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**TRANSCRIPT OF PROCEEDINGS**

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**MAGISTRATES COURT**

**COATES, Magistrate**

**MAG--00163239/19(1)**

**POLICE**

**Complainant**

**and**

**SIMON JOHN HICKEY**

**Defendant**

**BRISBANE**

**9.00 AM, TUESDAY, 12 JANUARY 2021**

**DAY1**

Any Rulings that may be included in this transcript, may be extracted and subject to revision by the Presiding Judge.

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BENCH: I have this matter for hearing for two days today in the matter of Simon Hickey. For the record, please.

5 MR B. RAUT: For the record, my name is Raut, R-a-u-t, initial B. I appear for the prosecution, your Honour. I am counsel and I appear for police prosecution. Your Honour, I'm not sure why you've got it listed for two days, your Honour.

BENCH: It's magical, isn't it.

10

MR RAUT: It is magical. One day is enough, your Honour, as far as my estimate is concerned.

15 BENCH: Okay. So let's just – so I'm a little bit deaf, so you'll have to just spell your surname again, if you could.

MR RAUT: I will, your Honour. R-a-u-t, Raut, initial B.

BENCH: Yes.

20

MR RAUT: And counsel appear for the police prosecution.

BENCH: Okay. Counsel for - - -

25 MR RAUT: Police prosecution.

BENCH: - - - police prosecution.

MR RAUT: Yes, your Honour.

30

BENCH: Okay. Well, we've got a defendant here. So can we call Simon John Hickey. Has he got Wallace O'Hagan acting for him?

35 MR RAUT: No, your Honour. My understanding is that at this stage he is self-represented.

BENCH: Is he in custody?

MR RAUT: No, your Honour.

40

BENCH: So an application – are there any outstanding orders?

MR RAUT: Not - - -

45 BENCH: There's an evidence by video. Who's that of?

MR RAUT: No, evidence by phone. That potential other officers that are in New South Wales, but I'm not going to call them, your Honour.

5 BENCH: Okay. So it's a breach of a restraining order.

MR RAUT: Yes, your Honour.

BENCH: Okay. Well, we haven't got a defendant, so - - -

10 CLERK: Your Honour, the matter was originally listed in court 18, and I've moved it here. So I'm just going go and ask [indistinct]

BENCH: All right, okay. Well, can we – do you think he might be sitting in the back of court 18?

15 CLERK: He could be, your Honour.

BENCH: Do you know what he looks like, Mr Raut?

20 MR RAUT: No, I have never seen him, your Honour.

BENCH: All right.

25 MR RAUT: Your Honour, I was going to ask if I could have 10 minutes. I have a disc to set up, and I - - -

BENCH: No, no, no. No, I can't do anything more until I get the defendant in here.

30 MR RAUT: Yes, I hear you.

BENCH: Okay. It's inappropriate for me to do that, Mr Raut.

MR RAUT: Yes.

35 BENCH: We need to locate the defendant.

MR RAUT: Sorry, your Honour, I was only talking about an electronic set-up, but that's it.

40 BENCH: No, no. We need to locate the defendant first.

MR RAUT: I understand, your Honour.

45 BENCH: So he has District Court bail. He was granted bail in the Supreme Court.

MR RAUT: That's – yes, that's something I am not sure what it is was, but he is - - -

BENCH: Yes, so he doesn't have bail from this court.

MR RAUT: No, your Honour. I am – he has a bail from a higher court. I am not sure why that happened.

5

BENCH: Well, it includes this charge as well – breach of a restraining order between the 5<sup>th</sup> of July and the 28<sup>th</sup> of August. So I don't have anything to forfeit, do I, if he doesn't turn up. It has to be remitted to the Supreme Court. Do you know what happened to his District Court matters?

10

MR RAUT: No, your Honour.

BENCH: Well, there are District Court matters which relate to the Civil Aviation Regulations under the Commonwealth.

15

MR RAUT: I'm not sure, sorry, your Honour.

BENCH: It's in his bail:

20

*I must appear at the Brisbane District Court on the 7<sup>th</sup> of August 2020 or on any other date or as stated by the Brisbane District Court.*

MR RAUT: I missed that. Just one moment, and I will just - - -

25

BENCH: Okay. So I need to know what happened to those matters. Mr Amos, can I get you to check the District Court site to find out what date the man executed his bail.

CLERK: Yes, your Honour.

30

BENCH: And can you find out whether those civil – where those Civil Aviation Regulations Commonwealth files have gone, because they're not on this file, or to see whether they're still in the court system.

35

CLERK: Yes, your Honour. I [indistinct]

BENCH: All right, could you. All right. And I'm just going to stand till – I need to know what happened in the District Court.

40

MR RAUT: Yes, your Honour.

BENCH: This charge obviously wasn't remitted in the District Court, whether there's an outcome in the District Court, I need to know those. And he – did you reply to his submission that he sent to you?

45

MR RAUT: Your Honour, it had. Our office has responded that his matter is to proceed, yes, your Honour.

BENCH: Okay. All right.

MR RAUT: That's my understanding, your Honour, yes.

5 BENCH: Do you have a copy of the original restraining order issued from Richlands on the 25<sup>th</sup> of January 2018?

MR RAUT: I do have a copy, your Honour.

10 BENCH: Okay. Can I have a look at that while I'm waiting. Thank you. Thank you. So could I leave it at this: I'm going to give the defendant, wherever he is, another probably 20 minutes to turn up. Have you got all your witness here?

MR RAUT: Yes, your Honour.

15

BENCH: Okay. The problem is I've got no capacity to issue a warrant for his arrest.

MR RAUT: Yes.

20

BENCH: Because it's a District Court bail. So I have no capacity to forfeit a District Court bail. That's out of my jurisdiction.

25 CLERK: Sorry, your Honour. In relation to [indistinct] the matters in the District Court are with the – he has matters on the 1<sup>st</sup> of April [indistinct]

BENCH: And what for?

30 CLERK: It's for a trial for carriage services [indistinct]

BENCH: Sorry, what is it?

CLERK: Using carriage services to [indistinct]

35 BENCH: Yes.

CLERK: And matters – a similar – the same [indistinct] scheduled for [indistinct]

40 BENCH: Okay. Can you give me a printout of it. Can you have a look into it, because it's relevant to the case. If he's going to the District Court in relation to similar offences involving the same accused person, then it is logical that the matter should be dealt with in the District Court in the event that he's sentenced for all those matters.

45 MR RAUT: Yes, your Honour.

BENCH: This matter would then follow in the usual course.

MR RAUT: Yes, your Honour. I – it will be - - -

BENCH: Okay.

5 MR RAUT: Yes.

BENCH: Okay. So I need to have more information to be able to form a view on it.

10 MR RAUT: Thank you, your Honour. I will look into that. Thank you. And giving this to - - -

BENCH: All right. The other issue is he has a whole lot of other charges that seem to relate to 2017 and 2018 which relate to Commonwealth – Civil Aviation Safety Regulations of the Commonwealth. Now, I'm not sure. On his undertaking, they're obviously District Court matters which, presumably:

*Operate model aircraft over populous area at height less than height.*

20 Well, that sounds to me like the operation of a drone. And he's got two, four, six, eight, 10, 12 of those.

MR RAUT: Yes.

25 BENCH: Okay. So I need to find when they are in the District Court as well. But there seems to be another range of offending. Can you see in our system whether we've committed him for that, because that's the stalking charge, which has got to go up. So can you check our system. So I need – has he got a criminal – not for production criminal history?

30 MR RAUT: I only have criminal history, your Honour. Sorry, your Honour, I can - - -

BENCH: Well, I need to know all this - - -

35 MR RAUT: Okay.

BENCH: - - - to find out whether the matter should proceed.

40 MR RAUT: I can't - - -

BENCH: It's a District Court bail. We haven't sent him a notice.

CLERK: [indistinct]

45 BENCH: Okay. You need to write it down for me, Mr Amos, because I can't hear you. He has also brought an application previously to say he was out of the State at

the time the offence occurred. I mean, I'm just putting that on the record because I'm just looking through the court file. Do you know about that?

5 MR RAUT: Yes, I think that was his case, your Honour. That is his defence that he has always been saying that he was out of State.

BENCH: Yes, okay. All right. Okay. So could I perhaps stand down till a quarter to 10. And then I need to have all that information.

10 MR RAUT: Thank you, your Honour. I will - - -

BENCH: If in fact the charges of the District Court are matters that are coming on in April that relate to the same person, this person who's – the person for whom the restraining was granted, which is - - -

15 MR RAUT: Siobean Dash, yes.

BENCH: Okay. Is Siobean Dash a woman that he was in a relationship with, or is - - -

20 MR RAUT: No, your Honour. Siobean Dash is an investigator in relation to a Fair Trading office, your Honour. So there's no relationship, your Honour.

BENCH: Okay. So she's a government official.

25 MR RAUT: Yes, your Honour.

BENCH: Okay. All right. Okay. I've got the picture. And how many witnesses have you got waiting outside the court?

30 MR RAUT: Three police officers – there's two police officers and then one civilian working for police. Yes, three people here.

BENCH: And where's Ms Dash?

35 MR RAUT: That is one thing I was going to – your Honour, we don't have the complainant in this case. Our case – the defendant is not here, but that was the first thing I was going to inform, but - - -

40 BENCH: Right, okay. All right.

MR RAUT: - - - I was waiting for the defendant.

45 BENCH: Well, no, I don't want to hear this yet. I need more information, so let's go back to it. I'll adjourn till a quarter to 10, thanks.

MR RAUT: Thank you, your Honour.

**ADJOURNED**

**[9.16 am]**

**RESUMED**

**[10.00 am]**

5

BENCH: Yes. Now, Simon John Hickey.

DEFENDANT: Yes.

10

BENCH: Is that you, sir?

DEFENDANT: Yes, your Honour.

15

BENCH: Okay. For the record please.

MR B. RAUT: Yes, your Honour, for the record my name is Raut, R-a-u-t, initial B., counsel appearing for the Police Prosecution, your Honour.

20

BENCH: Thank you. Now, I've got here a matter that's to proceed today on a breach of a restraining order. Mr Hickey, while I was waiting for you to come to court I asked the Police Prosecutor to check on what your District Court matters were doing. So are you able to inform the court about that?

25

MR RAUT: Yes, your Honour. In relation to the matter of Civil Aviation - - -

BENCH: Yes.

