

27178
Vancouver Registry

In the Supreme Court of British Columbia
(BEFORE THE HONOURABLE MADAM JUSTICE HOLMES AND JURY)

Vancouver, B.C.
June 15, 2017

REGINA

v.

PATRICK HENRY FOX

PROCEEDINGS AT TRIAL
(Excerpt - Testimony of Desiree Capuano)

COPY

**BAN ON PUBLICATION;
INHERENT JURISDICTION**

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Crown Counsel:

M. Myhre

Appearing on his own behalf:

P. Fox

Defence Counsel:

A.J. Lagemaat
M. Chatha, A/S

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RULINGS

Nil

Proceedings**BAN ON PUBLICATION; INHERENT JURISDICTION**

1 Vancouver, B.C.
2 June 15, 2017
3

4 THE CLERK: In the Supreme Court of British Columbia,
5 at Vancouver, this 15th day of June, 2017,
6 recalling the matter of Her Majesty the Queen
7 against Patrick Henry Fox, My Lady.

8 MR. MYHRE: We're ready, My Lady.

9 THE COURT: All right. Can we have the jury, please.

10

11

DESIREE CAPUANO

12

a witness called for the
13 Crown, recalled, warned.
14

15

15 THE CLERK: I remind you, Ms. Capuano, that you're
16 still under affirmation.

16

17

A Yes, ma'am.

18

19

(JURY IN)

20

21

MR. LAGEMAAT: I'll be referring now to -- and I'm sure
22 we've all lost track of what page we're on in the
23 book, and I don't have page numbers, so it's
24 called -- the email chain is called "Re G. summer
25 visit 2015". I believe it's 13 pages in from the
26 back. And this was also a fairly lengthy chain,
27 seven pages. So if we could number the pages 1 to
28 7, please.

29

THE CLERK: Sorry, where is it starting?

30

MR. LAGEMAAT: It's starting on --

31

THE COURT: Can I show you, Madam Registrar?

32

MR. LAGEMAAT: Yes, "Re summer visit".

33

THE COURT: It's this one. It's this one, and that
34 would be page 1.

35

THE CLERK: And seven in you wanted it?

36

THE COURT: You said seven?

37

MR. LAGEMAAT: Yes. Yes, My Lady, seven pages.

38

39

CROSS-EXAMINATION BY MR. LAGEMAAT, CONTINUING:

40

41

Q And again, this -- this email chain was referred
42 to in my -- in the Crown's book of exhibits, and
43 we're going to go a little bit further in time in
44 the chain. And I'll direct you to page 3 of 7 at
45 the bottom. And what -- Ms. Capuano, you can
46 confirm for me, this -- this email chain is
47 largely about confirming a trial itinerary for --

Desiree Capuano (for Crown)
cross-exam by Mr. Lagemaat
BAN ON PUBLICATION; INHERENT JURISDICTION

1 and this is what you characterized in direct
2 evidence, defining the term "itinerary", and
3 you're basically arguing back and forth about
4 itinerary for {GR} going to visit Patrick; is
5 that correct?

6 A Yes.

7 Q In this chain. Hence the title.

8 So going a little bit further than we went in
9 direct, and I'll go to the bottom of page 3,
10 Desiree Capuano wrote, April 26th -- I'm assuming
11 May 4th -- you've copy and pasted into there where
12 you have previously asked him for an itinerary; is
13 that correct, Ms. Capuano?

14 A Yes.

15 Q Okay. And then you've put in a dictionary
16 definition, turning the page to page 4 of 7 at the
17 top. It's a continuation of that email. And
18 you've put in a dictionary definition of "full"
19 and "all" --

20 A Yes.

21 Q -- correct? And again, that -- you didn't think
22 he -- you understood he knows what "full" and
23 "all" means; correct?

24 A Well, according to this conversation back and
25 forth, I was just trying to get him to see that
26 what I wanted was the travel plans for my son.

27 Q I suggest you were just doing what you've done in
28 previous emails and just arguing.

29 A I had full control over visitation and determining
30 that visitation. After the website went up, the
31 attacks, the reference to shooting, I was still
32 offering to send {GR} to him. All I wanted
33 were travel plans. And the fact that it took two
34 weeks to get a plane ticket was very frustrating.
35 I tried many different ways to tell him what I
36 wanted were travel plans.

37 Q Do you know why it took two weeks?

38 A Because he kept saying that what I was asking for
39 he didn't understand, although I referred to it in
40 the same way he had referred to it in previous
41 emails.

42 Q Going over to page 2 of 7, and about halfway up
43 the page, on Thursday, May 7th, 2015, Desiree
44 Capuano wrote -- and can you read -- and you wrote
45 two in a row again here. Can you read those in,
46 please? It starts with "Would you like me to
47 forward". Is that your reply, Ms. Capuano?

Desiree Capuano (for Crown)
cross-exam by Mr. Lagemaat
BAN ON PUBLICATION; INHERENT JURISDICTION

- 1 A Yes.
- 2 Q Okay. Could you read those both in, please?
- 3 There's two in a row.
- 4 A [As read in]:
- 5
- 6 Would you like me to forward you the email
- 7 thread where I purchased a ticket and it
- 8 interferes with your work schedule so you
- 9 denied it? Or the one where I told you the
- 10 flights were cheaper on a different day and
- 11 you responded that you didn't care about my
- 12 financial troubles and it wasn't your fault
- 13 that I was a white trash person incapable of
- 14 budgeting my money, and again denied it?
- 15 Oh, but you probably have them up on your
- 16 website, so you can just go read it there.
- 17 Actually, you interfered with almost every
- 18 visitation I have with (GR), from pulling
- 19 stupid things like refusing to put him on a
- 20 plane, calling the airlines and changing the
- 21 plane tickets yourself, filing for a
- 22 restraining order the day prior to
- 23 visitation, sending him for a week with
- 24 nothing but the clothes on his back and a box
- 25 of Jewish crackers. You and he decided that
- 26 he would not participate in any event over
- 27 Christmas break, including eating dinner,
- 28 because he was Jewish and it was against his
- 29 religion. You sure as hell never permitted
- 30 me to have him for a visitation without
- 31 return plans solidified. I believe I have
- 32 been extremely accommodating to you, given
- 33 the hardships you caused me while you had
- 34 partial custody. Where's your argument
- 35 again?
- 36
- 37 Q Why did you ask at the end, "Where's your argument
- 38 again?" Is that asking him for a reply?
- 39 A Because he's telling me in his -- that he's not
- 40 agreeing to the terms of visitation, meaning that
- 41 he was requiring that I drive two hours during the
- 42 work week from Tucson to Phoenix to put him on a
- 43 plane, and he didn't care that I had to work.
- 44 Q Did you know if he was working at this time?
- 45 A I don't know. I assume so.
- 46 Q Going over to page 1 of 7, and about halfway up
- 47 the page, May 11th, 2015 -- and again, this is

Desiree Capuano (for Crown)
cross-exam by Mr. Lagemaat
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1 again May 11, Desiree Capuano wrote [as read in]:

2

3

See, Richard, it doesn't matter.

4

5

Is that your response, Ms. Capuano?

6

A Yes.

7

Q Could you read that in, please?

8

A

9

See, Richard, it doesn't matter what I say or how I say it. You're bound and determined to argue everything I say and you adamantly refuse to even attempt to understand what I'm talking about. So tell me why I should try to defend myself against a person like that. It's a futile effort and I have better things to do. You nitpick like a little old lady. Oh, my God, are you going to say that I'm racist against little old ladies?

10

11

12

13

14

15

16

17

18

19

20

Q And up at the top of the page, "and you're incapable", is that your reply, Ms. Capuano?

21

22

A Yes.

23

Q Can you read that in, please?

24

A

25

And you're incapable of having a conversation without a dictionary, encyclopedia, or case law book for reference.

26

27

28

29

Q And this, again, was at a time when you say you were in fear of Mr. Fox?

30

31

A Yes, and I still had to determine visitation for my child.

32

33

Q Pardon --

34

A Was still required to put him on a plane to go see his father. So no matter how scared I was, I still had to communicate with him.

35

36

37

Q Well, if he didn't send a ticket --

38

A Then he wasn't getting on the plane.

39

Q Exactly.

40

A Yeah. And then he would take me back to court and say that I prevented visitation. I knew what I was facing.

41

42

43

Q Did you have to go out of your way that far to get him to send you the plane tickets --

44

45

A Yes.

46

Q -- compared -- compared to just leaving it?

47

A Yes. The only time I got him to send me the plane

Desiree Capuano (for Crown)
cross-exam by Mr. Lagemaat
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1 ticket is when I said, "Stupid fucking cunt" does
2 not look like an itinerary. Send me the
3 itinerary."

4 Q I -- I suggest, Ms. Capuano, this is just like
5 every other email we went through where it came a
6 point where you did not have to engage but you
7 did. And in this case there's one instance again
8 where you send two in a row.

9 A In 2014, the beginning of 2014 when the website
10 went up, I was not responding. It was not till
11 the end of 2014 that I started going back and
12 forth with him on [indiscernible], as you said
13 yesterday, bickering back and forth, trading witty
14 remarks.

15 In the fall of 2014 -- in the winter,
16 actually, in December, is when one of those two
17 parties brought up shooting the other one. I
18 don't care what reference is around that, I don't
19 care how many times he tells me not to be
20 threatened, the person doing the attacking is the
21 person saying that they think about shooting the
22 other person. At that point every other threat
23 has a different meaning, everything else becomes
24 important. That doesn't mean that I'm going to
25 stop interacting with him the way that I had been.
26 I'm not going to cower and cry and beg and plead
27 for him to stop.

28 Q So instead of --

29 A I'm just going to continue in the same thing that
30 I had been.

31 Q Would --

32 A And in the background I'm going to take steps to
33 protect myself and my family.

34 Q Which is insulting him, provoking him, insulting
35 his family.

36 A I'm just trading back and forth the way that I had
37 been before he said he was going to shoot me.

38 Q Exactly. You're trading back and forth.

39 A But that doesn't mean I'm not taking steps on my
40 own to also protect myself and my family.

41 Q And -- and you said yesterday, I -- I asked you
42 several times, "Why didn't you just stop?" and you
43 gave a period of years where you had just not
44 replied and it hadn't -- it kept on going. What
45 were those years again where you said? And I have
46 it in my notes. I'm wondering if you recall.

47 A It was between 2012, 2013, and beginning of 2014.

Desiree Capuano (for Crown)
cross-exam by Mr. Lagemaat
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- 1 Most of the responses, if I had responses, were
2 very civilized in my attempt to be civilized and
3 respectful.
- 4 Q So you were responding. You said yesterday --
5 A To some -- I had to.
6 Q Okay.
7 A We had a child. We were in a custody battle.
8 Q And --
9 A There was no choice of me not responding to it.
10 Q And would it be a correct characterization to say
11 that communications during that time were more
12 limited to the family court issues about --
13 A Absolutely.
14 Q -- about visitation, about what went back and
15 forth with the child?
16 A From my respect, yes.
17 Q Mm-hmm.
18 A But that doesn't mean that his insults were not
19 there.
20 Q Was there -- was there insults and threats during
21 that period?
22 A Absolutely.
23 Q Thank you.
24 A Yes, there were, and I did not respond to them.
25 Q Next email in the chain is titled "Values" and
26 this was again May 11th, 2015. Do you -- do you
27 have any idea what it was about May 11th that
28 you --
29 A Yes. We were getting ready for visitation travel.
30 Q Okay. This is a two-page chain. At the bottom,
31 the last email, Patrick writes to you [as read
32 in]:
33
34 Desiree, I believe this epitomizes the
35 difference between you and I. In December
36 2013, G. gave me a coffee mug that he picked
37 up at the airport on the way here. I've
38 since used that mug every day, every single
39 time I have coffee at home, which is at least
40 once a day.
41
42 And did you reply to that email?
43 A Yes.
44 Q And that's your reply above, that May 11th at
45 10:50?
46 A Yes.
47 Q And can you read that in?

