Seath, which that would also be
4 double hearsay, I guess, if we're saying that this
5 is double hearsay.
6 THE COURT: Well, they're also documents kept in the
7 usual and ordinary course of business. And I
8 think your argument has to be about -- about that.
9 Why were these records kept? Look at when it was
10 written down. I don't know if the Crown has given
11 any thought to this issue, specifically that I
12 didn't hear it directly from Mr. Fox; however,
13 there -- there is evidence before the court.
14 CNSL T. LAKER: I'm just trying to recall if with
15 Ms. Seath --
16 THE COURT: She didn't remember is what I recall.
17 CNSL T. LAKER: Exactly. That was my concern that I
18 was just going to express Your Honour is that she
19 didn't have a specific recall about it and what
20 was spoken about. So obviously the evidence is
21 before Your Honour, so really is it more of, as
22 you said, determining what weight to ascribe to
23 that particular evidence. And I can address that
24 in the Crown's reply, if necessary.
25 THE COURT: Does Crown take the position that it's
26 hearsay, or does Crown take the position --
27 CNSL T. LAKER: Yes.
28 THE COURT: -- that it's a business record and...
29 CNSL T. LAKER: Well, that's interesting.
30 THE COURT: You can -- you can --
31 CNSL T. LAKER: Let me think about that.
32 THE COURT: Sure.
33 CNSL T. LAKER: Thank you.
34 THE COURT: Okay. Mr. Fox, I just wanted to see what
35 position the Crown took with respect to that
36 because it might have -- might have simplified
37 what you have to say or not.
38 THE ACCUSED: Right.
39 THE COURT: Okay.
40 THE ACCUSED: Sorry. I was trying to find the
41 particular entry where Mr. Trimis had stated that,
42 but I guess it's not really critical to --
43 THE COURT: No. I --
44 THE ACCUSED: -- [indiscernible].
45 THE COURT: I took myself to it. It's April 22nd
46 correspondence with Crown Chris Johnson. Is that
47 it? [As read in]:

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1
2 Hi Chris. I spoke to the duty officer Julia
3 Seath and she tells me Fox simply told her he
4 didn't have to take any steps as the site had
5 already been shut down.
6

7 THE ACCUSED: Yes, yes. Okay. I see. Yes. There it
8 is. Okay. So the wording of the probation
9 condition required me to report to a probation
10 officer. Okay. I already covered that. And it
11 is my submission that the probation condition did
12 not require me to report specifically to
13 Mr. Trimis. It only required me to report to a
14 probation officer, which I believe I did when I
15 reported to Ms. Seath. And the condition, it is
16 my submission, required me to inform whatever
17 probation officer I reported to the exact steps
18 that I had taken to cause the website to be no
19 longer available.

20 Now, taken literally that would mean if I had
21 taken no steps, then by informing them that I had
22 taken no steps, I believe that that meant I
23 complied with that condition. And in face since
24 the website was already offline at the time it
25 would be impossible for me to take any steps to
26 cause it to be no longer available because it was
27 already no longer available. That was the point I
28 was trying to make to Ms. Seath at the time.

29 So based on that, it is my belief and it was
30 my sincere belief at the time that I recorded that
31 I had complied with the condition.

32 Now, I would also like to point out that when
33 Mr. Trimis testified, I pointed out to him that he
34 had made absolutely no mention in his RTC -- RTCC
35 in support of a warrant for my arrest that I had
36 actually informed Ms. Seath of the exact steps
37 that I had taken to ensure the website was no
38 longer available even though he knew at that time
39 that I had taken -- or that I had informed her of
40 that.