30

MR RAUT: - - - it appears that those matters have been finalised. Yes, they said maybe last week. Mr Hickey, is that correct?

DEFENDANT: A couple of weeks ago, yes.

35

MR RAUT: And Mr Hickey was fined in relation to those matters.

BENCH: Okay.

40

MR RAUT: So that's in relation to the Civil Aviation, your Honour. Now, in relation to using a carriage service, those matters are still outstanding. They are before the District Court. My understanding is that before – it's on 4<sup>th</sup> – 1<sup>st</sup> of April 2021. I'm not sure whether that's for a trial or sentence: whether Mr Hickey would like to add anything to that.

45

DEFENDANT: I believe that's a trial date. I was in the court earlier, your Honour. I apologise for keeping you waiting. I was in – the board said 18 and because I [indistinct]



BENCH: Yes. Yes, we sent someone out to find you. We thought you were down there because there was a late scratching to this court.

5 DEFENDANT: So the date is correct. I believe there's a – a pre – a pre-trial hearing to determine whether it should go ahead before then, but it's one of the – the user carriage service matter is set down for trial in early April. I know that.

BENCH: Okay. And do those charges relate to the same complainant?

10 MR RAUT: No, your Honour. Nothing to do with this complaint.

BENCH: Okay. All right.

15 MR RAUT: That's correct, Mr Hickey?

DEFENDANT: That's – yes, that's correct. They appeared in their own different time periods and it doesn't have anything to do with it.

20 BENCH: All right. So this relates to an order that was made in 2018.

MR RAUT: Yes, your Honour.

BENCH: All right. Okay.

25 MR RAUT: And in relation to Siobean Dash only, your Honour.

30 BENCH: Yes, okay. All right. Mr Hickey, could you please stand. You're charged that between the 5<sup>th</sup> of July 2019 and the 28<sup>th</sup> of August 2019 you knowingly contravened a restraining order in respect of yourself on the 25<sup>th</sup> of January 2018 at the Richlands Court. How do you plead to that charge?

DEFENDANT: Not guilty, your Honour, and I understand the charge.

35 BENCH: Thank you. Now, you're representing yourself today?

DEFENDANT: That's correct, your Honour.

40 BENCH: Okay. I'm not able to give you legal advice, but I can help you with the procedure. You're saying "yes".

DEFENDANT: Thank you, your Honour. I'm relatively familiar with the procedure. Obviously, I'm not a trained lawyer. I think I can muddle my way through it.

45 BENCH: You can muddle your way through. So there's nothing about the processes that I need to tell you. The onus rests on the Prosecution to prove each and every element of the offence beyond a reasonable doubt.

DEFENDANT: I understand that. And I have a fair idea of how the process will go. He will lead his evidence and any witnesses. I will have a chance to address the court after that and give events on my own behalf.

5 BENCH: Okay. Now, there's a couple of things I need to tell you. First of all, if you have a – the charge reads between the between dates of the 5<sup>th</sup> of July and the 28<sup>th</sup> of August 2019, which is a short period of time. If you want to cross-examine the witnesses you will have to put to them your side of the story and allow them to comment upon that. If, at any time, you want to talk to the court or you're objecting  
10 or you want some clarification, you only need to stand and then we can discuss that. There's a person sitting in the back of the court. Are they your witness – are any of those your witnesses?

DEFENDANT: No, he won't be involved in the trial today, your Honour.

15

BENCH: All right. Okay. So that's not one of your witnesses.

DEFENDANT: No.

20 BENCH: No. All right. Okay. So at the end of the Prosecution case you can decide whether you will make a no case submission. Are you aware of those details?

DEFENDANT: I intend to make a no case submission when the time comes, your Honour.

25

BENCH: All right. Okay. And if I determine there is a case to answer, you will then have to make the decision as to whether you will give evidence on your own behalf.

30 DEFENDANT: I understand that, your Honour.

BENCH: All right. Okay. Is there anything else I can explain to you, Mr Hickey, before I start?

35 DEFENDANT: No, I'm happy to proceed. Thank you.

BENCH: All right. Okay. Well, then, Mr Raut, over to you.

40 MR RAUT: Thank you, your Honour. Your Honour, Mr Hickey has kindly – we had some talk and Mr Hickey has – and we would have come to some agreed facts, your Honour. If I can - - -

BENCH: All right. Agreed facts. Okay.

45 MR RAUT: If I can put - - -

BENCH: Is that right, Mr Hickey?

DEFENDANT: Yes, your Honour, we've agreed on a number – on that.

BENCH: All right. Okay.

5 MR RAUT: Your Honour, order – order - - -

BENCH: What are the facts?

10 MR RAUT: - - - is not in dispute. The order is accepted. That's made on - - -

BENCH: The order of the court - - -

MR RAUT: Made on 25<sup>th</sup> of January 2018.

15 BENCH: At the Richlands Magistrates Court by Magistrate Simpson is agreed.

MR RAUT: Agreed. Yes, your Honour.

20 BENCH: Yes.

DEFENDANT: Yes, your Honour.

25 MR RAUT: And the defendant – we don't have to prove the defendant either. Might Mr Hickey accept that he's the one subject to the - - -

BENCH: So he agrees that he's the same person mentioned in the order.

DEFENDANT: Yes, your Honour.

30 BENCH: Okay. So he is – he is the named person.

MR RAUT: Yes.

35 BENCH: Okay.

MR RAUT: Now, your Honour, the Prosecution case is that he published material in relation to Siobean Dash on his website and the name of the website is – if I can spell it to your Honour.

40 BENCH: Published material on his website. Have you got a website?

DEFENDANT: I did have.

45 MR RAUT: The website – the name of the website is – your Honour - - -

DEFENDANT: Sorry.

BENCH: What's the – yes, go on. Just tell me what you've agreed and I will write it down.

MR RAUT: Yes. SmerffElectrical.net. Yes.

5

BENCH: Smoke?

MR RAUT: No, sorry, it's - - -

10 DEFENDANT: Smerff.

MR RAUT: Your Honour, S-m-e-r - - -

BENCH: S - - -

15

MR RAUT: S-m-e-r-f-f.

BENCH: Smerff.

20 MR RAUT: Electrical. Together, your Honour.

BENCH: Elexical?

MR RAUT: Electrical.

25

DEFENDANT: Electrical, one word.

BENCH: SmerffElectrical.

30 DEFENDANT: Correct, one word.

BENCH: Yes.

MR RAUT: .net.

35

BENCH: Yes.

MR RAUT: Yes.

40 DEFENDANT: I believe it was .com, but it's not really relevant. It was a website and it did exist. And I - - -

BENCH: Smerff Electrical.

45 DEFENDANT: And I agree that I own that website.

BENCH: Right. So that is your website.

MR RAUT: That is his website, he has admitted.

BENCH: All right. Okay. So he admits that.

5 MR RAUT: He is the operator of that electrical – that website is accepted.

DEFENDANT: I accept that I'm the administrator of that website. I'm not the only operator, but I accept that I'm the administrator. I pay the bills and I own it.

10 MR RAUT: All right. I accept.

BENCH: Yes.

15 MR RAUT: Your Honour, we'd rely on two materials found on that website. They were on – just one moment, your Honour – on 13<sup>th</sup> of July.

BENCH: Fourteenth of July?

20 MR RAUT: Just one moment, your Honour. I will just grab these – and 8<sup>th</sup> of August, your Honour.

BENCH: Eighth of August.

25 MR RAUT: Your Honour, the 13<sup>th</sup>, not the 14<sup>th</sup> – 13<sup>th</sup> of August, your Honour.

BENCH: I can't hear that. Sorry. The 13<sup>th</sup> or the - - -

MR RAUT: Thirteenth, your Honour.

30 BENCH: The 13<sup>th</sup>.

MR RAUT: Yes, your Honour, 13<sup>th</sup> of July and 8<sup>th</sup> of August.

35 BENCH: Fourteenth of July and 8<sup>th</sup> of August. Yes, okay.

MR RAUT: Yes.

DEFENDANT: No.

40 BENCH: Okay. So - - -

DEFENDANT: May I make a correction? I believe it's the 28<sup>th</sup> of August. They allege that the material appeared between the 5<sup>th</sup> of July and the 28<sup>th</sup> of August. I'm sure that's what's on the statement. But - - -

45 MR RAUT: Yes.

DEFENDANT: Yes, because the 28<sup>th</sup> of August was the day I was taken into custody. It's on the statement, but it's – that's when they allege the offence occurred, between those two dates. I think what he's going to say is that it actually occurred on the 13<sup>th</sup>, but the statement says between those two dates.

5

MR RAUT: Thirteenth of August?

DEFENDANT: Yes.

10 MR RAUT: So I will go with that, one three, your Honour, 13<sup>th</sup> of August.

BENCH: All right. And - - -

MR RAUT: And 8<sup>th</sup> of August, 8<sup>th</sup>.

15

BENCH: Yes.

DEFENDANT: No, I think you've misunderstood. The police allege that the offence occurred between the 5<sup>th</sup> of July and the 28<sup>th</sup> of August. And primarily that the material appeared around the 13<sup>th</sup> of July. That's what they're alleging. It's on the statement.

20

MR RAUT: Anyway, we – sorry, excuse me. I just want – can I just have one moment.

25

BENCH: Yes.

MR RAUT: Yes, the 8<sup>th</sup> of August. On the 13<sup>th</sup> of July and 8<sup>th</sup> of August there are videos post – videos posted on that website that relates with Siobean Dash and we say that's the breach of the order.

30

BENCH: A video?

MR RAUT: Yes, there are – yes, your Honour.

35

BENCH: A video?

MR RAUT: Yes, your Honour.

40

BENCH: One video?

MR RAUT: One video on the 13<sup>th</sup> of July.

BENCH: Yes.

45

MR RAUT: And two videos on the 8<sup>th</sup> of August.

BENCH: Two videos on the 8<sup>th</sup> of August.

MR RAUT: Now, Mr Hickey admits that these materials were on the website.

5 BENCH: So that is correct, Mr Hickey? You admit that that is - - -

DEFENDANT: I – I admit - - -

BENCH: But this is 2019, isn't it?  
10

MR RAUT: Yes, your Honour.

DEFENDANT: I accept that they appeared on a website. I don't accept that I had  
any prior knowledge of it or contribution to it.  
15

MR RAUT: That's the – that's the trial about – yes.