Desiree Capuano (for Crown)
cross-exam by Mr. Lagemaat
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1 A [As read in]:
2
3 You would not have the opportunity --
4
5 Q No, sorry, Ms. Capuano --
6 A Oh.
7
8 Are you saying that {GR} being in this
9 world means nothing?
10
11 Q Sorry, Ms. Capuano, it's -- it starts with "Ha".
12 It's -- I'm on the second page --
13 A Oh.
14 Q -- of that chain. I apologize. Second page.
15 A
16 Ha! I picked out your precious coffee mug
17 that you use every day. Guess it's time to
18 trash it now, huh?
19
20 Q So you got -- you took it upon yourself to point
21 out that it wasn't actually from {GR}, it was
22 -- you picked it out?
23 A I picked it out and bought it.
24 Q Right. And -- and why did you feel it's necessary
25 to point that out to Mr. Fox, to hurt him?
26 A There's information that he doesn't have, because
27 he assumes that he knows everything that's going
28 on at all times, and he doesn't.
29 Q So you -- you felt it necessary to point that out
30 to show him he's wrong or to hurt him?
31 A Well, he's saying that I have no values and don't
32 respect anything that {GR} gives me.
33 Q So yet --
34 A So now he's saying that in comparison, he respects
35 everything {GR} gives him, but he didn't --
36 {GR} didn't buy that or pick it out, I did.
37 Q But -- but in his email he's saying how special it
38 is to him, he uses it every day, but you took it
39 upon yourself -- you had to point out, "He didn't
40 pick it out, I did. Ha!"
41 A Why did he have to point out that I don't cherish
42 the things that my son gives me?
43 Q Why start with "ha" exclamation mark?
44 A Because it was ridiculous.
45 Q And then above that, he asks you, and I'll only
46 read in the last paragraph, it's again arguing --
47 sniping back and forth [as read in]:

Desiree Capuano (for Crown)
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1
2 Can you list one thing you're [sic] done in
3 your life to make the world a better place,
4 either directly or indirectly?
5
6 Turning over to page 1 of 2, and -- and you say,
7 this -- at May 11th at 11:08, at the very bottom,
8 did you write that about the maple coffee?
9 A Yeah.
10 Q And can you read that in, please?
11 A [As read in]:
12
13 I finished the maple coffee he bought me.
14 You don't have any facts at all.
15
16 Q And then two minutes later, above, again you sent
17 two in a row, these aren't replies anymore -- did
18 you write that email at 11:10, "Can you list"? Is
19 that your --
20 A Yes.
21 Q Can you read that, please, Ms. Capuano?
22 A
23 Can you list one thing you've done in your
24 life to make the world a better place, either
25 directly or indirectly? Yes, I gave birth to
26 your son. Bam, that just happened.
27
28 Q What do you mean by "Bam, that just happened"?
29 A It's proof that I've done something.
30 Q Isn't it proof that you've just won a little bit
31 of an argument?
32 A No, it's proof that I've done something good in my
33 life.
34 Q So "that just happened" means that you gave birth.
35 A That -- no, it means that I came up with something
36 that I've done.
37 Q So you've won a little piece of this argument;
38 correct? You're saying, "Bam, that just happened.
39 I've won this little piece of this argument."
40 A Sure.
41 Q Thank you.
42 A You're welcome.
43 Q I suggest again that all these emails are a game,
44 little pieces of winning and losing for both of
45 you, back and forth. And in some cases such as
46 this again, you don't even wait for a reply, you
47 send another one with a "bam" at the end.

Desiree Capuano (for Crown)
cross-exam by Mr. Lagemaat
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- 1 A There's no game, but there is a game plan. And if
2 there's any prize, it's my freedom.
- 3 Q Next email, "Carrington College", and it's a two-
4 page chain. And at the bottom, June 7th -- or
5 27th, 2015, Patrick wrote [as read in]:
6
- 7 Oh, I see now. So Paulo [phonetic] was -- is
8 having serious financial problems and doing
9 yet more layoffs. Is that what happened?
10 Were you let go?
11
- 12 And he's talking about your position and
13 potentially some problems at your employer. Would
14 you agree that's the content of that email from
15 him, the subject matter?
16 A That he's trying to get information about where I
17 work? Yes.
- 18 Q Mm-hmm. And then what did you reply at 8:17 p.m.?
19 And it's just above there, Ms. Capuano.
20 A
21 My job is none of your business.
22
- 23 Q And then he replies again, insulting. And then
24 you ask him a question up above, Desiree Capuano
25 wrote. It says:
26
27 May you please confirm ...
28
29 Is that -- you sent that email, Ms. Capuano?
30 A Yes.
31 Q Could you read that in, please?
32 A
33 May you please confirm which facility you are
34 working at?
35
- 36 And I give him two addresses.
37 Q You -- you give two addresses.
38 A Yes.
39 Q And then up above, he replies:
40
41 I shall verify that. Thank you.
42
- 43 And he --
44 A Actually, I wrote that.
45 Q He -- oh, sorry, you wrote that. He says:
46
47 Jacobson Way.

Desiree Capuano (for Crown)
cross-exam by Mr. Lagemaat
BAN ON PUBLICATION; INHERENT JURISDICTION

1
2 So he confirms where he's employed.
3 A Yes.
4 Q Why is it your job is none of his business but
5 then you go on to ask him where his job is?
6 A I want him to understand that it can work both
7 ways. He's already contacted my employer. He
8 already sent emails pretending to be me. He
9 already created a LinkedIn account, he already
10 created a Facebook account, he already said that
11 he's going to destroy me, he already said he's
12 going to do all of these things. I want him to
13 know that there are risks to him too.
14 Q You want him to know that you can do the same
15 thing. You're threatening here that you can do
16 the same thing; correct?
17 A But I never did it. That's the difference.
18 Q Well, it doesn't matter. You're threatening that
19 you can do it and he's giving you the information
20 you need to do it --
21 A Yes.
22 Q -- correct? Thank you.
23 A Yes.
24 Q Page -- next email chain. This is "G.'s adventure
25 with the RCMP". And at the bottom, he sends you
26 an email on June 30th, 2015, and I'm assuming
27 there's been some kind of discussion about -- I'll
28 go look back. I'm assuming there's been some kind
29 of discussion about the authorities being called
30 and he's saying about you making a frivolous
31 claim. Is that Child Protection Services or --
32 A It's not. I just asked for a home check.
33 Q Pardon me?
34 A I asked for a home check.
35 Q Okay. And then your reply, up above, at 8:46
36 p.m., June 30th [as read in]:
37
38 Richard, when you said ...
39
40 Is that your reply?
41 A Yes.
42 Q Could you read that in, please?
43 A
44 When you said, or would that have been too
45 complicated for you to think of? I believe
46 you meant to use the word "to". You really
47 should use a dictionary. That sort of poor

Desiree Capuano (for Crown)
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1 grammar, common against [sic] the lower
2 echelon of society, makes it difficult for
3 you -- to take you seriously. Not that
4 anyone does anyway. As you well know,
5 {GR}'s phone does not receive calls while
6 in Canada. Again, nice try. I chose not
7 only to pursue a wellness check this time
8 and, as such, no frivolous claim exists. To
9 the contrary, I actually had a very nice chat
10 with the RCMP and they indicated that they
11 would be keeping an eye on you. I thanked
12 them for checking in on {GR} for me. Have
13 a nice day.

14
15 Q The second paragraph [as read in]:

16
17 I believe you meant to use the word "to".
18 You really should use a dictionary. That
19 sort of poor grammar, common amongst the
20 lowest echelon of society, makes it difficult
21 to take you seriously.

22
23 So again you're -- you're insulting his grammar
24 skills?

25 A He had no ID that said he was Richard Riess. My
26 son is in a foreign country and he just told me
27 he's not going to get a return ticket.

28 Q That's not what I asked you, Ms. Capuano.

29 A And I'm --

30 Q I asked you --

31 A -- being punished because I said a frivolous
32 sentence, and that that gives him permission to do
33 this, and that I'm saying it's okay because I
34 insulted his use of the word "to". Are you saying
35 that it's okay that he's done all of this?

36 Q Well, if you're so afraid and threatened and
37 harassed, why do you have to harass --

38 A Because I need my son back and I'm not going to
39 back down.

40 Q And the last sentence:

41
42 Not that anyone does anyways.

43
44 And reading back, you're saying his grammar "makes
45 it difficult to take you seriously. Not that
46 anyone does anyways." I suggest you don't take
47 this seriously, do you?

Desiree Capuano (for Crown)
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1 A Oh, I absolutely do.
2 Q It doesn't seem to me you do. When you reply with
3 all these insults, it doesn't appear you do.
4 A All we're doing is looking at emails back and
5 forth. That does not take into account the other
6 activities that are happening.
7 Q Well, the --
8 A They were a lot of other things happening at --
9 Q -- the -- the email --
10 A -- this time besides emails.
11 Q Sorry, I apologize. Finish.
12 A The emails were just a front. That's all they
13 are. It's just a front.
14 Q The -- the emails are also the -- the entire
15 relationship between you two is in the emails.
16 There's -- you've said there was only three phone
17 conversations. This is the relationship between
18 the two of you, this is what we have.
19 A There's also actions.
20 Q Moving on to the Crown's book of exhibits, Tab 3,
21 the photo section. And we'll go to the second
22 page, "Photo album, Desiree Capuano".
23 You said in direct evidence there was a photo
24 of you on the website in your underwear.
25 A No, he said that.
26 Q So there is no photo of you in your underwear on
27 the website.
28 A It's me in my bathrobe. I'm --
29 Q Or your bathrobe.
30 A -- pretty sure that's what he's referring to.
31 Q And would that be --
32 A Fourth page --
33 Q -- the red plaid bathrobe?
34 A -- fifth row down --
35 Q Yes.
36 A -- right-hand side. I didn't say that, he said
37 that.
38 Q So there's nothing racy or unusual about that
39 photo. You're fully dressed, you're fully garbed;
40 correct?
41 A He's the one that said it, not me. His direct
42 quote was something along the lines of, "How does
43 it feel knowing everybody in work has seen you in
44 your underwear?"
45 Q Go back to -- or further in, "Photo album, {SC}
46 Capuano". And the second page, five rows down, is
47 that Mr. Lochner [phonetic] --

Desiree Capuano (for Crown)
cross-exam by Mr. Lagemaat
BAN ON PUBLICATION; INHERENT JURISDICTION

- 1 A Yes. It's --
2 Q -- with {SC}?
3 A -- a BB gun.
4 Q It's a BB gun.
5 A It's just a BB gun. It's not real.
6 Q How old was {SC} at the time?
7 A Seven; six, seven.
8 Q A BB gun is a real gun, it's just not a firearm.
9 A Correct.
10 Q Correct. One -- one thing about these photos, and
11 perhaps you can explain this -- you work in IT;
12 correct?
13 A Yes.
14 Q You said you didn't post these pictures on your
15 Facebook; Facebook allowed, I'm assuming your
16 friends, because it -- you allege it was through
17 G.'s Facebook account, that Facebook allowed your
18 friends into your photo album?
19 A There's a -- there was a camera roll option in the
20 pictures in Facebook.
21 Q So you selected that camera roll option, so people
22 who were -- who could have access to your Facebook
23 page could have access to your entire camera roll?
24 A Yes. They were people that I knew, family.
25 Q And this at a time when you were concerned about
26 your information being made public, you shared
27 your camera roll on Facebook?
28 A No, I'd already blocked it, but he had gotten
29 these before I put up the privacy.
30 Q Well, I'm saying there was a time when it was all
31 public.
32 A There was, yes. I didn't realize that somebody
33 was going to go in there and try to take
34 everything out of there and use it against me.
35 Q So you're saying --
36 A I just assumed that it was to be -- be a normal
37 Facebook account.
38 Q But you're saying you were very concerned about --
39 A It was in 2014 that I blocked it. As soon as he
40 put this stuff up on the website. And then he
41 would taunt me about how much more stuff he had
42 that he hadn't put on the website, but he got it
43 all before I put up the blocks.
44 Q Speaking of firearms, guns, you said in Tab 10,
45 when we were referring to Tab 10 of the Crown's
46 emails, that you were terrified to learn that
47 Patrick had guns.

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- 1 A That he owned them? Yes.
- 2 Q But you knew he had guns previously; right?
- 3 A No.
- 4 Q When you were together he didn't have guns?
- 5 A No.
- 6 Q He never owned firearms when you were married.
- 7 A Absolutely not. Never once.
- 8 Q And --
- 9 A We also never went to a shooting range when we
10 were together.
- 11 Q I didn't ask --
- 12 A He put --
- 13 Q -- if he went to a shooting range.
- 14 A No.
- 15 Q He did not own firearms.
- 16 A He did not own firearms while we were together.
17 He was using a fake social security number at the
18 time.
- 19 Q I'm going to -- I'm going to go through the
20 custody situation a little bit of {GR}, just --
21 just to clear it up, get a -- a timeline because
22 -- and this will be brief.
- 23 So he was born September 27th, 2000, in
24 Phoenix; correct?
- 25 A Yes.
- 26 Q You guys both moved -- moved to Los Angeles, or
27 the three of you moved to Los Angeles sometime
28 2001, beginning, March.
- 29 A Yes.
- 30 Q October the same year you moved back to Phoenix?
- 31 A Yes.
- 32 Q Sometime after that, you said in direct, or I'm
33 asking you now, you went to Florida and you left
34 G. with your mother. You went for a short trip to
35 Florida or whatever, you went to Florida, left G.
36 with your mother.
- 37 A In December, yes.
- 38 Q How long were you going to Florida for?
- 39 A I was only there for a couple days. I already had
40 a plane ticket back to go get him.
- 41 Q So you -- you made a two-day trip to Florida?
- 42 A No, it's a two-day drive. It was going to be a
43 week that I was there.
- 44 Q So you were making a one-week trip to Florida and
45 leaving {GR} with your mother; correct?
- 46 A Correct.
- 47 Q How long did you have {GR} for at that visit?