41 And it -- it is -- it's very troubling to me
42 that the probation officer would leave that
43 information out of his RTCC knowing that the
44 purpose of the RTCC is to result in a warrant for
45 my arrest. And if he had informed the court that
46 I had informed a probation officer of the steps
47 that I had taken, the court may very well have

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1 said well, I've complied with the condition, and
2 refused to issue the warrant for my arrest.
3 THE COURT: Did I have evidence about the date of that
4 RTCC? Was that prior to May 16th? Did I --
5 THE ACCUSED: Oh, that was definitely prior to May 16th
6 because the warrant was issued on April 28th, I
7 believe it was.
8 CNSL T. LAKER: And I believe that Sergeant McElroy did
9 indicate in her evidence that there was a warrant
10 outstanding for him prior to May 16th with
11 regards --
12 THE COURT: Okay.
13 CNSL T. LAKER: -- to the failure to report.
14 THE COURT: Thank you for reminding me. I just -- is
15 it in that --
16 CNSL T. LAKER: It's in the C-log --
17 THE COURT: Exhibit 4?
18 CNSL T. LAKER: -- actually.
19 THE ACCUSED: Yes.
20 CNSL T. LAKER: It says [as read in]:
21
22 May 4th, 2022, Detective McElroy aware of the
23 warrant and will be looking to locate Patrick
24 to arrest him.
25
26 And I was just looking at the C-log again. Your
27 Honour, I -- I -- it is a business record. So I
28 think that -- I submit that Your Honour can
29 certainly consider it.
30 THE ACCUSED: I think it's actually mentioned even
31 earlier here. This says "breach submitted." I
32 assume the RTCC would go with that.
33 CNSL T. LAKER: Yes. Breach submitted, failure to
34 report as directed on April the 21st. Yes. And
35 then -- and then it says "arrest warrant" --
36 THE ACCUSED: Then the warrant was, right, issued on
37 April 29th.
38 CNSL T. LAKER : Oh, April 29th. Yes. And then McElroy
39 aware of warrant and will be looking to locate
40 Patrick to arrest him May the 4th.
41 THE ACCUSED: Right.
42 CNSL T. LAKER : Yes. Thank you, Mr. Fox.
43 THE ACCUSED: So I'm very troubled by that, by
44 Mr. Trimis's failure to mention that in the RTCC,
45 because that makes it seem to me that really he
46 just wanted to get me arrested. He had
47 information that he should've known would've been

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1 critical to the RTCC, but he just left that out.
2 And when I asked him about it, he didn't really
3 have much of an explanation other than to say he
4 didn't believe it was relevant.

5 Mr. Trimis also testified that the reason he
6 believed that I should've been required to go back
7 and report a second time is because if I had gone
8 back and reported to him, he would've asked me
9 additional information about, for example, who had
10 taken the website down. And I would submit that
11 that -- that should not be an acceptable excuse
12 because I wasn't actually required to provide him
13 that additional information. And even if I did go
14 back and report that second time and if he had
15 asked me those kinds of questions, I wouldn't have
16 told him. I would have simply told him that I'm
17 only required to tell you the steps I had taken;
18 these are the steps; I'm not required to tell you
19 anything beyond that.

20 There was also -- when Mr. Trimis testified
21 there was an issue about -- he had testified, I
22 believe, on direct that I was required to report
23 as directed. But then on cross I asked him if he
24 could show me where in the condition -- in the
25 probation condition on the probation order it
26 states "as directed." Because I do -- I realize
27 any of my previous probation orders sometimes it
28 would state that I was required to report as
29 directed by the probation officer. But in this
30 particular instance Judge Denhoff -- Denhoff
31 didn't include an "as directed" clause.

32 So when Mr. Trimis testified about that, he
33 seemed a little bit surprised when he realized
34 that it didn't actually state "as directed." And
35 since it didn't state "as directed," it was my
36 understanding I was only required to report as it
37 was explicitly stated in the probation order, not
38 at the discretion of the probation officer. So
39 the fact that it said in the probation order that
40 I was required to report as it was explicitly
41 stated in the probation order, not at the
42 discretion of the probation officer. So the fact
43 that it said in the probation order that I was
44 required to report for the purpose of informing
45 them of the steps I had taken and that once I had
46 informed them of that I wasn't required to report
47 anymore beyond that.