BENCH: Yes.

20 MR RAUT: And, basically, they are the admitted facts, your Honour.

BENCH: Okay.

MR RAUT: Your Honour, in - - -  
25

BENCH: So - - -

MR RAUT: Yes.

30 BENCH: - - - you – just so I'm clear on where Mr Hickey is, Mr Hickey, you admit  
that these videos appeared on Smerff Electrical?

DEFENDANT: I accept that - - -

35 BENCH: Which you're the administrator of the website.

DEFENDANT: I accept that they did appear on – on the website.

BENCH: Yes.  
40

DEFENDANT: I don't – I didn't have any knowledge of them until later on. But I  
accept that they did appear.

BENCH: Yes. So not that you are responsible for them.  
45

DEFENDANT: That's correct. That's my position, your Honour.

BENCH: Okay. Is that – is that – have I got that correct, what you're admitting to?

DEFENDANT: That's my position, your Honour.

5 BENCH: Okay. Are there any other agreed facts?

MR RAUT: The – the other party named in the order, Siobean Dash, is a government employee working for the Office of Fair Trading.

10 BENCH: Is that conceded by Mr Hickey?

DEFENDANT: Yes, your Honour.

MR RAUT: And Mr Hickey - - -

15

BENCH: She's working for which department?

MR RAUT: Queensland Office of Fair Trading.

20 BENCH: Queensland Office of Fair Trading.

MR RAUT: And she was the victim in relation to unlawfully stalking in relation to the previous matter and there was material published on the same website. That's the extent of the agreed facts, your Honour.

25

BENCH: So I'm a bit confused about what that – what you're telling me in that last line. Could you explain that to me?

MR RAUT: Sorry, your Honour. Sorry, your Honour. Sorry, I'm going a bit fast.  
30 My apologies, your Honour. Siobean Dash was a victim of unlawful stalking - - -

BENCH: Yes.

MR RAUT: - - - where Mr Hickey was the defendant.

35

BENCH: Yes.

MR RAUT: And in relation to that matter, materials were posted on the same website that we are talking about today – or that are related to today,  
40 SmerffElectrical.com. It just gives a background. That's all, your Honour.

BENCH: Okay. So are you telling me that there was another charge which – for which this order arises - - -

45 MR RAUT: Yes.

BENCH: - - - from the same website?



MR RAUT: In the past, yes, your Honour.

BENCH: Okay.

5 DEFENDANT: That's correct, your Honour.

BENCH: Okay. So the – the order arises from unlawful stalking from – from the same website.

10 DEFENDANT: That's correct, your Honour.

BENCH: And that's conceded.

DEFENDANT: Yes, your Honour.

15

BENCH: Right.

MR RAUT: Your Honour, they are all the agreed facts, your Honour.

20 BENCH: All right. Yes.

MR RAUT: Now, your Honour, I – I do not have the complainant or the other party named in the order for today's purpose. The videos or the material posted were observed by the investigating officer and the copies are – and I save it on the disc here. We are going to play that with consent.

25

BENCH: Yes.

MR RAUT: Those materials that we just referred in the agreed facts.

30

BENCH: Yes.

MR RAUT: And I have only one officer giving evidence for today's purpose and his name is, your Honour, Detective Senior Constable Adam – and the last name is Gillespie, your Honour. Detective Senior Constable Adam Gillespie.

35

BENCH: All right.

MR RAUT: And I call - - -

40

BENCH: And have you got the statement of Mr Gillespie?

DEFENDANT: Yes, your Honour.

45 BENCH: And you've got the police brief.

DEFENDANT: Yes, your Honour.

BENCH: Okay, good. Thank you.

MR RAUT: Thank you, your Honour.

5 BENCH: So can we have Officer Gillespie to the witness box, please. No, hang on – hang on, please don't leave the bar table.

MR RAUT: Sorry, your Honour.

10 BENCH: My clerk will go and get him. Thanks.

MR RAUT: Sorry, your Honour.

BENCH: Okay. Have seat, Mr Hickey, thanks.

15

DEFENDANT: I was going to make a challenge to the proceedings on jurisdictional grounds. Should I do that now or should I not?

BENCH: You should do that now.

20

DEFENDANT: Yes.

BENCH: Definitely. Okay. All right.

25 DEFENDANT: Only that – it should be brief. I would like to challenge the proceedings before the court today on jurisdictional grounds in that Gillespie in several points of his statement refers to the fact that I was in - - -

BENCH: Okay, but he hasn't given his evidence yet.

30

DEFENDANT: Okay.

BENCH: Okay. And you understand that he gives his evidence vice voce.

35 DEFENDANT: Okay.

BENCH: Yes. And so it's – it's not what's in his statement. It's what he says there.

40 DEFENDANT: I understand that, your Honour.

BENCH: Okay. So it's probably good not to tangle the two.

DEFENDANT: Okay.

45

BENCH: If you want to make that submission you could do that after his evidence.

DEFENDANT: If I could just continue with another couple of sentences, I think you will understand where I'm going with this.

BENCH: Yes.

5

DEFENDANT: I was in New South Wales during the entire period between the 5<sup>th</sup> of July and the 28<sup>th</sup> of August. I would like to challenge the proceedings on jurisdictional grounds in that no event or element of the offence occurred in Queensland. And I've got – under section – under section 557 of the Queensland Criminal Code:

10

*The person charged with committing an offence may be tried in any jurisdiction within which any act or omission or event which is an element of the event takes place.*

15

An element of the offence takes place. I would like to submit to the court that no act, omission or event which is an element of the offence took place in Queensland. And no offence – and further to that no event was – no event occurred in Queensland as a result of my actions in another State. If – if an event had of occurred in Queensland, even if I had of done them in another State, then that would be grounds to have a trial in Queensland. However, I believe that in this case if I am to be charged it should be before a New South Wales court.

20

BENCH: Yes. A reply to that submission.

25

MR RAUT: Your Honour, that is not relevant because the order was made in Queensland and the material we rely on or the information we say happened was published on the internet. And because the other stalked person is in Queensland – and, your Honour, one of the – one of the facts we all need to be – is relevant is that if anything is published on the internet it is – it can be published from anywhere. But what it is, is that it is a broad subject matter, but if – if the person who has published or posted has targeted or – would have some particular jurisdiction in mind and that's where that jurisdiction applies.

30

In this case, your Honour, material was published on that website noting it is a fact that the other party was always in Queensland. It was targeted. It was intended to target that person. Therefore, the jurisdiction – the relevant jurisdiction is always Queensland, your Honour. Therefore, that part does not apply here.

35

DEFENDANT: May I respond to that?

40

BENCH: Yes, you can have a reply, Mr Hickey.

DEFENDANT: If we accept that example, then we would suggest that if a Queensland court made an order that a newspaper not publish an article, then if that article was published by the Herald Sun in Melbourne a Queensland court would have no power to – to arrest or imprison the people involved with the publishing of

45

it. In that even if the newspaper was transferred up here on a plane one morning and somebody read it in Queensland, the event still occurred in another State's jurisdiction. That would be my response for that.

5 BENCH: Thank you. In relation to the submission in relation to jurisdiction, I'm of the view that it is well within the Queensland jurisdiction. The internet is an Australian-wide issue. The internet is not a device that's similar to a published paper like The Age or any other paper across the border. It's a device which enables contact in each and every part of – each and every part of Australia and, therefore,  
10 the matter on that basis will proceed.

MR RAUT: Thank you, your Honour. Now, I call Senior Constable Adam Gillespie.

15 BENCH: Does he have a middle name at all, Mr Raut?

MR RAUT: In the statement I can't see – Adam Gillespie. I can't – sorry, your Honour, in the statement there is no middle name.

20 BENCH: Now, Mr Gillespie, it will be in order for you to remove your mask, because by the time you start talking your glasses will fog up.

MR GILLESPIE: Yes, I wasn't thinking.

25 BENCH: So could I ask you, please, to take the Bible in your right hand and - - -

**ADAM GILLESPIE, SWORN**

**[10.22 am]**

30

**EXAMINATION-IN-CHIEF BY MR RAUT**

35 BENCH: Thank you, sir. Please be seated?---Thank you.

Now, Mr Hickey, could I ask you just to move up one chair, please, so you're not as close, because you're not wearing a mask and Mr Gillespie has now got his mask off. I think – if that – if you wouldn't mind doing that. I don't want you getting – I don't want anybody catching anything in my court. Yes.

40

MR RAUT: Can you tell the court your full name, rank and station?---Yes. Adam Gillespie. I'm a Detective Senior Constable and I'm currently attached to the Security and Counter-Terrorism Command and my registered number is 26055.

45 Can I just mention one thing, when I ask the question your answer will be directed to the court?---Yes.

And if you could look at the court. So can you tell the court your involvement in relation to this matter?---Okay. So I was notified in March of a complaint made by Siobean Dash which related to a stalking and a breach of a restraining order. There was a previous matter which has been dealt with, but in - - -

5

Sorry for the interruption, March which year?---Twenty nineteen.

Right. Okay?---Did you want me to cover the - - -

10 Give us a bit of a background, yes?---Okay. So in March 2019 I was made aware of a breach of a restraining order, which was off the back of a stalking matter. The aggrieved was named Siobean Dash, with the respondent being Simon Hickey. On the 23<sup>rd</sup> of March 2019 I reviewed what the – what constituted the breach, which is a video that was placed on the website, SmerffElectrical.com. And it was a video  
15 titled bulldyke Gestapo, which is a video containing images of Siobean Dash with a search warrant that was executed on Simon Hickey’s residence at Stretton. From that point I’ve contacted Detective Senior Constable Gary Russell to conduct a capture – a forensic capture of the website, where he took a video of the bulldyke Gestapo video and also one of the site itself. From the back of that, we’ve executed a  
20 search warrant at the defendant’s residence at 7 Spruce Bark Court, Stretton where he was charged. That was on the 1<sup>st</sup> of April 2019. We objected to his bail at that point of time and he was remanded in custody until the hearing in June of 2019. On his release – I believe it was the 12<sup>th</sup> of June – he has been - - -

25 BENCH: What year was that? 12<sup>th</sup> of June - - -?---2019.

So that was the date of his release?---I believe the – I believe the hearing was on the 12<sup>th</sup> and he was released. So he has been given a sentence of nine months. He’d  
30 already served several – a few months, so it was time served and he was given a parole of six months. Over the next week we’ve identified that his website had a few modifications on there.