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- 1 Was it a -- was it a -- what was the period of
2 time you were going to have {GR} for, or did
3 you have him at that time?
4 A I had him.
5 Q Okay.
6 A There was never any discussion about who would
7 have him.
8 Q Okay.
9 A Richard never indicated once that he wanted
10 {GR} .
11 Q So you went to Florida, Patrick drove and picked
12 up {GR} from your mother; correct?
13 A Correct.
14 Q And February 2002, you had a hearing, a joint
15 hearing -- or a custody hearing, you were both
16 there, and you were granted joint, two weeks on,
17 two weeks off; right?
18 A Yes.
19 Q And you were directed to move back to Phoenix
20 because --
21 A I was given the option.
22 Q And you agreed.
23 A No.
24 Q You -- you told the court you were going to remain
25 in Florida?
26 A Yes, I did.
27 Q And then you took -- the first two weeks was with
28 you; correct?
29 A Yes.
30 Q And then Patrick's first two-week access, he came
31 there and picked him up; correct?
32 A Yes.
33 Q And is that the last time you saw him for a long
34 period of time?
35 A Yes.
36 Q You said in direct evidence that Patrick
37 disappeared for 10 years with {GR}, but then
38 you said nine also. That -- I'm not making
39 anything of that. It was nine or 10 years in that
40 time frame you said Patrick disappeared with
41 {GR}; correct?
42 A Yes. He showed up twice, in 2005 and 2007.
43 Q But to your mother, not -- not to you; correct?
44 A Correct.
45 Q Isn't that kidnapping?
46 A Yes.
47 Q Did you ever file a police report that your child

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1 had been kidnapped?
2 A Yes.
3 Q And police took no actions on a kidnapping?
4 A I didn't know where he was. I didn't know whether
5 he was in Los Angeles or Phoenix.
6 Q The police couldn't find him?
7 A No. Using what identification? He was Richard
8 Riess in a foreign country.
9 Q But he must have been working; right?
10 A I don't know. I don't know that. I don't know if
11 he was getting contract jobs, I don't know if he
12 was working at all, I don't know where he was -- I
13 don't know.
14 Q So sometime in early 2011 -- well, okay, let's put
15 it this way, then. If you filed a kidnapping
16 report, when they eventually --
17 A I called CPS, I did not file a kidnapping report.
18 Q Okay. You said previously you filed a
19 kidnapping --
20 A I did not file a kidnapping report.
21 Q -- report with police.
22 A I contacted police, I contacted CPS, I contacted
23 attorneys and lawyers.
24 Q Why was he not charged with kidnapping if you --
25 well, you're saying now you didn't file a police
26 report with kidnapping. So sometime in early
27 2011, Patrick wrote you a letter to reinitiate
28 contact; is that correct?
29 A Yes. I did go and see him in 2009 and demand to
30 know where my son was, and he refused to tell me.
31 But, yes, in 2011 he reached out to me.
32 Q And you replied to him in a letter; correct?
33 A Yes.
34 Q Do you recall that letter you sent?
35 A Yes.
36 Q If you were to see it, would you recognize it?
37 A Yes.
38 Q I'm going to pass you a letter and you can take a
39 look and tell me if you recognize this as the
40 letter you sent him on March 8th, 2011. Take your
41 time, Ms. Capuano.
42 A Yes.
43 Q So you accept that's a letter you wrote to him?
44 A Yes.
45 MR. LAGEMAAT: March 8th, 2011? My Lady, I'm going to
46 ask that this letter be made an exhibit.
47 THE COURT: Mr. Myhre, any objection?

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1 MR. MYHRE: Well, I think my friend can cross-examine
2 Ms. Capuano on her statement. I'm not sure it
3 becomes an exhibit in the trial.
4 MR. LAGEMAAT: Would you like a copy to the jury to
5 follow along? I'm going to be --
6 THE COURT: Can I see it, please, so I have some idea
7 of what we're talking about?
8 MR. LAGEMAAT: I will be going through --
9 THE COURT: Thank you.
10 MR. LAGEMAAT: -- a total of three paragraphs, not in
11 -- not the complete paragraphs because the first
12 paragraph is two pages.
13 THE COURT: I think I need to hear from you about the
14 purpose for which it's tendered or to be used, and
15 maybe that needs to be -- maybe we need to stand
16 down --
17 MR. LAGEMAAT: I -- I agree, My Lady.
18 THE COURT: All right. So members of the jury, I'm
19 going to ask you to take a short -- short break,
20 please.

21
22 (JURY OUT)

23
24 MR. LAGEMAAT: Perhaps would we have --
25 THE COURT: Yes.
26 MR. LAGEMAAT: -- Ms. Capuano remain?
27 THE COURT: Ms. Capuano, I'm going to ask you to remain
28 outside the courtroom while we have this
29 discussion, so we'll stand down very briefly.

30
31 (WITNESS STOOD DOWN)

32
33 (PROCEEDINGS ADJOURNED)
34 (PROCEEDINGS RECONVENED)

35
36 [PROCEEDINGS IN ABSENCE OF JURY FROM 10:37:57
37 TO 10:47:13 A.M.]

38
39 (PROCEEDINGS ADJOURNED FOR MORNING RECESS)
40 (PROCEEDINGS RECONVENED)

41
42 (JURY IN)

43
44 **DESIREE CAPUANO, recalled.**

45
46 THE COURT: Members of the jury, before we continue on
47 this, an instruction I'm going to give you, you're

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1 going to hear some cross-examination on -- I'll
2 call it a statement said to have been previously
3 made. It's actually a set of statements. So this
4 is a general instruction that applies to witnesses
5 who are cross -- applies when witnesses are cross-
6 examined about statements they've made on previous
7 occasions.

8 Common sense tells you that if a witness says
9 one thing in the witness box but has said
10 something quite different on an earlier occasion,
11 this may reduce the value of his or her evidence.
12 The inconsistency may affect the witness's
13 credibility. You will have to decide whether the
14 witness in fact gave an earlier and different
15 version from his or her testimony about the same
16 event. If you find, after you've heard all the
17 evidence, that the witness did give an earlier and
18 different version of events, then you consider
19 whether the differences are significant. You
20 should consider any explanation the witness gives
21 for the differences, you should consider also the
22 fact and nature and extent of any differences when
23 you decide whether and how much to rely on the
24 witness's testimony. That all relates to the
25 witness's credibility.

26 You must not use the earlier statement as
27 evidence of what actually happened unless you
28 conclude that the witness accepted the earlier
29 statement as true while testifying in the witness
30 box, and even then, as with any evidence, you will
31 decide whether and how much to rely on it.

32 And finally, if you do not find that the
33 witness gave a different version of events in an
34 earlier statement, you may not use the earlier
35 alleged statement in any way at all. The
36 allegedly inconsistent earlier statement must play
37 no part in your assessment of the witness's
38 credibility or in your determination of what
39 happened.

40 I will give you instructions similar to these
41 in the instructions I give you at the end of the
42 trial, but because you're about to hear some
43 cross-examination on what is said to be a previous
44 statement, I wanted you to have a preview of how
45 that cross-examination may and may not be used.

46 All right. Thank you for your attention to
47 that.

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1

2

CROSS-EXAMINATION BY MR. LAGEMAAT, CONTINUING:

3

4

Q So you've accepted, Ms. Capuano, that this is the letter you wrote to Patrick on March 8th, 2011; correct?

6

A Yes.

8

Q I'm going to read in a portion of what you wrote here. Firstly you apologize for typing it. Your handwriting's -- your hand's cramped up and you're lazy and prefer typing. And then you move on that you'll start with you because it's easier. You start in 2001, 2002.

9

10

11

12

13

THE COURT: I think, if you're paraphrasing --

14

MR. LAGEMAAT: Yes.

15

THE COURT: -- you need to -- it's not clear who --

16

MR. LAGEMAAT: Okay.

17

THE COURT: -- you're referring to as "you"

18

MR. LAGEMAAT:

19

20

Q Ms. Capuano, going -- on the second paragraph, and I'll read in what is eight lines down, what you wrote to Mr. Fox [as read in]:

21

22

23

24

25

26

27

28

29

30

What changed for me, what made me stop fighting, was a conversation you and I had where you actually asked me not to take {GR}. You were sincere. You weren't the nicest to {GR} for the first year when we were still together.

31

In brackets:

32

33

34

35

36

37

38

39

40

41

42

43

44

45

46

47

So to hear that you had a love for him, that touched me. Then when we took him to Florida for those two weeks, Richard, he didn't want to leave you and he certainly didn't want to go with me. There was a bond there. And although it crushed me that he didn't even remember me, it made me happy that he wanted to be with you. If tension and emotions weren't already running so hot, we may have been able to work something out at that

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1 point. But to my regret, I let someone else
2 take the lead. I remember the last email I
3 sent to you. It was in response to you
4 saying that, no matter what, {GR} needed
5 his mother. It was not because I had given
6 up on him, it was because you guys loved each
7 other.

8
9 Isn't it accurate, Ms. Capuano, this is referring
10 to you making a decision that it would be best for
11 {GR} to go with Patrick during this period?

12 A The fighting was for custody. The fight that I
13 indicated that I was not going to continue was a
14 fight for custody.

15 Q So you were giving up on the fight for custody is
16 what you're saying here.

17 A Yes, I wasn't going to try to take him away.

18 Q You were going to let him go with Patrick. You
19 thought that was --

20 A Well, I was going to let --

21 Q -- best for the -- sorry.

22 A I was going to let the joint custody stand.

23 Q Moving down one, two, three, four, five full lines
24 down [as read in]:

25
26 That said, it was so hard to be away from
27 him. It tore me apart and it hurt 10 times
28 worse every time we talked or emailed or
29 anything, so I let you have him.

30
31 A Mm-hmm.

32 Q You let him have him.

33 A During that first couple months of the separation
34 and the fighting.

35 Q
36 I used that pain as my strength to do
37 everything I could to improve my life,
38 thinking that the day I could be with him
39 again I would have food in my fridge, video
40 games for him to play, bills paid, and money
41 that we could use to go see movies and such.

42
43 And I'll -- not to characterize the letter, but in
44 your direct evidence you said you basically got
45 your life together and went to school; correct?