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1 It seems abundantly clear to me that Judge
2 Denhoff's intention there -- and of course it's
3 actually discussed even further in the
4 transcripts, but those are transcripts, not her
5 reasons for judgment. She clearly stated at the
6 time of sentencing in the transcript that I would
7 only be required to report that one time, assuming
8 that one time that I told them what steps I had
9 taken.

10 So based on all of that it is my submission
11 that it is clear that I did comply with
12 Condition 1. I reported within the 72 hours as I
13 was required to. I reported to a probation
14 officer with the expectation that she would make a
15 C-log entry about what I told her. And by making
16 that C-log entry that would be indirectly
17 informing Mr. Trimis of the steps I had taken.
18 The fact that she didn't put that information into
19 the C-logs, I mean, that -- that was her decision,
20 that wasn't mine. I still told her the
21 information I was required to tell her.

22 And then not going to back to report the
23 second time. I mean, my submission on that is I
24 simply wasn't required to go back a second time.
25 I told them I wasn't going to. I told them I am
26 here doing what I am ordered to do. I am not
27 going to come back a second time because I'm not
28 required to.

29 And so it seems to me that that would be the
30 end of the submissions that I would have -- sorry.

31 Let me just take one quick --

32 THE COURT: No. That's fine.

33 THE ACCUSED: -- look here. 'Cause I know I don't get
34 a second shot to come back.

35 THE COURT: No. That's true.

36 THE ACCUSED: There were a number of issues that the
37 Crown made in their submissions that I did want to
38 respond to, but since I don't have those
39 submissions prepared, I will forego that.

40 THE COURT: You can take a minute and think about it.
41 I -- if you want to. If you want -- it's, you
42 know, 10 to 4:00.

43 THE ACCUSED: No, no. I -- I do just want to bring up
44 this one point again because it seems extremely
45 important to me. This issue that if I have a
46 condition that requires me to take all necessary
47 steps to cause the website to be no longer

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1 available. If a third part, for example Desiree
2 Capuano, puts the website back online for the
3 express purpose of -- and this is just a
4 submission, this is not evidence. If she does
5 this for the purpose of ensuring that I will be
6 arrested and denied bail and spend another year in
7 jail, she puts the website online, calls the
8 police or calls the Crown and says hey, the
9 website's online again. Within 24 hours they come
10 and arrest me, I get denied bail; here I am a year
11 later. As far as I can see, the website wasn't
12 even online. This is this infinite loop that I'm
13 going to be stuck in now. And -- and the police
14 refuse to contact the hosting provider to
15 determine whose credit card is being used to pay
16 for any of this or who's associated with this.

17 So this argument that if the website appears
18 online it must be Mr. Fox who's putting it online
19 and the -- they shouldn't have to determine who's
20 actually doing it seems a little outrageous to me
21 because, as I say, Ms. Capuano can just go ahead,
22 put the website online, like, anytime I get
23 released from custody, victim services notifies
24 her that I've been released. All of a sudden the
25 website appears online again and then a day or two
26 later I'm arrested and back in jail for another
27 year.

28 Okay. Those are my submissions.

29 THE COURT: Okay.

30 THE ACCUSED: Thank you.

31 THE COURT: Thank you, Mr. Fox. I know Crown said they
32 might have a reply. Does Crown have a reply and
33 do you want a few minutes to --

34 CNSL T. LAKER: No, I don't think so.

35 THE COURT: -- gather your thoughts or -- okay.

36

37 REPLY FOR CROWN BY CNSL T. LAKER:

38

39 CNSL T. LAKER: I think that there was just two points
40 to deal with. And the first one is just
41 addressing the admission. And of course -- could
42 I grab the -- we entered it as an exhibit. I just
43 want to make sure I have that. Oh. I even still
44 have it open on my computer actually. With
45 regards to the first admission that it is possible
46 that a website can appear to be accessed even when
47 it is not online. So it appears that Mr. Fox, the

Reply for Crown by Cns1 T. Laker**BAN ON PUBLICATION 486.5(1) CCC**

1 bulk of his argument is that the Crown has not
2 proven -- well, not only that the Crown has not
3 proven that the website was actually online on
4 May 16th, but he's -- he seems to be indicating
5 that there was a dummy website that had been
6 created by the police which is what was actually
7 accessed on May the 16th.