MR RAUT: When you say over the weeks, what are you specifying it - - -?---So from his release.

35

Okay?---We identified that the Smerff Electrical website had been modified. On the 24<sup>th</sup> of June we identified that there had been a video uploaded that related to the 1<sup>st</sup> of April search warrant being executed at the residence and that was taken from internal CCTV of the residence itself.

40

So what do you mean by modified?---There was text videos. There was – there’s texts superimposed over the video of the CCTV footage and audio. I think it was music or something like that that was placed over the top as well. We identified also – I believe it was on the 13<sup>th</sup> of July – the – the bulldyke Gestapo portion of the web  
45 - - -

BENCH: Could you just give me the full year, thank you. Is that - - -?---Yes, sorry. So the 13<sup>th</sup> of July 2019.

Yes?---The portion of the bulldyke Gestapo and Siobean Dash - - -

5

Sorry, what was it called?---It's called the bulldyke Gestapo – is the name of the video.

Bull-like?---Bulldyke.

10

Bulldyke Gestapo?---Gestapo. It's basically making reference she's a lesbian. That had been placed back on to the Smerff Electrical website. At that point I tasked the counter-terrorism online team to - - -

15

MR RAUT: So how – sorry, how did you know that that was posted on that website?---I viewed it. I – I conducted a review of the website itself and I saw that that video had been placed on there. The video and a number of text items as well, which gave an overview of Siobean Dash as part of that as well.

20

So on that video what – what was there in that video?---So the video was on there, but the online team didn't actually capture the video. They captured the actual page that the video was on. But it makes a reference to Siobean Dash. Her image is posted on – on that page itself and it says, "Siobean Dash, bulldyke Gestapo" and a – basically a rant going on about Siobean Dash and her investigation as part of the Office of Fair Trading.

25

Office of Fair Trading?---Yes.

30

Was there only a name or photos were of Siobean – Siobean Dash?---Well, the – the – as part of the video you can actually see Siobean Dash's image on the actual page itself and she's actually named on the page also.

35

Did you recognise that that was Siobean Dash?---Yes, I've had dealings with Siobean Dash in previous matters and I recognise that to be Siobean Dash.

40

How do you recognise?---From the image – so I – I've spoken to and met Siobean Dash previously for other matters and I recognised that that's – that woman depicted on the web page – or the website, sorry – was, in fact, Siobean Dash. Or the person that I know to be Siobean Dash.

45

All right. All right. Yes, after that what about – that was on the 13<sup>th</sup> of July?---Yes.

So what about after that?---So after that in relation to the Siobean Dash portion of it, I conducted a further review of the website – sorry – on the 3<sup>rd</sup> of August. At that time I've used a third party program to capture the contents of the website itself. So within that web – that's the Smerff Electrical website – I've gone through the main page video of recording the main page itself and also recorded the video of the police

raid on the 1<sup>st</sup> of April 2019. And then it also captured the entirety of the bulldyke Gestapo video, which is on that main page also. And that shows the full video that was uploaded in relation to Siobean Dash.

5 So why bulldyke Gestapo, that video, is so relevant? What is it – why - - -?---Well, in relation to the stalking matter from 2018 a – a restraining order was put in place off the back of the stalking. And one of the conditions – there’s two conditions on there that relate to the internet. One is that the defendant must not post content  
10 that is that he must remove any content of Siobean Dash from the internet or a public place also.

Okay?---Yes.

15 Okay, that was 12<sup>th</sup> of August. Yes, what – what about after that?---We also – there’s a few other things that we identified. Was there anything specific you were after or - - -

Yes?---So – so from the - - -

20 I’m trying to get the chronology of it so that it helps her Honour as well?---Yes.

Chronology of facts. So in terms of your involvement - - -?---Yes.

25 - - - of the investigation in relation to this website?---Yes. Okay. So in relation to the website itself we also identified on the 7<sup>th</sup> of July 2019 that the site had actually closed. I did a capture of that as well, which indicated that the site was run by Bluehost, which is – I think it was just like a – a server that you can run websites off of. I did a capture of that as well using the part – just a snipping tool of the screen  
30 captures of that as well.

BENCH: So on the 7<sup>th</sup> of July what year?---Twenty nineteen, your Honour.

35 Please – can you just outline what you mean by that evidence?---I’m just going in chronological order now of - - -

Yes, 7<sup>th</sup> of July the website closed?---For a – for a short period, yes. And then on the 13<sup>th</sup> of July we identified – on another review of the – sorry – 13<sup>th</sup> of July 2019 – a week later we identified on a further review that the website had opened up again and  
40 the Siobean Dash content was back up on the website from that point.

And what date was that?---The 13<sup>th</sup> of July 2019 we identified that it was placed back up on to the website, Smerff Electrical.

45 Is it the same image?---It’s pretty much – yes, it’s – it’s a video, so – is what we’re looking at is the – is the primary content of it. But there’s also texts attached to the website itself giving an overview on Siobean Dash.

MR RAUT: So just about the website, so you said on the 7<sup>th</sup> of July it was closed?---Yes.

And the 13<sup>th</sup> of July it was open?---Yes, correct.

5

Is that the only period you say it was closed? And do you - - -?---It closed – I believe it closed later in the year, but that was after the defendant had been arrested in relation to this breach and other matters.

10 Well, we are not interested in other matters?---Yes.

Now, when we are talking about the website, did you make any investigation who operates this website?---Yes. So with – I’ve gone through – just opened Source on ABNs, searches on ABNs on the website itself. And they came back with a number of results for PO Boxes, email addresses and telephone numbers that were attached to the business name itself, the website and those from the investigation identified through correspondence that the defendant had used – with court he provided that – those addresses, those numbers and those email addresses in his correspondence with court previously.

15

That corresponded with?---With the results from the ABN searches. So those ABN searches provided information on PO Boxes, addresses, websites and telephone numbers, which the defendant had used previously in correspondence with the court and his – things that he’d posted online on the Smerrf Electrical website as well.

20

Is that how you established that Mr Hickey is the operator of the website?---We – there’s – there’s other things in there also that we identified. On the 5<sup>th</sup> of July 2019 we were notified by Probation and Parole that the defendant had contacted them and stated that he wasn’t going to comply with his parole conditions and that he was - - -

25

BENCH: What’s the relevance of this?

MR RAUT: Not from this – now - - -?---We – as - - -

30 No, no, no, that’s - - -

BENCH: Okay. No, I’m not interested in this.

MR RAUT: No, no, no, we are not interested about that. My question – we are not interested about what relation Parole - - -?---Yes. Yes.

35

Or parole conditions. My question to you was how did you establish that the website that we are talking about - - -?---Yes.

- - - SmerffElectrical.com was operated by Mr Hickey? What other basis - - -?---It was – it was his – from an examination of the website itself. The website consists of political views and it’s also his business address, his business website for Smerff

40

45



Electrical, which was an electronic – electrician and air-conditioning installation company.

5 When you said business address, what are you talking about?---It's a PO Box at Slacks Creek. So with – the business address that was listed on the ABNs was the PO Box at Slacks Creek.

And that – did that match with Mr Hickey?---I believe it did.

10 Did you make any inquiry or investigation whether this business belongs – or this website belongs to or operated by any other person?---It didn't have anything listed that it was – I don't believe it had anyone else listed on there. In the ABN searches I believe he might – he might be a contact on there.

15 But just to be clear, so your ABN search - - -

BENCH: Have you got your ABN searches with you?---It's those ones I printed out this morning.

20 MR RAUT: Just a minute. Sorry, I might have written on the back. Just a minute. Is that – may I approach the witness, your Honour?

BENCH: You have to show them to Mr Hickey first.

25 MR RAUT: Yes. Just a minute?---There should be three pages, I think, on this one.

BENCH: Okay. Could you help the Prosecutor, please, to approach the witness with the searches, please.

30 MR RAUT: Sorry, somehow I got – the last page is not the – show that one as well. I seem to have only two pages?---Okay, no worries.

35 Yes?---Okay. So what we have here is the registered contact details and the PO Box 1139 Slacks Creek, Queensland. Now, we tied this into the defendant being that he has used his PO Box in correspondence - - -

BENCH: Okay. Do you intend to tender them?

40 MR RAUT: I tender that search.

WITNESS: Sorry, yes. Yes.

BENCH: Okay.

45 MR RAUT: Now - - -

BENCH: So just hang on. For the purpose of this matter in view of the fact that the order made by Brother Simpson at the Richlands Magistrates Court will – that will be exhibit number 1, because it's not contested.

5

**EXHIBIT #1 ADMITTED AND MARKED**

10 BENCH: In relation to this matter – well, this says that the registrant contact is a person called LANSA Trust?---That's a bank account.

Well, where's the search of LANSA Trust?

15 MR RAUT: Did you conduct any search about LANSA?---No.

No?---No, not for that one.

20 BENCH: Smerff Electrical registrant is – the registrant is a contact called LANSA Trust. And the technical contract – contact is Bluehost Inc?---Yes.

MR RAUT: Your Honour – for the purpose of this proceeding, your Honour, I rely on the evidence that the post box contact details were linked with SmerffElectrical.com. Because Mr Hickey had - - -

25 BENCH: Well, Mr Hickey has conceded that it's his website.

MR RAUT: Yes. Yes, your Honour.

30 BENCH: But this search doesn't assist the Prosecution's case at all. It's SmerffElectrical.com. He says that that's his, but the resident contact is a person called LANSA Trust according to the search.

MR RAUT: Your Honour, I withdraw that document, your Honour, in terms of - - -

35 BENCH: Right. That doesn't assist at all. Was that your point, Mr Hickey? I mean, you say that it is your website.

40 DEFENDANT: Well, if it assists the court I accept that it is – the website is owned by my business and LANSA Trust was set up by the accountant to – to do the – whatever they have to do for the tax. So I accept that.

BENCH: All right. Okay. All right, thank you.

45 DEFENDANT: Thank you.

MR RAUT: Now, in terms of this business, did you make any inquiry or investigation how many people are involved and – instead of – in addition to Mr

Hickey?---He had a few – a few business people that were aware of – as far as we understand, he was the owner of the business and he had employees that worked for him.

5 Yes. All right. Now, we move on to the chronology or further development in terms of what did you find after that date? We're talking about – is it 14<sup>th</sup> of July?---Yes.