46 A Yes.

47 Q Is that what you're referring to here?

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- 1 A Yes.
- 2 Q Turning to the second page and about halfway down,
3 if you look in the middle of the sentence -- in
4 the middle of the sentence, there's a new sentence
5 starts with "I vowed at that point". Are you
6 there?
- 7 A Yes.
- 8 Q Okay. [As read in]:
9
- 10 I vowed at that point that I was moving back
11 to Phoenix. Actually, I just straight up
12 told Michael we were moving. It was always
13 my plan, primarily because it might be where
14 you and {GR} were. And if not, at least
15 not so far away from CA.
16
- 17 That's California?
- 18 A Yes.
- 19 Q Bracket:
20
- 21 I will add here that it absolutely killed me
22 both times {GR} asked me to see him. I
23 had to think of some way to say no while
24 telling him how so very much I wished I
25 could. That drove me to go to school full-
26 time, including over the summers.
27
- 28 Closing bracket.
- 29 Your child wanted to see you and you -- you
30 had to think of some way to tell him no?
- 31 A It was during a conversation in 2005 while he was
32 with my mom and I was in Florida, and then during
33 our conversation in 2007 while he was in Arizona
34 and I was in Florida.
- 35 Q Why did he ask --
- 36 A He wanted me to -- he wanted to see me right then.
- 37 Q Sorry, I was speaking. Why did -- he ask you to
38 see him. Why didn't you say yes?
- 39 A I was hundreds of miles away without the money to
40 get a plane ticket.
- 41 Q Yet you hadn't seen your child for how long? He
42 asks you to see him and you could not get to where
43 he was, and he's there -- you're -- you're saying
44 in your evidence you didn't know where he was all
45 this time, and all of a sudden now in this letter
46 you're saying he's there, this is where he is,
47 he's called me twice, wants to see me, and you

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1 could not make the effort to get there.
2 A He was gone days after. Even if I had got on a
3 plane --
4 Q Well --
5 A -- he might not have been there by the time I got
6 there.
7 Q Did you try?
8 A No.
9 Q You said he might not have.
10 A He had contact with my mom.
11 Q Pardon me?
12 A He had contact with my mom, and my mom was giving
13 me updates of where he was.
14 Q Regardless --
15 A And two days later Mom says, "He's gone."
16 Q Regardless -- regardless, you're saying here he
17 asked you twice and you had to think of some way
18 -- what -- what way did you tell him no? How did
19 you tell him no? Did you lie to him?
20 A No. I told him I couldn't get on a plane and told
21 him I couldn't fly out there. I also had no phone
22 number to reach him. He called -- my mom called
23 me from her phone when he was at her house in
24 2005. I had no phone number to reach him. So if
25 I could have gotten on a plane, all I could have
26 gone was to my mom's, and she may have had some
27 way to reach Richard, but he was the one that was
28 initiating the contact.
29 Q May have had. So you don't know.
30 A If my mom would have had a way to reach him? No,
31 I don't know. Richard is the one that reached out
32 to my mother.
33 Q You also --
34 A And then in 2007 I tried to call back and no
35 answer. I got no answer. And in 2007, I was
36 already planning on moving.
37 Q But you had these two opportunities to see your
38 son and you said, "No," and you say you didn't --
39 you may have got there --
40 A I wasn't able to.
41 Q I'm sorry, I'm talking -- you may have got there
42 and he wouldn't have been there anymore, but you
43 didn't even make the effort to get there; is that
44 correct?
45 A I -- I had another child too.
46 Q But you had a child who'd been missing.
47 A Yes. Yes.

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- 1 Q Thank you. Turning to the next page, bottom
2 paragraph [as read in]:
3
4 As far as {GR} goes, I have been waiting a
5 very long time for this to happen and there's
6 no way I'm going to rush anything or make
7 anyone feel uncomfortable in -- in any way.
8 I'm completely prepared for him to have a lot
9 of questions and to not think the world of
10 me. That's okay. He's completely justified
11 in whatever feelings or opinions he has
12 toward me. I hope, like you, that he can
13 overcome them and try. But just knowing how
14 well he's doing is enough for now. I will go
15 at no one else's pace but his. I could
16 search him out, that is true, but why would I
17 do that?
18
19 What do you mean by that? You -- you told -- you
20 said earlier you were searching him out. Here
21 you're saying, "I could search him out, that is
22 true, but why would I do that?"
23 A I'm talking to the man that holds all the cards.
24 Q Pardon me?
25 A I'm talking to the man that holds all the cards.
26 I'm talking to the person that has the location
27 and -- and the whereabouts. And I'm admitting my
28 faults. I wasn't perfect. I didn't handle that
29 situation perfectly. I didn't. There were a lot
30 of things I could have done a lot different
31 throughout the whole thing, but this is how it
32 happened.
33 Q So you didn't search him out during that period.
34 A I did call CPS. I did not do a social security
35 number search for him.
36 Q So you --
37 A I didn't know if that would even get me anywhere.
38 Q And you didn't call the police.
39 A I called CPS, I called Homeland Security, I called
40 all kinds of people. But the police --
41 Q CP --
42 A -- I called -- I did not make a missing police --
43 person report with the police.
44 Q CPS is Child Protection Services --
45 A Yes.
46 Q -- correct? The best way -- and I continue on:
47

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1 The best way is for the people he loves,
2 trusts, and knows to give him the information
3 and let him process it in his own way and
4 make his own decision about he wants to do,
5 always. I will hope for a phone call one
6 day, believe me. It's the only thing I wish
7 for, but I'm not going to initiate it.
8

9 Is what you said in that letter true or false,
10 that you didn't seek him out?

11 A Trying to find --

12 MR. MYHRE: Sorry, that's not an accurate quote.

13 MR. LAGEMAAT:

14 Q Did you search him out?

15 A Trying to find his physical location and trying to
16 make contact with him are two different things. I
17 tried to find his location. I did not try to make
18 contact with him.

19 Q Thank you.

20 A You're welcome. Making contact with him is a much
21 more delicate situation.

22 Q So going back to the timeline which I was going
23 through before and I -- I stopped at 2011, we're
24 at the end of this nine or -- approximately nine-
25 or 10-year period. August 2011, after sporadic
26 contact with G., and I'm -- I believe it was
27 telephone contact, you show -- you -- you
28 travelled to Los Angeles to see him, to meet him?

29 A Twice.

30 Q Twice. September 2011 there was a custody hearing
31 in Arizona court?

32 A Yes.

33 Q What happened in that custody hearing?

34 A Richard filed the UCCJEA, said the home state of
35 the child is California, and the judge agreed and
36 made me return him.

37 Q So it was a jurisdiction argument. He was
38 returned to California; correct?

39 A Yes.

40 Q November 8, 2011, custody hearing in California.

41 A Oh, sorry, the one in -- in August was in Arizona.

42 Q Yes. I'm moving on now to -- to November 8th.
43 There was a custody hearing in California and
44 again Patrick had the child, correct, and you had
45 visitation?

46 A No. In August, the case that was heard was in
47 Arizona. I was trying to move the custody case to

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1 Arizona. The one in November 8th was Richard
2 saying that the home state of the child was
3 California --
4 Q Who --
5 A -- and that I should return him.
6 Q Who walked out of that courtroom November 8th with
7 physical custody? 2011.
8 A Physical custody wasn't determined at that, it was
9 only the home state of the child.
10 Q So still with Patrick.
11 A {GR} was with me at the time.
12 Q Or with you. Sorry. December 6th, 2011,
13 mediation. And where was this mediation? It was
14 in California because that was jurisdiction now;
15 correct?
16 A Correct.
17 Q And what happened during that mediation?
18 A We got joint custody. Primary physical custody
19 was with Richard. I had visitations.
20 Q February 12th, 2012, Patrick petitioned California
21 court to have you do a drug test --
22 A Yes
23 Q -- for -- for your access, right, before you could
24 -- before he would facilitate your access;
25 correct?
26 A Yes.
27 Q Why did he want you to do a drug test?
28 MR. MYHRE: Objection.
29 MR. LAGEMAAT:
30 Q Did you do the drug test?
31 A No.
32 Q And that was to do with your arrest; correct?
33 A Yes.
34 Q Your arrest for marihuana possession?
35 A Yes.
36 Q Were you convicted?
37 A No.
38 Q What happened to that conviction?
39 A They were dropped.
40 Q Or the charge. Sorry.
41 A Charges were dropped.
42 Q Under what program?
43 A I did -- I submitted to a test program that does
44 drug testing, random drug testing, and a fine. So
45 I submitted to multiple months of random drug
46 testing --
47 Q And what's that --

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1 A -- [indiscernible/overlapping speakers.
2 Q -- program? I believe the acronym is P-O-P.
3 A TASC is the program that administered the drug
4 tests.
5 Q No, no, the --
6 A It's a PROP.
7 Q -- the program under which the -- we have programs
8 here that do similar things. The program under
9 which the conviction is not -- or the charge is
10 not a conviction, there's not --
11 A PROP 202.
12 Q Pardon me?
13 A PROP 202.
14 Q PROP 202. What does PROP stand for?
15 A I don't know.
16 Q Okay. And under that you admit your guilt.
17 A Yes.
18 Q And you submit to testing, and they want to see --
19 I'm asking you, and they want to see that you're
20 doing well, and then there's no conviction, no
21 charge; correct?
22 A Correct.
23 Q Okay. October 2012, and you talked about this in
24 direct, there was a search warrant on your home.
25 November 28th, 2012, Patrick took the matter into
26 court, he requested to relocate with G. to
27 Vancouver; correct?
28 A Yes.
29 Q And that was denied.
30 A Correct.
31 Q And he stayed in California.
32 A Yes.
33 Q December 2012 -- what does ICE stand for?
34 Immigration ...?
35 A Custody Enforcement, I think.
36 Q Yes, Immigration Custody Enforcement. Did you
37 make a report regarding Patrick to ICE?
38 A I called a tip line.
39 Q And is it correct in January 2013 he was arrested?
40 A Yes.
41 Q What was the purpose of your tip?
42 A To let them know that a person who was not a U.S.
43 citizen was in the United States and he was trying
44 to take my son.
45 Q That was the tip. What was the purpose of your
46 tip? Why --
47 A To have him removed from the country.

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- 1 Q Did you think that would be in your child's best
2 interest for his father to be removed from the
3 country?
- 4 A At this point, yes.
- 5 Q Or would be in your best interest because then you
6 wouldn't have him there bothering you in
7 California courts making applications, trying to
8 take away your time? Isn't that more accurate,
9 Ms. Capuano?
- 10 A He was in the United States using another name,
11 trying to get a job illegally. In my opinion, it
12 was both.
- 13 Q So you're concerned for the economy and -- and
14 immigration --
- 15 A Well, I was just concerned about my son seeing
16 what's right and wrong --
- 17 Q Pardon me?
- 18 A -- and my son being taught that this type of
19 behaviour and going through life lying and
20 pretending is not right.
- 21 Q But you had no concern for your marihuana use with
22 your son?
- 23 A I had a card. I had a medical marihuana card --
- 24 Q At the time you were charged?
- 25 A Before I saw the judge for that -- for that
26 charge, I had my card in hand.
- 27 Q But you didn't have it when they came into your
28 home.
- 29 A When they arrested me, no.
- 30 Q Yes.
- 31 A I had a meeting set up with a doctor already.
- 32 Q Yet -- yet you feel that you need to inform on
33 Patrick when you see him doing something unlawful
34 and knowing the end result could be he's out of
35 the country.
- 36 A I told him and asked him many times if we could
37 work amicably on a resolution for the child. That
38 was not possible. Multiple times he had tried to
39 remove visitation, multiple times he had tried to
40 interfere with custody, multiple times he had gone
41 after me for child support when I was the only one
42 financially providing for him, besides Liz Munoz.
43 Multiple times I had been trying to be a part of
44 my son's life, a good part, and time after time it
45 was negated and torn apart and -- and confusing --
- 46 Q He -- he took it away from you.
- 47 A He tried.

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BAN ON PUBLICATION; INHERENT JURISDICTION

- 1 Q Similar to what you did on February 6th, 2013,
2 when you went to court requesting sole custody and
3 no communication between --
4 A Temporarily.
5 Q -- (GR) and Patrick, exactly what you're saying
6 he's been doing to you.
7 A Only temporarily.
8 Q Temporarily. Well, that day is what you wanted;
9 correct?
10 A Yes.
11 Q Similar to what you're just saying he was doing to
12 you or attempting to do to you. And this -- this
13 is -- this is two months after you call the tip
14 line. I suggest -- when I asked you what was the
15 purpose of the tip, I suggest here's the purpose
16 right here, that two months later you have him
17 removed -- you don't have him removed, you make
18 the tip that results in him being removed, and two
19 months later you're in court saying, "Sole -- I
20 get sole custody, I want sole custody, and no
21 communication."
22 A Here's the difference. Every time that he tried
23 to do that and I defended myself, I won because I
24 was right and I was telling the truth. The one
25 time that I did that to him, he lost because he
26 was lying.
27 Q So it's about winning and losing.
28 A No, it's about telling the truth.
29 Q It's about winning and losing, just like these
30 emails where it was a game between you, a --
31 A No.
32 Q -- banter of who would get the last word. And at
33 this point it had gone beyond emails of trying to
34 get the last word to in court and immigration and
35 deportations and cutting off communications. It
36 had gone beyond what we --
37 A At this point --
38 Q -- read in the email.
39 A -- there was no bantering back and forth. There
40 was none. This is -- this is January of 2013. At
41 this point there's no bantering in emails at all.
42 Q So February 15th, 2013, Patrick was deported
43 again. You -- you'd called ICE again saying he
44 was in the country. He was --
45 A He was in the country again.
46 Q He was deported again. And March 20th, you again
47 called ICE. And this is the day that -- this is

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1 the day that there was a court appearance.
2 A He thought there was a court appearance.
3 Q He thought there was -- there was some mix up and
4 there was a court appearance on the list, and he
5 was there. You didn't think he'd be there, so you
6 didn't attend.
7 A It was off calendar.
8 Q Yes. But he was there, nevertheless.
9 A Yes, he was.
10 Q You found out he was there from the registrar or
11 the court clerk or somebody at the court. You can
12 correct me on that if I'm wrong. And you called
13 immediately to your source or your person you were
14 working with at the FBI or ICE -- sorry, ICE, and
15 said, "He's there. Go get him"; correct?
16 A I didn't say go -- "He's there, go get him," no.
17 I did say, "He's in the country again."
18 Q And where he -- and exactly precisely where he is;
19 correct?
20 A The courthouse.
21 Q Yes. And they went and got him and deported him
22 again; right?
23 A Yes.
24 Q You -- you were going to make sure that he wasn't
25 in America; correct?
26 A Yes.
27 Q Did you find it amusing that you had him deported?
28 A No.
29 Q You didn't find it amusing at all.
30 A No. It was scary that he kept coming in. The
31 fact that he would continuously try was
32 flabbergasting.
33 Q But not amused.
34 A In a very ironic way.
35 Q Do you recall giving a statement to the police, a
36 Corporal Wilcott [phonetic] --
37 A Yes.
38 Q -- on July 13th, 2016?
39 A Yes.
40 Q How was that statement given?
41 A I don't remember exactly.
42 Q Were you amused in that statement that he'd been
43 deported?
44 A I was dumbfounded that he would try again and go
45 to a courthouse.
46 Q I asked you, were you amused?
47 A No.