8 The Crown very briefly addressed this sort of
9 proposition at page 17 of -- paragraph 53 of our
10 closing submissions where we said that -- well,
11 first of all, Mr. Fox did not call evidence in his
12 defence. What I can say is that there appears to
13 be a suggestion that the Crown has not proven that
14 Ms. Meiklejohn properly searched for
15 desicapuano.com. And ultimately the Crown says
16 that there's no factual basis to that suggestion
17 and that Mr. Fox inviting Your Honour to make that
18 finding is -- is purely speculative.

19 So that's the -- that's the first just point
20 that I wanted to address in light of the
21 admissions of fact that -- that have been put
22 before Your Honour.

23 And then very briefly with regards to
24 Mr. Fox's proposition that he did comply with --
25 with the reporting portion of his probation order.
26 First of all, he did mention that Ms. Seath had
27 not made any record of that conversation that she
28 had with him, and that's -- that's actually
29 incorrect. In the client log there is a note.
30 It's the -- it's actually the first note, you
31 could say, but it's the last note on the log where
32 she does indicate on -- on April 19th about her
33 interactions with Mr. Fox on that date.

34 Furthermore, he was directed to report.
35 We've heard evidence from the probation officers
36 that he was directed to report on April 21st and
37 we have not heard from Mr. Fox other than the fact
38 that his belief that he had already complied with
39 his condition, but we have not heard from Mr. Fox
40 as to exactly -- about his -- his decision to not
41 report on the 21st of April. So, in my
42 submission, there's an absence of evidence with
43 regards to that aspect. And -- and what we have
44 is a probation officer who has already explained
45 that they were of the view that there was a
46 further requirement for him to report based on the
47 condition that he was bound by and that he failed

Reply for Crown by Cnsl T. Laker**BAN ON PUBLICATION 486.5(1) CCC**

1 to report on the 21st of April.
2 I think that those are all the points that I
3 wanted to address with Your Honour. I'll just
4 make sure as to whether or not my friend -- or my
5 colleague had anything else.
6 CNSL R. ELIAS: No.
7 CNSL T. LAKER: Okay. That's everything. Thank you.
8 THE COURT: Fine. Okay. Thank you. Oh, something
9 further, Mr. Fox?
10 THE ACCUSED: Could I just respond to two points?
11 THE COURT: Yes.
12 THE ACCUSED: I' ll be very quick.
13 THE COURT: Yes. No, it's unusual, but yes.
14 THE ACCUSED: The first is with respect to what I had
15 said about the C-log entry that Ms. Seath made.
16 I didn't say that she didn't make any entry of our
17 discussion at all. I was saying that she only
18 didn't mention that I had told her about the steps
19 that I had taken. And with respect to the
20 probation officers directing me to report again on
21 the 21st, I don't dispute that. They did direct
22 me to report on the 21st. What I'm saying,
23 though, is that they didn't have the legal
24 authority to compel me to report on the 21st
25 because it didn't state in the condition that I
26 had to report as directed. I was only required to
27 report as Judge Denhoff had -- had stated.
28 THE COURT: Yes. No, I -- I understood that was your
29 point before.
30 THE ACCUSED: Thank you.
31 THE COURT: But thank you for clarifying about what you
32 meant about Ms. Seath.
33 CNSL T. LAKER: Thank you.
34 THE COURT: Okay. All right. I will reserve my
35 decision in this matter. There were the seven
36 days we've had and I'll review the evidence and
37 the -- the submissions that I've had from both
38 Mr. Fox and the Crown. If you would look for a
39 day beginning May 8th, so just -- just over two
40 weeks from today's date for, say, an hour for my
41 decision.
42 CNSL T. LAKER: Yes.
43 THE COURT: And you can choose when you wish to go to
44 the JCM fix date court to find that date. Is that
45 something that you want to propose, Ms. Laker, now
46 when you could go?
47 CNSL T. LAKER: Yes. What we could do is do it -