BENCH: Is the officer able to produce the documents that he took at the time of his evidence?

10

MR RAUT: You're – we do have – sorry, I was referring [indistinct] your Honour – that the officer has said that the video that was posted on the website – and we have just – because it has been agreed, so it's on a USB, your Honour. I might just play  
- - -

15

BENCH: Well, you have to show it to him and he has to agree that that's what he did, surely.

MR RAUT: Yes, your Honour. I might just – your Honour, I would like to –  
20 because it's on a USB and we are already set up to play and it has been agreed, so I might just play that – what - - -

25

BENCH: All right. Well, first of all, you need to establish the evidentiary link between this officer and the document you wish the court to look at.

MR RAUT: Yes. Yes, your Honour. In fact, your Honour, Mr Hickey has agreed, but I will go through that process as well, your Honour.

30

BENCH: Well, that is the process.

MR RAUT: Yes, your Honour, in fact. Now, you – you give your evidence that you observed the website?---Yes.

35

And your evidence is that - - -

BENCH: Okay. Rather than cross-examine the witness – I'm not going to allow that questioning. Right. If he has produced a document then it needs to be shown to him and then it needs to be produced and played to the court.

MR RAUT: Okay. Might – can I just have the USB back here? Your Honour, I  
- - -

BENCH: No, my clerk is the clerk. Please, hand it to my clerk.

MR RAUT: Yes. Can you identify what that is?---That's a USB containing video  
45 and electronic files that pertain to the brief of evidence and some of the items that we mentioned in my evidence earlier.

And did you do – did you download it yourself?---Yes. Yes, I did.

5 And what documents - - -?---So this contains the capture that was conducted on the 13<sup>th</sup> of July 2019, which is the component of the bulldyke Gestapo. It consists of a screen capture and a rolling video of the contents of that. There is also the video that I captured of the Smerff Electrical website on the 3<sup>rd</sup> of August 2019, which shows the videos of the April 1<sup>st</sup> raid – 2019 – search warrant and the bulldyke Gestapo video in its entirety. Do you need all the items on there or - - -

10 The next one [indistinct] the work documents we have?---Yes, I – that was it.

Over [indistinct]?---Yes, that was the 13<sup>th</sup> of July 2019, which was the capture - - -

BENCH: Yes, I've got that?---Yes.

15

MR RAUT: Yes. Then - - -?---Then the 3<sup>rd</sup> of August 2019.

BENCH: Yes?---A video also. Yes.

20 MR RAUT: All right. Your Honour, I tender the USB.

BENCH: All right.

MR RAUT: And I - - -

25

BENCH: And, as I understand that, Mr Hickey, you're not opposing the tender of that document?

DEFENDANT: I'm not, your Honour. I accept it.

30

BENCH: All right. Okay. Well, that's - - -

MR RAUT: Yes, your Honour, the documents - - -

35 BENCH: That will be exhibit number 2 in these proceedings.

**EXHIBIT #2 ADMITTED AND MARKED**

40

MR RAUT: So if I can go to the 13<sup>th</sup> of July first, please.

**RECORDING PLAYED**

45

BENCH: Can I just have it a bit slower. I can't read it at that pace.

WITNESS: You may just have to pause it as it scrolls along.

**RECORDING PLAYED**

5

BENCH: Yes. Could we scroll up, Mr Amos, please.

CLERK: Yes, your Honour.

10

**RECORDING PLAYED**

15 BENCH: Are these all on the same date, Officer?---This is on the 13<sup>th</sup> of July 2019.

All right. All right.

20 **RECORDING PLAYED**

BENCH: So this is imputations about serving police officers, isn't it?---Yes, your Honour.

25

That's nothing to do with what this court is dealing with, is it?---No, it's nothing to do with this.

30 **RECORDING PLAYED**

BENCH: Is this all on the same day?---Yes – yes, your Honour, this is a capture of the website itself: of the page bulldyke Gestapo.

35

**RECORDING PLAYED**

40 BENCH: This isn't relevant to the court proceedings, is it?

MR RAUT: Yes.

BENCH: This involves other officers.

45

MR RAUT: Yes, we can move on. Yes. But maybe the Ace of - - -

BENCH: Yes. I'm only here in relation to - - -

MR RAUT: Well, the Ace of all the Spades.

5 BENCH: Yes. Keep going. Is that the end of that file?---No, it goes for a little bit more.

Well, we need to see it all too?---It's – the vast majority of it – yes, okay.

10 Can we go to the spot that we were, thanks, Mr Amos?

**RECORDING PLAYED**

15

BENCH: Can you just hold that there, thanks. To the end. Can I just have a look at the – right. Yes. So that's the – that contains the entirety of what you shot?---Yes, from the 13<sup>th</sup> of July 2019, your Honour.

20 Right. Are there any other matters on that that are relevant to this matter?---It would be the 3<sup>rd</sup> of August 2019.

All right. Okay. There's a second video there. What's that about?---That was a – it was a rolling capture. So, basically, it's everything you saw there, but it's in one  
25 document, a long document.

I see?---The video is made to scroll through just for ease of viewing.

Is it the same as the first one that I watched?---Yes. Yes.  
30

Okay. All right. Can we move to the second one, please. And you say the second video is on what date?---The 3<sup>rd</sup> of August 2019, your Honour.

35 **RECORDING PLAYED**

BENCH: Could you press the button where it relates to the complainant, Ms Dash, please?---I think it's probably - - -  
40

DEFENDANT: The video you're about to play is not the video – I think it's – that it's separate to the issues we're talking about. So the video on the right is the one that we're –the bulldyke.

45 BENCH: Yes, I know, the one on the right, not the one on the left.

**RECORDING PLAYED**

5 DEFENDANT: If I could make a suggestion, the video is an hour and a bit long.

**RECORDING PLAYED**

10 DEFENDANT: If it assists the court, your Honour, I accept that it appeared on the website at that time. It goes on for some – like, over an hour like this. It just documents the original raid on that – on the – my premises.

15 BENCH: All right. And, well, don't I have to look at it all, really?

DEFENDANT: If you'd like to, then that's all right.

BENCH: Because the comment that overlays the - - -

20 DEFENDANT: If that's the case, then we really need sound, because it - - -

BENCH: This was on the website on the 8<sup>th</sup> – the 3<sup>rd</sup> of August.

25 MR RAUT: Third of August. Yes. Third of August, yes.

BENCH: Third of August.

MR RAUT: Yes, your Honour.

30 DEFENDANT: Are you able to get the sound working? There's some important parts in - - -

BENCH: Sorry. Just stop it there, thanks. Stop. What's your - - -

35 DEFENDANT: It's only that if we are going to watch it, I think the sound should be working to get context of everything that goes on?---The – just so you know, when it recorded - - -

40 BENCH: Well, it's just a - - -?--- - - - there wasn't any sound. I don't know.

It's a – it's, obviously, some sort of arrest.

WITNESS: We can get a copy of it, though.

45 BENCH: The essence of it is the overlay as appears on the video that - - -

DEFENDANT: Well, I don't accept that the essence – there's some crucial parts of it that show that Dash lied about lots of events.

BENCH: Yes, but I'm not here to decide that.

5

DEFENDANT: I understand that.

BENCH: Right.

10 DEFENDANT: If we're only - - -

BENCH: I'm here to decide whether you breached your protection – this restraining order made on the 25<sup>th</sup> of January 2018.

15 DEFENDANT: I accept that, but the – if – but if we - - -

BENCH: I'm not here to determine who lied or who did what. That's the only thing I'm dealing with today. Can we continue. Can we get – see if – does it have sound, Mr Gillespie?---When we did the capture on this, there wasn't any sound, but I believe there's a file - - -

20

Well, this is what you captured?---Yes, your Honour.

What you captured had no sound?---It didn't record the sound for some - - -

25

Right. Okay?---I'm not sure if it's the program or - - -

Can I continue with the video, please.

30

**RECORDING PLAYED**

BENCH: Ave you watched the video?

35

MR RAUT: Yes, your Honour.

BENCH: Okay. At this point, does it go on further other than – other – are there any other issues, or does it just continue in the same vein?

40

MR RAUT: It continues in the same vein, your Honour?---Yeah. Pretty much.

Yes. Whether the officer can assist further, saying this is, pretty much, the cycle of what had happened on the 1<sup>st</sup> of April that's – he has just posted there; is that right?---Yes.

45



BENCH: And, Officer, can you tell me how much longer the video goes on in this vein of - - -?---This video itself has probably got another 20 minutes, half hour to it to the Dash one.

5 Right. Okay?---And then there's other components on the website that don't pertain to this matter.

Don't pertain?---No, they don't.

10 No. Is this the last video of the matters that pertain to this matter?---Yes, your Honour. Yes.

All right. So from this point on are there any other further references to Ms Dash, other than the tampon conspiracy?---No.

15 Was that your point, Mr Hickey?

DEFENDANT: I think so, your Honour. Yes.

20 BENCH: Yes. All right. Well, then, that being confirmed with me, do we know – it doesn't have a time to which we stop the video at this point, do we?---When the video stops?

25 No. I'm just asking on the screen does it have a time, like most videos do. All right. So there's – there is a date stamp on the top left-hand, isn't there? Right up in the corner there. No. On the video itself. If you look up the top there?---Yeah, the – yep.

30 DEFENDANT: There is, yeah. CCTV. That was January the 19<sup>th</sup> 2018. January. Around that - - -

35 BENCH: All right. Well, that being confirmed with me, I'm now going to stop the video. Okay. Is there anything further on this disc that relates to this complaint?---In relation to content of Siobean Dash, no. No, your Honour.

BENCH: No. All right. Now, do you want me to continue to watch the video, Mr Hickey?

40 DEFENDANT: I think - - -

BENCH: because there's a number of very prejudicial things on it that I wouldn't want to cloud my mind with.

45 DEFENDANT: No, I think it's unnecessary, your Honour.

BENCH: Right.

DEFENDANT: I accept that the video appeared on the site at the time.

BENCH: All right. And you accept it appeared in this form?

5 DEFENDANT: I accept that it did – I'll elaborate on that later, yes, your Honour.

BENCH: All right. Okay. Well, then we'll stop that. Are you seeking to tender the  
- - -

10 MR RAUT: Yes. Just one more – just one moment, your Honour, please. Officer, I  
thought there was another portion from 8<sup>th</sup> of August, as well?---No. No. It's the 3<sup>rd</sup>  
of August. That's the – 3<sup>rd</sup> of August was the video that I captured.