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1 Q Did you laugh?
2 A Amusing in an -- no. Yes, I probably laughed but
3 it was not in amusement.
4 Q It was in -- what was it in?
5 A It was in, "What is this guy thinking?"
6 Q Do you wish you could have been in the courtroom
7 watching or in the courthouse watching when
8 the ICE --
9 A I would have loved to have seen it.
10 Q Why?
11 A Because he was trying to say that there was a
12 court hearing that was on calendar, it was not on
13 calendar. He's standing there arguing. And I
14 know that when he thinks that he's right about
15 something, he does not give up. And so he's
16 challenging them and he's probably arguing back,
17 and then Immigration walks in.
18 Q Probably. You don't know that.
19 A Of course not.
20 Q But you would have loved to have been there to see
21 them come in and get him; correct?
22 A At that point, some small victory.
23 Q Small victory. There we go. Again, you -- you
24 won that part of the game, definitely, because he
25 was removed again.
26 A He was wrong. He was in the country illegally.
27 He was in the country illegally trying --
28 Q Did you --
29 A -- to take my kid and make me pay him child
30 support while living in my country illegally.
31 Q Did you report --
32 A Yes.
33 Q Did you report Mr. Lochner when you knew he was
34 using methamphetamine?
35 A No. No, he did himself in.
36 Q He was doing --
37 A He damaged himself all by himself. He needed no
38 help from me.
39 Q But he was breaking the law and you're
40 concerned --
41 A He wasn't --
42 Q -- you're concerned with laws. He was breaking
43 the law while living in your home.
44 A The drugs that were in the home he had stashed,
45 and when he was breaking the law he was nowhere
46 around. I couldn't even reach him. He wouldn't
47 answer the phone, he wouldn't come back to the

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1 house. He was gone all the time.
2 Q And you didn't turn yourself in when you were
3 using marihuana without a marihuana card, did you?
4 A No. It was the one thing I did that was illegal
5 that I hated, and as soon as it became legal, I
6 got my card.
7 Q That's the one thing you did that was illegal?
8 A Yes.
9 Q You've never been arrested other than that?
10 A For misdemeanour charges back when I was very
11 young.
12 Q So you've done other things that were illegal.
13 A Well --
14 Q That's not the one thing.
15 A Working in an establishment that sold alcohol and
16 getting arrested at the establishment, yes, that's
17 -- that's --
18 Q Arrested because they sold alcohol?
19 A The -- one of the arrests that I had.
20 Q What was the other one?
21 A But that was at 18 years old.
22 Q Well, yeah, but the reason I'm asking you, because
23 you said the marihuana was the one thing you've
24 done illegal.
25 A Yes.
26 Q So there was more things.
27 A I worked in a strip club that got raided. That
28 was one charge at 18 --
29 Q Okay.
30 A -- years old. And then the only other charge was
31 marihuana based.
32 Q So you knew that him being across the border,
33 deported, would be much easier -- or much more
34 difficult for him and easier for you to fight
35 custody battles in court in California; correct?
36 A Him being out of the country meant that I probably
37 would not have to fight many more custody battles,
38 yes.
39 Q And you knew that if it did come down to a custody
40 battle, it would be difficult for him because,
41 look, he's been deported three or four times.
42 That -- that would be difficult for him in getting
43 custody; correct?
44 A No. The judge didn't really care about that.
45 Q I'm going to suggest at this time again that you
46 never, during this time, feared him. This -- this
47 was just a big game, and you've said won and lose;

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1 is that correct?
2 MR. MYHRE: What time?
3 A Thank you.
4 MR. LAGEMAAT:
5 Q During this time that -- that we've gone through
6 all this evidence, the emails that we started
7 with, the ones Crown read in, the ones I read in,
8 these family law hearings, these -- these tips to
9 Immigration, I'm going to suggest this was one big
10 game to you, and you've used the term "win and
11 lose", and that at this point you're winning.
12 You've had him deported, you're winning; correct?
13 Because you were frustrated in the emails, and
14 you've said that. That wasn't getting you
15 anywhere, insulting, demeaning, insulting his
16 manhood, his stature, his family, his
17 intelligence, his maturity, and you weren't
18 winning. But now you're winning, correct? And
19 you've used that term.
20 A You're mixing up dates and times and timelines of
21 events pretty severely.
22 Q I'm not talking about timelines and dates --
23 A During 2013, when I was going through a custody
24 battle with him, there -- I was not insulting his
25 manliness, I was not insulting his stature, I was
26 not calling him names. I was fighting a custody
27 battle in 2012. In 2013, when he was deported, I
28 got custody of our son and, yet, I called a tip
29 line. Yes, the intent was to have him removed
30 from the country. Yes, he came back multiple
31 times and, yes, I called each time. I did end up
32 with custody. But even then he got visitation and
33 I never went after him for child support.
34 The insults and the bantering didn't happen
35 until late 2014, and none of that happened until
36 after the website went up. And I never called for
37 harassment until after the website went up. I
38 never called for fear of my life until the email
39 that said he was -- he thought about shooting me.
40 Q Two --
41 A So, no, what you --
42 Q Two --
43 A -- said was incorrect.
44 Q 2014 --
45 A Yes.
46 Q -- winter visit.
47 A Yes.

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- 1 Q Do you recall what the -- when that was? It was
2 -- I'm assuming was it his -- G.'s Christmas
3 vacation from school?
- 4 A Yes. And again, that is when the bantering
5 started, as I said. And I never called for
6 harassment until the website went up, and I never
7 called for physical harm of my safety until after
8 the email was sent that said he was -- he thought
9 of shooting me. That is when the physical fear
10 for my safety started. Never called for that
11 beforehand. And I never called for harassment
12 before the website, even with all of the emails
13 and the custody battle. I put up with a lot.
- 14 Q But you've said -- you've said in evidence here
15 you've been harassed for years.
- 16 A Well, yes, to me it's harassment. And even in
17 some of those emails. Finding out how I vote
18 based off of my driver's licence and asking me to
19 confirm if I've changed my voting registration out
20 of the blue, no prompting, that's scary. Telling
21 me that he's got private investigators following
22 me, that's scary. That happened in 2012.
- 23 Q None of that's against the law, though, is it?
- 24 A No, but it's still scary. And to me it's
25 harassment.
- 26 Q And you were scared at the time, and this is also
27 the time when -- I'm not going to go through them
28 again, where there's the emails.
- 29 A No, that's 2014.
- 30 Q 2014. You were scared in 2014.
- 31 A Yes. That was when the harassment started.
- 32 Q And that's also when you were partaking in -- in
33 this what we -- we're calling banter; correct?
- 34 A Late 2014. Months after the website went up.
- 35 Q Well, Ms. Capuano, the emails I started on were
36 January 2014, not late 2014.
- 37 A He hadn't put the website up in January of 2014.
- 38 Q That's the -- I'm talking about the emails I --
- 39 A Which one?
- 40 Q -- I was going through. So 2014 winter visit for
41 Christmas vacation.
- 42 A Yes.
- 43 Q As per the court order; correct?
- 44 A Yes.
- 45 Q So you'd had Mr. Fox -- not had Mr. Fox deported,
46 but you'd made -- you'd made the calls that had
47 resulted in him being deported, yet you -- still

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1 in 2014, you followed the court order, you sent
2 {GR} up there.
3 A Yes.
4 Q Did you not think to try to take away that
5 visitation? Were you not worried of what would
6 happen up there? You've said how worried you were
7 about Mr. Fox --
8 A Yes.
9 Q -- yet you sent your son up there to be with
10 him --
11 A Yes.
12 Q -- correct? 2015 summer visit. And it would
13 seem, from your evidence in direct, that by 2015
14 would you agree things had escalated --
15 A Yes.
16 Q -- in the communications in -- and the
17 communications being the emails because that was
18 the only communication. And in May 2015, you went
19 through this in direct evidence, he sent you an
20 email with his PAL attached.
21 A Yes.
22 Q Which is another acronym. I -- I don't know what
23 it stands for. It's a firearms licence; correct?
24 A Up here in Canada, yes.
25 Q Yes. So you knew he had firearms and you've said
26 you were afraid knowing, and alarmed and --
27 knowing he had this identity and firearms, but you
28 still sent your son up there --
29 A I was still required under law.
30 Q -- to spend the summer with him.
31 A Yes.
32 Q Correct. So you -- I -- I suggest you weren't
33 really afraid of anything at that time because
34 your son, in your evidence, means so much to
35 him -- to you, you wouldn't have sent him up there
36 if you thought there was any danger, would you?
37 A I don't think Richard's going to hurt {GR}.
38 Q What about keep him?
39 A That is a risk, yes.
40 Q But you sent him. You weren't afraid.
41 A I had to. At that point he hadn't kept him --
42 Q And we --
43 A -- so I had no basis to change that in the court
44 yet.
45 Q And we went through the emails where we talked
46 about the definition of "itinerary". You never
47 got that return ticket. You sent him up there on

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1 a one-way ticket; correct?
2 A Yes.
3 Q Yet you had all these fears, you knew he had
4 firearms, you knew he had a new identity, and you
5 sent your son there on a one-way ticket. Yes or
6 no?
7 A Yes.
8 Q I want to move on a bit to the GoFundMe page which
9 you talked about in direct evidence. I ask you,
10 if this was as terrible for you and your family,
11 everybody, as you make it out to be, and you say
12 what a terrible person Mr. Fox is, why didn't you
13 just go underground? You're -- you work in IT,
14 you've done some court applications on your own,
15 which we've seen, you've -- you're not -- you're
16 not a -- you're a sophisticated person as far as
17 the internet. Why didn't you just change your
18 name?
19 A It's public record.
20 Q If you change your name, it's public record?
21 A Yes.
22 Q Okay. So you looked into that?
23 A Yes.
24 Q So --
25 A So is buying a house.
26 Q So it just simply wouldn't work. You couldn't
27 just change your name and --
28 A He'd find it.
29 Q He'd find it. Then why did you ask the public to
30 give you \$10,000 --
31 A Just the minimum.
32 Q -- to change your name?
33 A That's the typical GoFundMe limit. It's --
34 Q Well, I don't think so, because GoFundMe, you
35 choose the limit.
36 A Asking people for \$10,000, I -- I set the limit at
37 \$10,000 because that was what was suggested. But
38 you actually have to go out and repeatedly ask
39 people for money. I set it up and never sent any
40 additional requests. You're supposed to go and
41 put it on Facebook all the time, and you're
42 supposed to send it out to your friends and
43 family, you're supposed to have them send it out
44 to their friends and family. Never did any of
45 that.
46 Q I'm not --
47 A I put it up once.