Proceedings

BAN ON PUBLICATION 486.5(1) CCC

1 well, I'll ask Madam Clerk because what I have
2 been doing of late is actually appearing in -- in
3 front of the JCMs to fix a date and then just
4 confirming the date in 102 on the same date. And
5 so what we could do is even be adjourned to -- oh,
6 I can't do tomorrow unfortunately. Unless
7 Mr. Elias is free tomorrow.
8 CNSL R. ELIAS: No. I'm in another court tomorrow.
9 CNSL T. LAKER: Okay. Perhaps we can be adjourned over
10 to Friday for both the TMP appearance and the 102
11 appearance to confirm with Mr. Fox. And I'll get
12 Mr. Fox's available dates before we leave today.
13 THE ACCUSED: I'll be in the VCCA in person on the
14 21st, on Friday.
15 CNSL T. LAKER: Okay. Okay. So --
16 THE ACCUSED: But I believe I can appear --
17 THE COURT: So --
18 THE ACCUSED: -- by video from there. I did that
19 before.
20 CNSL T. LAKER: Well, I mean, because -- well, what I
21 could do is I could actually just -- because what
22 I've done in the past with -- with Mr. Fox's
23 matters is just emailed the judicial case
24 managers.
25 THE COURT: Yes.
26 CNSL T. LAKER: Just because of Mr. Fox's custodial
27 status and the --
28 THE COURT: Yes.
29 CNSL T. LAKER: -- fact that he's self-represented and
30 they've been very -- that's worked really well.
31 THE COURT: Okay.
32 CNSL T. LAKER: So -- so perhaps -- so what I'll do is
33 I'll email them today to --
34 THE COURT: Okay.
35 CNSL T. LAKER: -- try and get the soonest date.
36 THE COURT: Yes.
37 CNSL T. LAKER: So there's no delay. And perhaps have
38 Mr. Fox return tomorrow at 2 o'clock in 102.
39 THE ACCUSED: It'll be by video, though, right?
40 THE COURT: By video, yes.
41 CNSL T. LAKER: By video.
42 THE COURT: I'll make that appearance by video,
43 Mr. Fox.
44 CNSL T. LAKER: Okay. Excellent.
45 CNSL R. ELIAS: Is that okay with your court of appeal
46 appearance the next day? Do you -- do you have
47 the time to sort of step away and appear in 102?

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

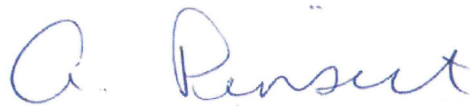
1 THE ACCUSED: Oh, yeah. I'm all --
2 CNSL T. LAKER: Or we can do it for Monday.
3 THE ACCUSED: -- prepared for Friday. I'm prepared for
4 my --
5 CNSL T. LAKER: Okay.
6 THE ACCUSED: -- Friday appearance.
7 THE COURT: Okay. So Crown, then, is going to contact
8 the JCM about the date for my decision. And I
9 will adjourn the matter and Mr. Fox to tomorrow
10 afternoon.
11 CNSL T. LAKER: Yes, please.
12 THE COURT: April 20th at 2 p.m. in Courtroom 102,
13 Mr. Fox to appear by video to confirm that date
14 that will be found sometime between now and by the
15 end of tomorrow morning.
16 CNSL T. LAKER: Yes.
17 THE COURT: All right.
18 CNSL T. LAKER: Thank you.
19 THE COURT: Thank you.
20 THE CLERK: Order in court.

21
22 (PROCEEDINGS ADJOURNED TO APRIL 20, 2023, AT
23 2:00 P.M.)
24
25

26 Transcriber: A. Pinsent
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the best of my skill and ability.



A. Pinsent
Court Transcriber