15 Third of August. Not on 8<sup>th</sup> of August?---No. Third of August. That's correct.

BENCH: So just so I confirm that, Mr Hickey, do you agree that it's the 3<sup>rd</sup> of  
August and not the 8<sup>th</sup>?

20 DEFENDANT: I don't know, your Honour. I couldn't comment on it.

BENCH: All right. Okay. Well, you've admitted the 13<sup>th</sup> of July and you admitted  
the 8<sup>th</sup> of August, but not the 3<sup>rd</sup> of August, but now you've told me that you admit  
that this was on the website.

25 DEFENDANT: When I admitted the facts earlier, I admitted the date of the 13<sup>th</sup> of  
July; however, I said the second video, I accept that it appeared on the website, but I  
don't know the date and I – and I'm – I have no prior knowledge of it.

30 BENCH: Right. Okay. Thank you.

DEFENDANT: Yeah.

BENCH: All right.

35 MR RAUT: On that note, your Honour, in terms of agreed facts, so what – I might  
make a submission later, your Honour. It seems this is from 3<sup>rd</sup>.

BENCH: Well, look, he's admitted that what we've seen - - -

40 MR RAUT: Yeah. Yeah.

BENCH: - - - was on the website.

45 MR RAUT: Yeah. Yes. Yeah.

BENCH: So the dates – the date is - - -

MR RAUT: [indistinct]

BENCH: A date in August, but not the 8<sup>th</sup>.

5 MR RAUT: Yes.

BENCH: Is that right, Mr Hickey?

10 DEFENDANT: It could've been the 8<sup>th</sup>. Early August, yeah, I'm happy with.

BENCH: Yes. All right. Thank you, Mr Hickey.

MR RAUT: Yeah. Thank you, your Honour.

15 BENCH: All right. Further for this officer?

MR RAUT: Nothing further. That's the evidence-in-chief, your Honour, and I tender that formally, your Honour, this - - -

20 BENCH: Okay. That will be exhibit number 2.

**EXHIBIT #2 ADMITTED AND MARKED**

25 BENCH: Did you ever talk to the defendant about this, sir?---About this?

Yes. I'm just asking him some questions whether he ever asked you anything about this matter. Did you ever talk to him?---The only time we - - -

30 Did you ever interview him, or - - -?---There was no interview that took place in relation to this, your Honour.

35 All right. Was the contents of his video ever put to him or was he just simply charged?---He was just charged, your Honour.

40 Right. Okay. And I think you did confirm with me that he was Mr – he was released from prison. Do you anything about his whereabouts or his control of the site?---Control of the – of the site itself?

Yes?---There was indication - - -

45 And, Mr Hickey, I will allow you to cross-examine him on any of these questions and you'll be allowed to clarify that. I just need to understand the context of what your case is?---Okay. So those items there were uploaded on – we identified as being uploaded onto the website itself. There was a phone that was intercepted from his wife, which showed content of communications between the defendant and his

wife, and that showed the April 1<sup>st</sup> 2019 search warrant being uploaded onto the website.

5 Yes. But that's irrelevant?---Yep.

That's not the question I asked you, Officer?---Well, that was – that was more just to show that he had access and capability to administer the site itself.

10 All right. Anything arising from that before I move to Mr Hickey now?

MR RAUT: No. No.

BENCH: Mr Hickey. Over to you, please.

15 **CROSS-EXAMINATION BY DEFENDANT** [11.25 pm]

20 DEFENDANT: Thank you.

I've got some questions about the timeline involved in the – in your evidence?---Yes.

25 You observed that on my release from prison in – on June 12<sup>th</sup> and between then and June 24<sup>th</sup> there was modifications made to the site, but no breach material that you were aware of; is that correct?---There was modifications on there, but we didn't act on any of the content that was on the website at that point in time.

30 Well, the – okay. So the – well, the material that you've alleged breached the restraining order first appeared on the 13<sup>th</sup> of July; is that correct?---Yes, that's correct.

35 Okay. I've noted that on the July – you've noted – well, you've also just given evidence that on the 7<sup>th</sup> of July the site closed and it was just a Bluehost screen for a few days until it reopened on the 13<sup>th</sup> of July; is that correct?---Yes, that's correct. It wasn't monitored every day. So it's – on the 7<sup>th</sup> I've identified that it appeared to be closed, and then a later review on the 13<sup>th</sup>, we identified that it was back up and running.

40 The material that appeared on the 13<sup>th</sup>, that was the same material that I had been breached for previously; is that correct?---That's correct. Yes.

45 Did you make any inquiries as to the content itself of the site, ie, are you aware that the video itself is not hosted on the website, it's hosted by YouTube?---That's correct, and they're still up on YouTube at this point of time.

So are you aware that the video itself is not contained on the website, it's only contained on YouTube and that the website only contained a link to the video. You

were, in effect, watching it through YouTube through the website?---It's accessible through the website itself.

5 When the material appeared on the site on the 13<sup>th</sup> of July, what phone number was attached to the website at that point in time, do you remember?---I don't recall. Sorry.

10 I put it to you – am I allowed to reference the statement that he made? I put it to you that - - -

BENCH: Okay. Now, what – you need to do that. You need to say to him did he make a statement and the date, and then you need to show him his statement or read him the full – he needs to confirm that he's made a statement by showing him the statement.

15 DEFENDANT: Okay. Have you made a - - -

BENCH: Mr Amos, could you get that statement, please.

20 DEFENDANT: I'd like to reference it, as well, if I could. We can show it to him. Yeah?---I should have a copy, as well, so - - -

BENCH: Have you got a copy?---Yep.

25 Could we have a copy of his statement, Mr Raut, please.

DEFENDANT: Well, before we go that far – before we issue the whole statement to the court - - -

30 BENCH: No. You understand it's not evidence.

DEFENDANT: Okay. Okay. Yeah. Yeah.

35 BENCH: Okay. It's not evidence. Okay. You want to call for the original?

DEFENDANT: Well, there's - - -

BENCH: Okay. The way - - -

40 DEFENDANT: There's - - -

BENCH: Can I just explain it - - -

45 DEFENDANT: Yeah. Yeah.

BENCH: - - - in simple terms. The way you do it is you say, "Did you make a statement on the relevant date?" Right. If you want to refer to a specific paragraph,

right, you read him the paragraph and then ask him did he say that in his statement, and then you ask him the question.

5 DEFENDANT: I understand that, your Honour. I will do that. The concerns that I have is if we – I'd like to exclude nearly the entire part of the statement. There's only - - -

BENCH: No.

10 DEFENDANT: There's only a couple of sections I'd wish to refer to.

BENCH: No. It doesn't – the statement doesn't go in.

DEFENDANT: Okay. Okay. I understand. Okay.

15

BENCH: Okay. Because that breaches the evidence rules.

DEFENDANT: Okay. I accept that.

20 BENCH: Okay. So that's how you do it.

DEFENDANT: Did you make a statement about these events prior to this court hearing, Mr Gillespie?---Yes. Yes, I did.

25 BENCH: You need to ask him the date.

DEFENDANT: All right. Did you make a statement about these events on the 15<sup>th</sup> of October regarding these events, Mr Gillespie?---Yes. Yes, I did.

30 Do you recall what you said in the statement about what phone number appeared on the website on the 13<sup>th</sup> of July.

BENCH: No. You need to ask him specifically the paragraph you're referring to.

35 DEFENDANT: Okay. On point 46.

BENCH: So is it a paragraph 46?

40 DEFENDANT: Let's go back a step. Okay. On paragraph number 48 of your statement you've stated that - - -

BENCH: Now, you need to read the whole of the statement to him for - - -

DEFENDANT: Okay.

45

BENCH: In fairness to him.

DEFENDANT: To refresh your memory, on page – on section 48, or paragraph 48 of your statement, you've said that:

5            *I observed a contact phone number of 0422 764 363 was attached to the website. I observed this to be the same phone number provided by the defendant in his letter addressed to myself and DSW.*

Do you remember making that statement?---Yes.

10 I put it to you – do you remember making a statement that - - -

BENCH: Okay. Now, if it's in there, you have to put in the paragraph in fairness to the witness.

15 DEFENDANT: In section 46 of the same statement, so it's only two steps prior, you've got a statement that says:

20            *The letter is written on a Smerff Electrical letterhead, which includes the following details: website, smerffelectrical.com, mobile number, 0411 739 333. The same number provided to me by the defendant on the 28<sup>th</sup> of June.*

I put it to you that these two numbers are not the same, 0422 764 363 is not the same as 0411 739 333; is that correct?---Well, it doesn't sound the same, no.

25 I put it to you that the email that you received contained the correct number of, and the current number at that time, which was 0411 739 333? What – in your statement you've said that the email that you received contained that number; is that correct?---If it says in the statement, I believe that's correct.

30 BENCH: Well - - -

DEFENDANT: What I'm getting at – yep.

35 BENCH: Can I call for the original so the witness doesn't have – the witness can see it's in his statement in fairness to the witness, please. Could you produce the statement, thank you, Mr Raut.

MR RAUT: Is that the same one that 15<sup>th</sup> of October 2019?

40 DEFENDANT: Correct. Correct.

MR RAUT: Is that the one you're talking about?

DEFENDANT: Correct.

45

MR RAUT: Just one moment, your Honour, I'll just find – did I - - -

DEFENDANT: [indistinct] letterhead. Just mobile number.

MR RAUT: For some reason - - -

5 WITNESS: There's two statements. There's the initial statement, then there's an addendum statement. So one was made in, I think, May.

BENCH: Which one have you got?---And then there's one in October.

10 DEFENDANT: Dated 15<sup>th</sup> October.

MR RAUT: Mine is - - -

BENCH: Fifteen October. Is that the only one you're interested in?

15

DEFENDANT: At this time, yes, your Honour.

BENCH: All right.

20 MR RAUT: Mine is 15<sup>th</sup> of October - - -

BENCH: October what year?

MR RAUT: Twenty-nineteen.

25

DEFENDANT: Twenty-nineteen. Yes, your Honour.

BENCH: Right.

30 DEFENDANT: The same.

MR RAUT: For some reason mine is - - -

DEFENDANT: I'm up to point 46. Have you got that?