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- 1 Q I'm not asking you what you did to follow up, I'm
2 asking you, you at one point asked the public for
3 \$10,000 to change your name, but you've just
4 said --
- 5 A Initially.
- 6 Q -- you -- you knew that changing your name doesn't
7 help.
- 8 A Changing -- yeah, I would have to seal all of my
9 records.
- 10 Q Then why didn't you just do that?
- 11 A I don't know how. I don't know how. I don't know
12 how. I don't ...
- 13 Q Did you ever Google how to seal public records?
14 Yes, and it's really confusing. It would take a
15 lawyer.
- 16 Q And I suggest to you that if it was as terrible as
17 you're making it out to be, you would have changed
18 everything, had your records sealed, found the
19 money for a lawyer, and done it.
- 20 A Why? Why can't he just stop? Why do I have to
21 change my name? Why do I have to go into hiding?
22 Why do I have to become somebody else just for him
23 to not do this?
- 24 Q Well, you asked the public for \$10,000 to do this.
25 You must have --
- 26 A I got 900.
- 27 Q Well, it doesn't matter what you got. It says what
28 you were seeking -- you were seeking \$10,000 to
29 change your name and disappear with your son;
30 right? Correct? You weren't going to leave your
31 son with Patrick if you disappeared, were you?
- 32 A I didn't have any thoughts about hiding my son
33 from Richard with that GoFundMe page.
- 34 Q Is it correct that in your seek you said, "I need
35 to hide all my public records to be able to move,
36 change my name"? Is that correct?
- 37 A Yes.
- 38 Q And were you going to tell him, "But this is where
39 Patrick -- this is Patrick's address and his new
40 name"? Were you going to -- in -- in your -- if
41 you got the \$10,000, would -- were you intending
42 on telling Patrick, "But -- but here's {GR}'s
43 new name and address"?
- 44 A I wasn't trying to get {GR} a new -- I hadn't
45 figured out how that was going to work. At that
46 point, I was just scared.
- 47 Q But you said in direct evidence that you were

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1 never going to run and hide; correct? Then what
2 was the money for, the \$10,000, if you got it? We
3 -- you don't know. For all you knew, you could
4 have got the \$10,000 in a couple days of GoFundMe
5 because this was a high-profile case at that time.
6 A You still have to ask people for help repeatedly
7 to make your goals.
8 Q But for all you knew at the start --
9 A I knew I wasn't going to get \$10,000.
10 Q Pardon me?
11 A I knew I wasn't going to get \$10,000. I didn't
12 care if I got a dime. That was put up as a
13 request. Somebody requested that. I've never
14 even considered doing that on my own.
15 Q Someone requested that you do it.
16 A Yes.
17 Q And you did it.
18 A Sure. People wanted to help.
19 Q So you knew people wanted to give you money and
20 you thought, "Sure, I'll take that money." Isn't
21 it correct, Ms. Capuano, that you've been
22 approached for movie rights for this?
23 A No.
24 Q No?
25 A No movie rights, no. As far as I know, there
26 might be a documentary on proceedings, but not my
27 life story, no.
28 Q Well, I'm talking about not your life story but
29 let's say --
30 A It's not -- as far as I --
31 Q -- your life with Mr. Fox.
32 A -- understand, from what I've been told, it's not
33 even about what happened to me with the
34 harassment, it's just about the legal proceedings
35 that happened. I don't know. I haven't actually
36 been approached for rights on anything.
37 Q In your GoFundMe seek, why didn't you ask for
38 money to take the website down?
39 A Money is not going to take the website down.
40 Q Well, no, I'm -- again, you're an IT person. Is
41 there -- was there any way that website could have
42 been taken down? I mean --
43 A IT is a very broad and general term for a lot of
44 different things. Just because I work in IT
45 doesn't mean that I understand how websites work.
46 Q Do you -- do you know if someone has a website
47 with child pornography, is it allowed to just

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1 continue on or is there, and I don't know, some
2 governing body that would say, "Take that website
3 down"?

4 A Yes. Yes. And that governing body is apparently
5 who I have to go through since he refuses to take
6 it down by court order.

7 Q And why didn't you ever go to --

8 A It's a very long --

9 Q -- take this avenue?

10 A -- complicated process. At the point I was also
11 in the process of trying to get the order of
12 protection. I'm working on it.

13 Q But the \$10,000 you were looking for was to go
14 underground and hide and move, change your name,
15 with your son, not -- not to --

16 A The GoFundMe --

17 Q -- not to remedy the situation and try to take the
18 website down; is that correct?

19 A GoFundMe does not allow you to put up a page if
20 you're requesting money for a lawyer.

21 Q Well, it wouldn't have been for a lawyer. This --
22 you could have had a lawyer do these things too,
23 but you just said, "This is what I need the money
24 for." You could have -- you wouldn't have had to
25 say, "I need a lawyer to do this," could have
26 said, "I need to get this website taken down";
27 correct?

28 A Sure.

29 Q I suggest --

30 A But at the time my thought was hiding.

31 Q What did you do with the \$965?

32 A I paid my lawyer.

33 Q So you didn't do with it what you were -- what you
34 said you were seeking it for; correct?

35 A No.

36 Q So you lied. You said, "I need the money for
37 this," and you didn't even do this or attempt to
38 do this, what you were seeking.

39 A I was trying to get the order of protection. I
40 had other immediate steps. And honestly, with the
41 order of protection, my thought was first step to
42 take the website down, so that's what the money
43 went to. The money went to taking the website
44 down, which is what you suggested I use it for.

45 Q I -- I suggest, Ms. Capuano, this -- this was just
46 another step in this very -- very nasty, intricate
47 game you two were playing with each other where

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1 you had him deported, then now he's gone, "Now I'm
2 going to try to get some money so I can disappear,
3 then I've really won"; is that correct?

4 A No.

5 MR. LAGEMAAT: My Lady, I'm -- I'm nearing the end of
6 my cross-examination, and I think this might be a
7 good time to break, and then I can spend some time
8 with Mr. Fox, as we discussed yesterday. I'm
9 actually potentially finished.

10 THE COURT: All right.

11 MR. LAGEMAAT: And I would suggest we break until two
12 o'clock and I could go spend a significant amount
13 of time with him and come back. And if -- if
14 there's anything I can go further, I will.

15 THE COURT: All right. You do need that much time, do
16 you, Mr. -- if you do, you do.

17 MR. LAGEMAAT: Well, I would need at least until 12:30.
18 I expect Mr. Fox has some issues arising after
19 sitting here for two days.

20 THE COURT: You'd prefer to come back at -- did you say
21 2:00?

22 MR. LAGEMAAT: I would prefer that, My Lady.

23 THE COURT: Prefer that over 1:30, say?

24 MR. LAGEMAAT: Well, I also need -- need to take a
25 break.

26 THE COURT: I see. All right. Then that's what we'll
27 do. Members of the jury, we'll take a longer
28 lunch break today, and I'll ask you, please, to be
29 back at two o'clock.

30 Mr. Myhre, is there anything from your
31 perspective that would affect that schedule?
32 Should we discuss this briefly before I give the
33 jury their instructions?

34 MR. MYHRE: If we could, please.

35 THE COURT: Yes?

36 MR. MYHRE: Yes, please.

37 THE COURT: All right. Then, members of the jury, if
38 you wouldn't mind just going to the jury room for
39 a moment.

40

41 (JURY OUT)

42

43 THE COURT: Now, should Ms. Capuano be out of the
44 courtroom while we have this discussion?

45 MR. MYHRE: I think that might be best, My Lady.

46 THE COURT: All right. Then --

47 MR. MYHRE: I agree, My Lady.

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1 THE COURT: -- we'll stand down very briefly.
2
3 (WITNESS STOOD DOWN)
4
5 (PROCEEDINGS ADJOURNED)
6 (PROCEEDINGS RECONVENED)
7
8 [PROCEEDINGS IN ABSENCE OF JURY FROM 11:53:32
9 A.M. TO 12:04:03 P.M.]
10
11 (PROCEEDINGS ADJOURNED FOR NOON RECESS)
12 (PROCEEDINGS RECONVENED)
13
14 THE COURT: Please.
15
16 (JURY IN)

17
18 **DESIREE CAPUANO, recalled.**

19
20 **CROSS-EXAMINATION BY MR. LAGEMAAT, CONTINUING:**

21
22 Q Ms. Capuano, I'd just like to clear up one thing.
23 We discussed, before lunch, when I was going
24 through the timeline of custody and court issues,
25 November 7th, 2011, was a hearing. And I'm -- I
26 -- I -- put the words in your mouth, I -- I said
27 it was a jurisdictional issue, that he was
28 returned -- or G. was returned to his father, and
29 you agreed.
30 Isn't it true it was a little bit more than a
31 jurisdictional issue, that there was actually a
32 determination made on the merits at that hearing
33 and, tell me if this is true, {GR} was going to
34 be returned to you because the court did not want
35 him changing schools a couple months into the
36 year, until it was learned that you in fact had
37 just moved into a different catchment area
38 anyways, so the judge said, "Well, if he's
39 changing schools anyways, he might as well come
40 back to Los Angeles and be with his father"; is
41 that correct?
42 A The judge determined that the home state of the
43 child was California but was content to wait until
44 a break to remove him from my custody, until he
45 learned that we had just moved and, yes, he was
46 not in school yet.
47 Q So it was decided on its merits. It was more than

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- 1 simply -- and isn't it also true that -- that the
2 judge did not accept as true your allegation that
3 Mr. Fox had hidden him away for nine years?
4 A That wasn't discussed.
- 5 MR. MYHRE: My Lady, I'm just rising because my friend
6 started a question and I'm not sure if it was a
7 statement or a question. He said it was decided
8 on the merits, and then seemed to move to another
9 question.
- 10 MR. LAGEMAAT: So I'll go back.
- 11 Q So it was in fact a determination made on the
12 merits, it wasn't simply a jurisdictional issue.
13 It was a determination made on the merits and that
14 it would not be -- or it was appropriate for him
15 to start the school year a couple months in in Los
16 Angeles; is that correct?
- 17 A No, the jurisdiction issue was what was at the
18 heart. The timing issue, that that -- that was
19 the only caveat. It was just a matter of when he
20 would be returned, not if. His -- his being --
21 the judge determining to return (GR) to him was
22 not due to me moving. The judge determined that
23 (GR) would be returned because California was
24 determined to be the home state, not because I had
25 just moved.
- 26 Q But there was discussion of him going back to
27 Arizona --
- 28 A The timing. The timing for him to be returned.
- 29 Q The timing. But it wasn't an appropriate time
30 because it was two months into the school year;
31 correct?
- 32 A Yes.
- 33 Q Thank you. Back to the guns. You said when you
34 received the PAL attached to an email that you
35 were alarmed to learn that he had gun -- firearms
36 and that was the first time you knew he had
37 firearms; correct?
- 38 A It was the first time I knew that he owned
39 firearms or had the ability to purchase firearms.
- 40 Q Isn't it true that you knew that sometime in 2000
41 or 2005, 2006, he was in Arizona with a firearm?
- 42 A He had a gun but that wasn't -- you can get a
43 firearm in Arizona without having a licence or
44 legal permission to buy one. I thought the terms
45 for that were a little bit different in Canada.
- 46 Q But you said in evidence that you were alarmed to
47 find out that that was the first time -- you

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1 didn't know him to have guns before that. Is
2 it --
3 A His having guns scared me.
4 Q That's not the question I'm asking. I'm asking
5 you --
6 A I don't know if he owned that firearm. I just
7 knew that he was carrying it that day, and I only
8 knew about that because my mother told me. I
9 didn't see him with it. I didn't know if he owned
10 it, I don't know if he purchased it, I don't know
11 if he was carrying it for somebody, I don't know
12 how long he had it in his possession, I don't know
13 anything about it. All I know is that my mom saw
14 him with a gun in a bar, lining up bullets on the
15 table.
16 Q So it wasn't quite accurate to say that when you
17 received the PAL, that was the first time you were
18 aware that he had firearms; correct?
19 A It was the first time I knew he ever was able to
20 purchase them legally.
21 Q Okay. Well, that's not what you said --
22 A -- [indiscernible/overlapping speakers].
23 Q -- in your evidence. But moving on, who's --
24 who's Virginia Tomlin [phonetic]?
25 THE COURT: Mr. Lagemaat, you need to address that by
26 way of a question.
27 MR. LAGEMAAT: Okay. What was -- what was it, My Lady?
28 I just said "moving on".
29 THE COURT: Before you said "moving on". I don't want
30 to repeat it. If you're putting an inconsistency
31 to her, you need to give her an opportunity to
32 respond.
33 MR. LAGEMAAT: Okay.
34 Q You can respond to my last statement about the
35 gun. Isn't it true that when you said in evidence
36 that when you received his PAL was the first time
37 you were aware he had firearms? Is that false?
38 A That he owned firearms.
39 Q So now you're changing it to the first time you
40 knew he owned firearms.
41 A Had firearms --
42 MR. MYHRE: My Lady --
43 A Sorry. Wording.
44 MR. LAGEMAAT:
45 Q Okay, so it's wording.
46 MR. MYHRE: -- I think it's important to be accurate
47 about what was said in direct.