35

MR RAUT: Forty-six. Just one moment, your Honour, please. Forty-six [indistinct] different.

DEFENDANT: Have you – well, is that for this court?

40

MR RAUT: Maybe they're different.

DEFENDANT: Is that for this charge?

45 MR RAUT: Sorry, your Honour. I might just use that one, whether he can show that or - - -



DEFENDANT: Yeah. Yeah.

MR RAUT: If that's okay.

5 BENCH: Well, you don't have the original? Officer, do you have your original statement?---I have a statement, your Honour.

Can you have a look for your original statement, please. Can you produce it for the court?---So 46 was that telephone number ending in 4363.

10

No. Can I just start at the beginning?---Sorry.

All right. Is that your statement that you made for the purposes of these proceedings?---I believe so, your Honour.

15

Well, you either did or you didn't?---Yes. Yes.

Is that your signature that appears at the bottom of the document?---Yes, your Honour. Yes.

20

How many pages is that statement?---Nineteen pages, your Honour.

Right. Did you make any other statements?---There was a number of briefs of evidence where statements were submitted.

25

Right?---So unless something [indistinct] crossed over on the initial brief, and I've provided this brief - - -

Right?--- - - - a number of times.

30

Okay. Is that the statement you want to ask him about?

DEFENDANT: Yes, your Honour, the 19<sup>th</sup>.

35 BENCH: Okay. Could you please confirm the first paragraph that you were referred to, which was paragraph 46?---Do you want me to read it out, your Honour?

Yes, please?---Yep:

40

*The letter is written on a Smerff Electrical letterhead, which includes the following details: website, smerffelectrical.com, mobile number, 0411 739 333.*

Triple-three, did you say?---Triple-three. Yes.

45

Yes?---

*The same number provided to me by the defendant on the 28<sup>th</sup> of the 6<sup>th</sup> 2019.*

So that would have been when I issued a notice to appear to him:

*Defendant provides the following information in a letter, Simon Hickey – within the letter, Simon Hickey PO box 1139, Slacks Creek, Queensland 4127.*

5

And there's a number of:

0422 763 363.

10 Continuing:

Okay. Yes. And what – move on, thanks, Mr Hickey. What's the next - - -

15 DEFENDANT: The question that I have for Mr Gillespie is when you spoke to me on the 28<sup>th</sup> of June, you say – you stated in that point 46 you just read - - -?---Yes.

- - - that I provided you with the mobile number 0411 739 333?---Yes.

20 I put it to you that that was the number I was using at the time, that 0422 764 363 was at the bottom of a page and that it was a previous number that hadn't been used for some time?---I couldn't state whether or not you use a – currently use a telephone number or it was a previous number. As we identified, there was a lot of numbers used over the period of the investigation.

25 Okay. Okay. Did you make any inquiries as to other – the involvement level of other staff employed by myself? Did you make any inquiries as to whether they had access to the websites or were involved in the development or posting any material on it?---No, I didn't, but I – we did identify that there was communications between yourself and the brother providing direction on - - -

30

BENCH: Sorry. Communication between?---Between the defendant and his brother.

All right?---To organise maintenance of the site.

35

DEFENDANT: When – before – you gave evidence, you said that no interview or conversation took place prior to my arrest for the alleged breach of the restraining order. That was on the 1<sup>st</sup> of July – 1<sup>st</sup> of April. I put it to you that police responded with such heavy-handed tactics, because they were - - -

40

BENCH: Okay. Do you understand I'm not doing – I'm not dealing with that.

DEFENDANT: Okay. Sorry, your Honour.

45 BENCH: Okay. That's not a relevant consideration, really. I'm only dealing about whether it's a breach of this order. I'm not talking about the history, Mr Hickey, or other cases or other events with the officer.

DEFENDANT: Yeah. Okay. Then, the final question – the final submission I have to Mr Gillespie is you admitted that there was a – or you’ve stated that there was a break in the website, it was interrupted and it was offline for a few days. I put it to you that the period when it was offline was due to problems with the website itself, that were – I was attempting to resolve at the time?---I wouldn’t know that.

Well, I’m putting it to you that that was the case?---Okay.

That it was offline. I’m putting it to you that the modifications that were made when I was first released from prison contained no breaches – no material which is alleged to be in breach of the restraining order? In that, you stated to the court that the first material that was in breach of the order appeared on the 13<sup>th</sup> of July?---Yeah, that’s correct.

So up until that point, no material had appeared that breached it? That’s – I’ll just check – I’d just like to put it – I also put it to you that when the website reappeared on the 13<sup>th</sup> of July with the breach material, it also reappeared with that number, 0422 764 363 when you’d previously, only a few days before, been provided with a different number for myself. Would you agree with that?---That’s correct, but that’s no indication as to which number you were utilising at the time.

I understand that. As long as you accept that it appeared with a different phone number on the 13<sup>th</sup> of July?---Yeah. That’s fine.

Okay. That’s all we’d like to say, your Honour.

BENCH: All right. Now, any re-examination of the officer?

**30 RE-EXAMINATION BY MR RAUT [11.38 am]**

MR RAUT: I just have one clarification to make, your Honour.

You gave – you said there was communication between the defendant and his brother?---Yes, that’s correct.

About the management of the website?---That’s correct.

Do you recall what was that communication?---During the course of the investigation, both the previous and the current, we received prison phone calls, the Arunta calls from Queensland Correctional Services. On the – sorry, the 16<sup>th</sup> of April 2019 - - -

No. That - - -

BENCH: Okay. How is it relevant?

MR RAUT: No. That's – I'm - - -

BENCH: Okay.

5 MR RAUT: That's irrelevant.

BENCH: How's any of that relevant?

10 MR RAUT: That's irrelevant, your Honour. That's irrelevant, your Honour, I accept that.

BENCH: I don't understand where it's going, and that – how does that arise out of this – the questions asked by Mr Hickey?

15 MR RAUT: No.

BENCH: I'm wondering how that arises in re-examination, Mr Raut.

20 MR RAUT: No. No. There was a – your Honour, there was evidence that the officer had observed communication between the defendant and the brother about the management of the website. I just wanted to confirm when was that – what period – or when was that communication held?---That was during his incarceration periods.

25 Okay. That's nothing relevant. Your Honour, I withdraw that, your Honour.

BENCH: All right.

MR RAUT: I was trying to - - -

30 BENCH: Well, it's – so - - -

MR RAUT: Nothing further, your Honour.

35 BENCH: But that's during his incarceration, which is outside the terms of the timeline of the charge?---Yes, that – that's correct.

DEFENDANT: That's the only part I was going to add. Yeah.

40 BENCH: Yes.

DEFENDANT: It was previous to this.

BENCH: Yes.

45 DEFENDANT: Yes. Thank you.

BENCH: It's outside the time. The time is determined by the confines of the breach, which is the 5<sup>th</sup> of July to the 28<sup>th</sup> of August.

5 MR RAUT: Yes, your Honour. Because the officer did not say the time, that's why I just wanted to clarify that.

BENCH: Okay.

10 MR RAUT: It seems that now it's not - - -

BENCH: So that's not relevant to this matter.

MR RAUT: It's not relevant. I accept that, your Honour.

15 BENCH: All right.

MR RAUT: Yes. Nothing further, your Honour.

20 BENCH: No. Now, Mr Hickey, because you're acting for yourself, I'm happy if there is something that you've forgotten that you would like to ask the officer.

DEFENDANT: That covers everything I wanted to bring up. Thank you.

25 BENCH: All right. Thank you, Mr Hickey. Well, then, you're excused, Mr Gillespie?---Thank you, your Honour.

Thank you. Good morning.

30 **WITNESS EXCUSED** **[11.40 am]**

MR RAUT: And that's the case for the prosecution.

35 BENCH: Well, I might take a short adjournment now till 12 o'clock for you to consider what you'd like to do. Please feel free to leave the court, if that's what you'd like to do.

40 DEFENDANT: So I can come back at 12 o'clock.

BENCH: Yes.

DEFENDANT: Yes. That's - I'd like - - -

45 BENCH: I just thought I'd give you a bit of a break.

DEFENDANT: Thank you. I'd like to give evidence, but I'm happy to come back at 12.

BENCH: Yes. Well, just have a bit of a break now.

5

DEFENDANT: Thank you.

BENCH: And we'll adjourn the court to 12 o'clock. Thanks.

10 DEFENDANT: Thank you.

**ADJOURNED**

**[11.41 am]**

15

**RESUMED**

**[11.59 am]**

20 BENCH: All right. Appearances are as before. We're back here in the matter of Simon John Hickey. Yes. Now, the prosecution have concluded their case and, now, Mr Hickey, what's your position? What do you wish to do? Do you want to make a submission on no case or what would you like to do?

25 DEFENDANT: Well, I'm not sure of the grounds I can make a submission on no case.

30 BENCH: Well, a no case submission has got to be on – a no case submission is whether the prosecution have proved their case taking their best position and whether a jury would reasonably convict on the evidence. It's a very difficult test to meet.

DEFENDANT: Sorry.

35 BENCH: All right. But that's a matter for you. I can't give you legal advice. I presume that – if you're undecided about it, you can make that submission - - -

DEFENDANT: What I would - - -

40 BENCH: - - - if you'd like. It's a matter for you. You're running your own show here.

DEFENDANT: What I would like to do is give evidence. If I do make a submission, a request for a no case, that doesn't preclude me from giving evidence if it's denied?

45 BENCH: No. No. The no case comes before giving your evidence.

DEFENDANT: Then I would like to make that submission in that - - -

BENCH: Right.

DEFENDANT: I don't believe that the prosecution have proved beyond reasonable doubt that I knowingly made - - -

5

BENCH: Okay. But, no, that's not the test.

DEFENDANT: Okay.

10 BENCH: Okay. The test is whether a jury, properly instructed, taking the prosecution case as at its best would convict an accused person. It's a very difficult test to meet.

15 DEFENDANT: Well, I mean, I will make this submission in that I don't believe that a jury would convict me based on what they've presented here today.

BENCH: Right.

20 DEFENDANT: Mr Gillespie made several admissions in that I did have staff working for me and he made no attempt to investigate the roles they played within the business.

BENCH: Yes.

25 DEFENDANT: Nor did he do any – conduct any interviews or any preliminary conversations with myself prior to the arrest, in that I was just arrested once the material appeared. I don't believe that – I suppose that that would conclude my no case submission

30 BENCH: All right. Well, on the material, I'd have to say that the no case submission was not made out.

DEFENDANT: Okay.