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1 MR. LAGEMAAT: I'll move on.
2 Q Who's Virginia Tomlin?
3 A Virginia Tomlin was an alias that I used when I
4 was 19 years old because I did not want to be
5 associated with my real name.
6 Q So Virginia, who's -- where did you get the name
7 Virginia? Is that your middle name or ...?
8 A My best friend grew up in Virginia.
9 Q So it's a fake name.
10 A Yes, an alias used because the actions that I was
11 -- at 18 years old, I did not want associated with
12 my real name. So it was an alias, yes.
13 Q You said in cross-examination that being caught
14 with the marihuana and arrested was the only time
15 you broke the law, and then later we expanded on
16 that, that it wasn't in fact the only time. Isn't
17 it true that you also have an arrest as Virginia
18 Tomlin?
19 A It was also related to marihuana. It was public
20 intoxication.
21 Q But it's not the marihuana incident we were
22 talking about, is it?
23 A You asked me if I had any charges related to
24 anything under the marihuana. I said marihuana
25 was the only reason I got in trouble, besides for
26 the stripper. Public intoxication --
27 Q Wasn't it also --
28 A -- was for marihuana.
29 Q Sorry. Wasn't it also for using a false name --
30 A No.
31 Q -- as Virginia Tomlin?
32 A No, not at all.
33 Q Was it for under the influence?
34 A Public intoxication.
35 Q So there's more than only the one time that you
36 said earlier. There's actually three times;
37 correct?
38 A Two of them were for marihuana, which is what you
39 asked.
40 Q I don't think I asked that.
41 A Okay.
42 MR. LAGEMAAT: No further questions, My Lady.
43 THE COURT: All right. Members of the jury, we're
44 going to stand down fairly briefly. It may be
45 five or 10 minutes, something of that nature,
46 please. If you wouldn't mind retiring to the jury
47 room.

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1
2 (JURY OUT)
3
4 THE COURT: And, Ms. Capuano, you'll need to leave the
5 courtroom for that same period of time, so we'll
6 stand down now.
7
8 (WITNESS STOOD DOWN)
9
10 (PROCEEDINGS ADJOURNED)
11 (PROCEEDINGS RECONVENED)
12
13 (JURY OUT)
14
15 THE COURT: [Recording begins]... need?
16 MR. LAGEMAAT: Like minutes. Five minutes.
17 MR. MYHRE: My Lady, the good news is we've
18 canvassed --
19 MR. LAGEMAAT: Yes.
20 MR. MYHRE: -- re-exam and there are no issues, so that
21 went smoothly.
22 THE COURT: All right. Then stand down for another
23 five minutes.
24 MR. LAGEMAAT: Thank you, My Lady.
25
26 (PROCEEDINGS ADJOURNED)
27 (PROCEEDINGS RECONVENED)
28
29 (JURY OUT)
30
31 [PROCEEDINGS IN ABSENCE OF JURY FROM 2:30:21
32 TO 3:40:31 P.M.]
33
34 MR. LAGEMAAT: Mr. Fox has decided, and you can confirm
35 this with him, that there's nine files. He
36 intends to have questioning on five of them. And
37 we're all ready to go. It won't take up much of
38 the court's time. And none of them are more than
39 one minute.
40 THE COURT: All right. So we're all set to go --
41 MR. LAGEMAAT: We're all set to go --
42 THE COURT: -- essentially?
43 MR. LAGEMAAT: -- My Lady.
44 THE COURT: All right. Mr. Myhre, you're nodding. Mr.
45 Fox, you're agreed?
46 THE ACCUSED: Yes.
47 THE COURT: All right. Please.

Proceedings**BAN ON PUBLICATION; INHERENT JURISDICTION**

1

2

(JURY IN)

3

4

THE COURT: Thank you. Thank you for your patience,
members of the jury. There's going to be some
further questions.

5

6

7

8

DESIREE CAPUANO, recalled.

9

10

CROSS-EXAMINATION BY MR. LAGEMAAT, CONTINUING:

11

12

Q Ms. Capuano, we talked in -- you talked in direct
evidence that Mr. Fox had accused you of punching
yourself in the stomach when you were pregnant in
an attempt to miscarry. Do you recall that
conversation?

13

14

15

16

17

A Yes.

18

Q Did you find this allegation amusing?

19

A Yes.

20

Q And it makes you laugh?

21

A It's ridiculous, yes.

22

Q You find it funny.

23

A The miscarriage was not funny but the fact that I
would punch myself in the stomach to try to abort
my child, yes. What's disturbing is that he told
our child that.

24

25

26

27

Q It was disturbing or funny?

28

A It was disturbing that he told our child. It's
funny to me.

29

30

Q So you find it funny.

31

A That that's his belief, yes. He was sitting right
there, he -- he was there with me that day and
it's completely ridiculous.

32

33

34

Q You're laughing now.

35

A Yeah.

36

Q Do you recall giving a statement to Constable --
or Corporal Wilcott of the Burnaby RCMP?

37

38

A Yes.

39

Q And, sorry, but that was on July 13th, 2016. How
was that statement taken? Did -- did he go down
to Arizona?

40

41

42

A Yes.

43

Q And he attended at your residence?

44

No, at the police station.

45

Q At the police station. And you recall giving that
statement; correct?

46

47

A Yes.

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1 Q Do you recall laughing about the allegation that
2 you'd punched yourself in the stomach?
3 A I probably did.
4 Q You probably did or you did?
5 A I probably -- I don't remember.
6 Q You don't remember?
7 A It was a three-hour interview.
8 Q So you don't know if you laughed about it.
9 A I don't.
10 Q I'm going to suggest to you you did.
11 A And that's why I said probably.
12 Q But you don't know.
13 A No. I haven't listened to the interview and I
14 haven't listened to it since I gave the interview.
15 I don't remember exactly what points --
16 Q I'm -- I'm going to play a clip of the interview
17 to you at this time.
18 A Yes.
19 MR. LAGEMAAT: And you can confirm whether you find
20 this allegation funny or you're laughing about it.
21
22 (AUDIO BEING PLAYED)
23 (AUDIO STOPPED)
24
25 MR. LAGEMAAT:
26 Q Would you now agree that you were laughing about
27 it in the statement you gave to Corporal Wilcott?
28 A I agree that the terms "funny" and "laughing" can
29 be done in various different ways. When you go
30 see a circus act, you can laugh because a
31 juggler's funny, but if you fall down and hurt
32 your elbow you can also laugh.
33 Q Really?
34 A If you hit your funny bone, sure. I've laughed
35 because of pain before. Everybody's --
36 Q So you were laughing --
37 A -- different.
38 Q -- there because -- sorry. I'm sorry to
39 interrupt. Continue.
40 A All I'm saying is that not every laugh is a
41 comical laugh, not every funny is a ha ha comical
42 funny. Some of them are ridiculous, some of them
43 are ludicrous, some of them are sarcastic, some of
44 them are ironic, some of them are ha ha funny.
45 That was not a ha ha funny, but it's ridiculous.
46 It's ridiculous that that would be the story that
47 my son would believe --

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- 1 Q But -- but --
- 2 A -- or know. But, yes, I did laugh.
- 3 Q But you were comparing it to falling down -- or
- 4 hurting your elbow, that laugh?
- 5 A No, that's not what I said at all.
- 6 Q So why were you laughing?
- 7 A Because it's ridiculous. Same reason I said in
- 8 the recording.
- 9 Q Okay. Do you in any way find it funny that quite
- 10 often during this time, and you've made this
- 11 allegation, that -- or tell me first, quite often
- 12 during this period did Mr. Fox know things about
- 13 you before you knew them? And I'm talking about
- 14 legal issues.
- 15 A Yes.
- 16 Q And did you find that funny?
- 17 A No, I found that scary. Like during the time of
- 18 that happening, that was during court proceedings.
- 19 The website hadn't come up, the harassment hadn't
- 20 really started yet, so really it was just a lot of
- 21 custody battles and emails back and forth. So I
- 22 thought it was creepy that he would be researching
- 23 and paying to get information on me before I would
- 24 even know about it. But at the time it was not --
- 25 I was not trying to say that there was harassment
- 26 or a fear for my life.
- 27 Q Well, at the time, in hindsight, do you find it
- 28 funny that he knew things before you knew them --
- 29 A No.
- 30 Q -- about you? You don't find it funny. Do you
- 31 recall giving the statement, the same one on July
- 32 13th, to Corporal Wilcott at the police station in
- 33 -- or Arizona?
- 34 A Yes.
- 35 Q And were you laughing when you were talking about
- 36 him knowing more than you --
- 37 A My laughing is a --
- 38 Q -- or sooner than you?
- 39 A My laughing is a coping mechanism in a lot of
- 40 cases. If I don't maintain some sense of --
- 41 Q I --
- 42 A -- sanity through this --
- 43 Q I asked you --
- 44 -- then I would lose my mind. And so a lot of
- 45 times I will laugh in -- so that I don't cry.
- 46 Q I asked you if you were laughing.
- 47 A I don't remember, but I assume that you have the

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1 clip so we can find out. I would assume that yes.

2 Q So you don't know if you were laughing at the
3 time.

4 A I don't remember everything that I laughed at
5 during this interview.

6 MR. MYHRE: My Lady, my friend has already established
7 that she doesn't remember giving this statement.
8 There's no utility in asking her whether or not
9 she remembers every time.

10 MR. LAGEMAAT: I'm going to play for you a clip, Ms.
11 Capuano. Sorry, it's a little bit hard to get on
12 the precise seconds and I've got to play it up to
13 that portion.

14

15 (AUDIO BEING PLAYED)

16 (AUDIO STOPPED)

17

18 A Yeah, I was about to cry.

19 MR. LAGEMAAT:

20 Q Would you agree with -- pardon me?

21 A I was about to cry, so I laughed instead.

22 Q That was about to cry?

23 A That was me about to cry, and so I laughed
24 instead. That's the way I go on.

25 Q Do you think it's funny, in hindsight, the fact
26 that you are able to represent yourself in family
27 court and win?

28 A I think that it was ironic that I had spent a lot
29 of money on lawyers and gotten nowhere in my case
30 until I took over. I think that's ironic, yeah.

31 Q Ironic or funny?

32 A They can be construed as the same.

33 Q Do you recall giving the -- I've asked you, the
34 statement, and we're going to talk about the same
35 statement, Corporal Wilcott. Do you recall
36 talking about being able to represent yourself in
37 court, family court, and winning, and laughing
38 about the -- the court deferring a child support
39 request? Do you recall laughing about that?

40 A I don't remember it being said like that.

41 MR. LAGEMAAT: Again I'm going to play a clip to you,
42 Ms. Capuano, and it will just take a second to get
43 to it, or 30 seconds.

44

45 (AUDIO BEING PLAYED)

46 (AUDIO STOPPED)

47

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1 MR. LAGEMAAT:
2 Q Would you agree with me you were laughing about
3 what happened in court, you won and the child
4 support being deferred?
5 A No.
6 Q You would not --
7 A I don't agree with that.
8 Q -- agree you were laughing.
9 A I don't agree that I was laughing because I was
10 not assigned child support, no. That's not what
11 that meant at all.
12 Q What were you laughing about?
13 A The laugh wasn't a laugh because the situation was
14 funny, the laugh was in exasperation again. This
15 has been really hard. The laughing is a coping
16 mechanism.
17 Q Have you laughed at all here the last three days?
18 A Yes. You just called me on it.
19 Q Did you find it funny, Ms. Capuano, when your
20 coworkers would approach you, knowing that you had
21 said on LinkedIn -- or a LinkedIn profile in your
22 name had said that you were a stripper? Did you
23 find that funny?
24 A No.
25 Q And in the same statement with Corporal Wilcott at
26 the police station, did you laugh about that?
27 A Probably, yes. And I think that that proves my
28 point. Anybody in a work situation, if they're --
29 come out with their colleagues and their
30 colleagues tell them that they saw a LinkedIn
31 profile that says they're a stripper, I don't
32 think that anybody would find that comically
33 funny.
34 Q But why would they laugh, then?
35 A It's in coping. If I don't laugh about some of
36 these things, if I don't, then I cry.
37 Q But you don't recall if you laughed, is that
38 correct, in -- with Corporal Wilcott?
39 A I can't guarantee you that that's one of the
40 moments. I don't remember --
41 Q Yes.
42 A -- every time. And my laugh is not a ha ha ha,
43 it's a "I can't believe I made it through this. I
44 can't believe I made it through another one of
45 these things."
46 Q I'm going to play a short clip for you, Ms.
47 Capuano.

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1 A Sure.
2
3 (AUDIO BEING PLAYED)
4 (AUDIO STOPPED)
5
6 MR. LAGEMAAT:
7 Q Would you agree with me, Ms. Capuano, that you
8 were laughing there?
9 A Not laughing at the situation, but I did in
10 telling Wilcott about it. Trying to get through
11 the story is hard.
12 Q So -- so you're saying that that wasn't genuine
13 laughing in any of these clips.
14 A No.
15 Q Sorry, I'm just getting to the last one. One
16 minute, please.
17 I think, from all of this evidence you've
18 gone through, and you're just about finished,
19 would you say that you were left with some scars
20 from this whole experience?
21 A Yes. It's still happening.
22 Q And do you find it humorous at all that you've
23 been left with scars from all of this?
24 A No, but I do have pride in myself for my strength
25 and my resiliency.
26 Q I'm going to play a short clip for you, Ms.
27 Capuano, in a second here. And -- and, sorry,
28 this again you recall giving the statement to
29 Corporal Wilcott --
30 A Yes.
31 Q -- in Phoenix in the police station.
32 A Tucson.
33 MR. LAGEMAAT: Tucson.
34
35 (AUDIO BEING PLAYED)
36 (AUDIO STOPPED)
37
38 MR. LAGEMAAT:
39 Q Would you agree with me, Ms. Capuano, you were
40 laughing in that clip?
41 A Yes, I was.
42 Q But now you're crying.
43 A That was what the laugh was to prevent.
44 Q What would -- what would have been wrong with
45 crying there? Why can you cry here but --
46 A I'd already cried.
47 Q -- not there?

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- 1 A I was just trying to get through the story. We
2 still had years to go through. I couldn't break
3 down that stuff.
- 4 Q Why not?
- 5 A Because I was trying to get through the story.
- 6 Q Isn't that what we're doing here?
- 7 A Yeah.
- 8 MR. LAGEMAAT: No more questions.
- 9 MR. MYHRE: My Lady, if there's any chance we could do
10 re-exam, I think I'll be about 10 minutes. And if
11 we're longer than that, I promise I will just
12 stop.
- 13 THE COURT: Members of the jury, is there anyone who
14 will have difficulty staying for another 10
15 minutes?
- 16
- 17 **RE-EXAMINATION BY MR. MYHRE:**
- 18
- 19 Q Ms. Capuano, I'm just going to show you a document
20 here. And, My Lady, pardon me, I only have one
21 copy of this document, so I'm going to ask the
22 question from right here, if that's okay.
- 23 Ms. Capuano, if you flip through these, it
24 just looks like emails between yourself and -- and
25 Richard, some that we've -- in fact all of them
26 that we've gone through already.
- 27 A Yes.
- 28 MR. MYHRE: So, members of the jury, I'm going to refer
29 Ms. Capuano to some of the emails that my friend
30 referred her to in the binder.
- 31 Q And so, Ms. Capuano, can I see that document? The
32 first email I'm showing you is dated January 21st,
33 2014, at 8:34 p.m., and it's titled "On the topic
34 of love"?
- 35 A Yes.
- 36 Q The original email in that chain, so the first one
37 that came from -- from Patrick Fox at 8:34 p.m.,
38 was {GR} cc'd on that?
- 39 A Yes.
- 40 Q And so just for the record, I'm showing you a
41 document. Does that refresh your memory about
42 whether {GR} was on that chain?
- 43 A Yes.
- 44 Q The next document I'm showing you is an email
45 titled "Telephone call", dated December 17th,
46 2014, at 8:30 p.m.
- 47 A Yes.

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- 1 THE COURT: Can you give us a clue where we find this,
2 please?
- 3 MR. MYHRE: So it's titled "Telephone call" and it's
4 dated December 17th, 2014.
- 5 THE COURT: All right.
- 6 MR. MYHRE: And I'm looking at the originating email in
7 that chain.
- 8 THE COURT: Members of the jury, it's about what I've
9 numbered the eighth page in the defence binder,
10 Exhibit 2. In Exhibit 2, it's about page 8.
- 11 MR. MYHRE:
- 12 Q Ms. Capuano, having looked at this copy of what
13 looks like that email, does that refresh your
14 memory about whether [REDACTED] was cc's on the
15 original chain?
- 16 A Yes.
- 17 Q And was he?
- 18 A Yes.
- 19 Q The next email I'm showing you is dated January
20 15th, 2015. It's titled "A little test".
- 21 A Yes.
- 22 Q And I'm showing you what appears to be the
23 original email in the chain from Patrick Fox at
24 9:44 p.m. on January 15th, 2015. Having looked at
25 this document, do you remember now if [REDACTED] was
26 cc'd on this first email?
- 27 A He was included, yes.
- 28 Q Moving on to an email dated January the 11th,
29 2015, titled "Your loving home and parental
30 teaching and guidance".
- 31 A Yes.
- 32 Q I'm showing you what appears to be the originating
33 email in that chain, from Patrick Fox at 9:04 a.m.
34 Was [REDACTED] cc'd on the originating email?
- 35 A Yes.
- 36 Q In that same chain there was -- the next email in
37 the chain is dated January the 11th, 2015, at
38 10:20 a.m. It just followed -- I think, in the --
39 in the defence book it just followed right on top
40 of the first one.
- 41 A Yes.
- 42 Q There are two emails in a row from -- from Patrick
43 Fox. Was [REDACTED] cc'd on the second one?
- 44 A I believe so, yes.
- 45 Q Moving ahead to an email January 26th, 2015,
46 titled "Your talk with [REDACTED]".
- 47 A Yes.

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- 1 Q I'm showing you what appears to be the originating
2 email in that chain, from Patrick Fox at 10:03
3 p.m. on January 26th, 2015. Having looked at this
4 document, can you tell us whether {GR} was cc'd
5 on that first email?
- 6 A Yes.
- 7 Q Moving ahead to an email titled "Your belief in my
8 motives", dated February the 8th, 2015. I'm
9 showing you what appears to be about the third
10 email in the chain.
- 11 A Yes.
- 12 Q Was {GR} cc'd on the third email in that chain?
- 13 A Yes.
- 14 Q And that was an email from Patrick Fox to you
15 dated February the 8th, 2015, at 10:08 a.m.
- 16 A Yes.
- 17 Q Lastly, showing you an email from May 7th, 2015,
18 titled "More of what I know".
- 19 A Yes.
- 20 Q And I'm showing you the originating email on that
21 chain, May 7th, 2015, at 1:07 p.m., from Patrick
22 Fox to you. Can you tell us whether {GR} was
23 cc'd on that email?
- 24 A Yes.
- 25 Q Ms. Capuano, I'm showing you a document. Could
26 you just take a quick look at that and tell me
27 whether you recognize it.
- 28 MR. MYHRE: There's a copy for Your Ladyship.
- 29 THE COURT: Thank you.
- 30 MR. MYHRE:
- 31 Q Ms. Capuano, do you recognize this document?
- 32 A Yes.
- 33 Q And this is an email from Richard that came to you
34 in the middle of a long chain that we've looked at
35 over the last few days.
- 36 A Yes.
- 37 Q And is that an accurate printout of the email?
- 38 A Yes.
- 39 MR. MYHRE: My Lady, could that be marked as an
40 exhibit, please?
- 41 THE COURT: Don't we need to know more about it?
- 42 MR. MYHRE: I believe, My Lady, she's authenticated it
43 as an email she received in the middle of that
44 chain and that's --
- 45 THE COURT: Well, don't we need to know what chain?
- 46 MR. MYHRE: There is a subject line on that email.
- 47 Q Ms. Capuano, could you read it out?

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1 A "Your loving home and parental teaching and
2 guidance".

3 THE COURT: All right. Any objection?

4 MR. LAGEMAAT: No objection --

5 THE COURT: All right.

6 MR. LAGEMAAT: -- My Lady.

7 THE COURT: So that would be what?

8 THE CLERK: Exhibit 3, My Lady.

9 THE COURT: Thank you.

10 MR. MYHRE: Thank you.

11

12 **EXHIBIT 3: Printout of email chain from**
13 **Patrick Fox to Desiree Capuano dated**
14 **01/14/2015, subject line "Your loving home**
15 **and parental teaching and guidance"**
16

17 MR. MYHRE:

18 Q Ms. Capuano, I'm showing you another document. Do
19 you recognize this as the email you sent that
20 started the long chain we looked at titled
21 "{GR}'s summer visitation 2015"?

22 A Yes.

23 Q And is this an accurate copy of that email?

24 A Yes.

25 MR. MYHRE: My Lady, could that be marked as the next
26 exhibit, please?

27 THE COURT: Okay. No objection?

28 MR. LAGEMAAT: No objection, My Lady.

29 THE CLERK: Exhibit 4, My Lady.

30

31 **EXHIBIT 4: Printout of email from Desiree**
32 **Capuano to Patrick Fox dated 04/20/2015,**
33 **subject line "{GR} summer visitation 2015"**
34

35 THE SHERIFF: Counsel, we're short by five.

36 MR. MYHRE: By five?

37 THE SHERIFF: Yeah.

38 MR. MYHRE: Please pardon me, My Lady. I'll have to
39 bring in new copies tomorrow.

40 THE COURT: Perhaps the jurors wouldn't mind sharing
41 for now, and Mr. Myhre will bring some copies
42 tomorrow.

43 MR. MYHRE: I'm hitting 4:10, My Lady, but these are my
44 last -- this is the last document I'm asking
45 about.

46 THE COURT: All right.

47 MR. MYHRE: And I have a copy for Your Ladyship.

**Desiree Capuano (for Crown)
re-exam by Mr. Myhre
BAN ON PUBLICATION; INHERENT JURISDICTION**

1 THE COURT: Thank you.
2 MR. MYHRE:
3 Q Ms. Capuano, do you recognize this as a printout
4 of what appears to be all or virtually all emails
5 between yourself and -- and Mr. Riess between May
6 2016 going back to February 2014.
7 A Yes, these are the emails.
8 Q Okay. And do you see that there's some
9 highlighting on this page?
10 A Yes.
11 Q And can you just look it over and tell me if you
12 agree that this is accurate? The emails that are
13 highlighted in pink are email -- pardon me, let me
14 back up. I'm going to suggest that every
15 highlighted email is an originating email in a
16 chain.
17 A Okay.
18 Q There may or may not have been follow-up emails.
19 Now, the pink highlighting shows an email that you
20 initiated, the yellow highlighting shows an email
21 that Richard initiated but to which you did not
22 respond --
23 A Okay.
24 Q -- and the green highlighting shows an email that
25 Richard initiated to which you did respond.
26 A Okay.
27 MR. MYHRE: Just look through that document and tell me
28 if that appears to be accurate, please.
29 My Lady, may I give copies to the jury?
30 THE COURT: No objection?
31 MR. LAGEMAAT: No objection.
32 MR. MYHRE:
33 Q Ms. Capuano, does my characterization of the
34 highlighting appear to be accurate?
35 A Yes.
36 MR. MYHRE: My Lady, if this could please be marked as
37 an exhibit.
38 THE COURT: All right.
39 MR. LAGEMAAT: No objection.
40 THE CLERK: Exhibit 5, My Lady.
41
42 **EXHIBIT 5: Document titled "Desiree Capuano"**
43 **containing printout of emails**
44
45 MR. MYHRE: My Lady, those are all my questions.
46 THE COURT: All right. Thank you very much.
47 Members of the jury, thank you for your

Proceedings**BAN ON PUBLICATION; INHERENT JURISDICTION**

1 attention and your patience through the day when
2 you've had to spend some time in the jury room. I
3 ask you to come back tomorrow ready to start at
4 the usual time, please. Thank you.

5
6 (JURY OUT)

7
8 THE COURT: Is there anything else we need to deal
9 with?

10 MR. MYHRE: No, My Lady.

11 MR. LAGEMAAT: No, My Lady.

12 THE COURT: I take it that's the end of your
13 involvement, Mr. Lagemaat.

14 MR. LAGEMAAT: Yes

15 THE COURT: Thank you very much.

16 MR. LAGEMAAT: Thank you, My Lady.

17 THE COURT: Thank you, Ms. Chatha.

18 Ms. Capuano, thank you for coming, and I
19 understand you're excused now. There's no need
20 for her to remain, I take it.

21 A Thank you.

22
23 (WITNESS EXCUSED)

24
25 (PROCEEDINGS ADJOURNED TO JUNE 16, 2017, AT
26 10:00 A.M.)

27
28
29
30 Transcriber: K. Lowe

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

K. Lowe

K. Lowe
Court Transcriber