35 BENCH: Now, the onus is not on the accused to give evidence on their own behalf. You understand that? That's your right.

DEFENDANT: I know.

40 BENCH: If you elect to take that right, then a number of things flow from that. You get cross-examined and it's also the position that that your evidence, then, has to be looked at in the context of the evidence presented. Right. The prosecution have to prove their case beyond a reasonable doubt. So if the court has even a small doubt, an accused person would be given the benefit of that doubt. Right. So that's  
45 entirely your decision. There is no – no adverse comment can be made of an accused person who does not give evidence on their own behalf, but that's entirely for you.

DEFENDANT: Thank you for explaining that. I'd still like to give evidence on my own behalf, your Honour, I've got - - -

5 BENCH: Right. That's fine. Well, then, would you like to come over and step into my witness box, thank you.

DEFENDANT: I do – I have several things I would like to be tendered into evidence, but I'd like to mark them for identification first in that I would like to - - -

10 BENCH: Well, no, you'll have to give your evidence first. And take them over there.

DEFENDANT: Yeah. I've got a – I've given a copy to the prosecution.

15 BENCH: Right. Okay.

DEFENDANT: I've got a copy for the court and I've got a copy for myself.

20 BENCH: Okay. All right. Now, come on over there and, look, I'll swear the witness in.

DEFENDANT: Yeah.

25 BENCH: Okay. All right.

**SIMON JOHN HICKEY, SWORN**

**[12.03 pm]**

30 BENCH: Now, please be seated?---Thank you.

Now, I don't know whether you've given evidence before, Mr Hickey, but I generally help the self-represented people just with the preliminary matters to make it easier. Your full name's Simon John Hickey?---That's correct, your Honour.

35 Your date of birth is the 28<sup>th</sup> of December 1975?---Yes, your Honour.

Your current address is 7 Spruce Bark Court, Stretton?---That was my pre-custody address. My current address is 14 – I can update that with the new address.

40 Yes. Okay?---My current address is 14 Centenary Road, Slacks Creek.

Right. Okay. And you're self-employed?---That's correct, your Honour.

45 Okay. So what is your occupation?---Electrician, although I run the business now, but I still do work on the tools.



All right. So you've got – you're a proper certified electrician?---Correct. I have a contractors licence and insurance, your Honour.

5 Right. Okay. All right. So the charge is between the 5<sup>th</sup> of July 2019 and the 28<sup>th</sup> of August 2019. So what would you like to tell the court about that?---Well, the explanation is very simply in this respect, your Honour. There was a virus or malware attached to the site at some stage, I believe during my previous incarceration and I wasn't able to maintain the site while I was away. On release, I was - - -

10

So when did you go into custody?---On the 1<sup>st</sup> of April and I was released on the 12<sup>th</sup> of June 2019.

15

First of April 2019?---Correct.

And what was the date of release?---Twelfth of June 2019.

20

Twelfth of June. Was that when you were on parole?---I was given parole on that date, yes, your Honour.

Okay. So you were on parole during the course of these offences?---That's correct, your Honour.

25

Right. Okay?---In the – the simplest explanation is what happened. The sites weren't maintained while I was away and absent. When I got out I noticed substantial problems with them. I attempted – I'm by no means a computer expert. I'm an electrician by trade. As you can imagine, I'm pretty clumsy around computers. I did learn and I did originally create most of the content on that site. When the problems on the site were too large for me to handle – too complex, I engaged another company to help me remove the malware and the virus, or what I believe was a malware or a virus. That company is SiteGround. I – some of the material I'd like to tender into evidence is my correspondence with that company.

30

All right. You'd have to call them. You haven't – you're not going to call them to confirm that? Just because you have correspondence that won't, sort of, actually do it. They'd have to confirm that they'd received that?---Well, they're a company based in America, as well.

35

40

All right. Okay?---And it's an internet thing.

Yes. And what sort of malware virus was that?---I don't know, your Honour. It's – it's all sorts of complex computer things that I don't understand. The site wasn't loading correctly. It was displaying material from a long time ago. It was – it was – things were all over the place. I couldn't resolve those issues. I contacted them and engaged them and paid them to – to rectify the situation. I did that around the 7<sup>th</sup> of July when – when – the same time Mr Gillespie's given evidence that the site disappeared and went offline. During that period I was in the process of moving

45

house and moving out of Queensland, again, as – as confirmed by Officer Gillespie’s testimony. When the site reappeared on the 13<sup>th</sup> of July, I wasn’t aware that it had come back up. I became aware around that time, perhaps a few days later. I didn’t pay much attention to it, in that I was otherwise preoccupied with moving house and getting organised, getting my wife and daughter back from overseas. When the site’s come back online and I did find time to look at it, I’ve noticed that it had reverted back to a previous – a previous example of itself. Like, it had lost a lot of content, and all the material that had reappeared was previous material. This is also supported by what Officer Gillespie has given evidence for. He said that the material that appeared on the 13<sup>th</sup> was the same material that I was breached for originally, previously, in April, and that’s what I’d like to maintain – or present to the court is that it wasn’t reuploaded. What – what I believe happened is the company that I employed to rectify the problem on the website didn’t actually go in and alter any code. They just deleted it and loaded it from backup. So they’ve loaded just a backup of a site to – and it’s – and that’s why it’s reappeared as a former version of itself, and this is substantiated by testimony given by Gillespie. I’ve got – well, the evidence – I’ve got details. I’ve got the invoices, which is – which are admissible as evidence, because it was made during the course of someone’s employment. I’ve got the invoices that were issued to me from this site, and I’ve checked the Evidence Act, and they are admissible. I’ve got printouts of the website that show the – the number of users that were active on the site at the time. I accept that I’m the administrator of a site; however, there were six active users on the site that were active right up until the 28<sup>th</sup> of August or – and after in some cases, that had access and the ability to change any content on the site that they would have liked. I have material that I downloaded and printed out from the sites and the host that show the users, their last login dates, their email addresses and their authority levels. It shows that these people had made several posts and pages. There’s – I’d like to tender them into evidence. They’re at page 5 of - - -

30 BENCH: All right. Well, let’s have a look at what you’ve got. Have you got a copy of those?

MR RAUT: I’ve got them.

35 BENCH: You see, the problem is, of course, if I can just be frank with you, Mr Hickey, and I know you’re in the middle of giving your evidence, is that one would need a computer expert to confirm this, and I don’t think that you qualify for that?---I’m – I’d like to give evidence as to the origin of these documents and how much weight – how - - -

40 Right. Okay. Well, then, what do you say about the documents? You’ve seen them

MR RAUT: Yeah, I’ve seen – your Honour, I indicate, to be fair, I indicated to Mr Hickey that these documents – I have objection to these documents, because they are not admissible.

45

BENCH: Yes. That's the problem?---I don't accept that objection, because the – the invoices from SiteGround - - -

Well, let me just have a look at them so I can determine - - -

5

MR RAUT: Yeah. Yes.

WITNESS: Well, there's the – a copy for the court there.

10 BENCH: - - - whether they're admissible or not. I just need you to – you've got them there with you?---There's three copies. So that's the copy for the court.

Okay. Okay. Well - - -?---I would like to say that the invoices - - -

15 No. No. No. Just let me have a look - - -?---Okay.

- - - at them?---Yep. Yep.

20 No, they're not admissible in their current form, because they don't comply with the rules of evidence?---That might be the case for - - -

No. No. Just – these are the two I've got. I've just looked at - - -?---No, there's eight pages there, or 10 pages.

25 Yes. Yes. Yes. I've had a look at this?---Well, the invoices are admissible, because they were made during the course of someone's employment, and they form – they form – if we check the Evidence Act, they form part – part of a record that was made - - -

30 Yes. But it would have to be the person who employed them. That means you'd have to call the person, and unless you're in a position to do that they're - - -?---That's not – that's not true. They're – they're - - -

35 They're not admissible as of right in accordance with the Evidence Act?---I don't accept that. As standalone evidence - - -

40 Well, that's my ruling on these documents. So I can understand how a person might feel that they would be, but under the rules they're not?---I'd – I'd like to repeat that they were made during the course of someone's employment as a regular record of – of what was done during the day, and as such they should be admitted under the Evidence Act.

45 No. They can't be. You'd have to call the person who made the record, and they'd have to confirm that?---Nevertheless, Gillespie - - -

You didn't - - -?---Gillespie hasn't – I'd like to give – evidence as to the origins of the documents that I've downloaded.

No. I'm sorry, Mr Hickey. They're not admissible. I'll return the documents to you?---So none of my evidence is admissible, is that what the court's saying?

5 No. It's admissible what you say, but if you're trying to establish a fact, then you need to call the person who – where the document comes from and the person gives - - -?---Well, the documents coming from me in this – in this – in this instance, and I'm giving evidence as to its origin.

10 No. The documents in themselves are not evidence of what they speak?---Well, then how can they – how can they produce documents and have them admitted into evidence. You know, Gillespie's given evidence that the origin - - -

15 I'm not entering into an argument with you, Mr Hickey. All right. Can you just explain – can you just go back and explain – you can do it in your oral evidence, if you're clever with it. All right. You said that you had a problem. The sites were not maintained. You had a malware and virus displaying. This appeared online on the 7<sup>th</sup> of the 7<sup>th</sup>. On the 13<sup>th</sup> of the 7<sup>th</sup> you were aware that the site reinstated, and it is your site, isn't it?---I own the site, but I don't have day-to-day control over everything that appears on the site, no, as demonstrated by the user list that I've  
20 printed out. There were six other active users on the site, one of which worked in my office.

25 Well, are they – are those people going to give evidence that they had access to the site?---Well, no, they're not.

No. All right. What else do you want to tell me?---The prosecution hasn't supplied any evidence that I had exclusive - - -

30 Okay. Yes. Yes. Just – that's a submission - - -?---All right.

- - - when we get to the final submissions, if you want to do that?---All right. All right.

35 So the question for you is did you do this?---Well, no. I didn't upload the material. No.

40 Right?---My – my position to the court is the material was inadvertently reuploaded by the company that I engaged to rectify the malware issues. I paid them to do so. I believe that they just wiped it and loaded an old – a backup version which is stored on the server. I believe that's how the material reappeared. Gillespie's accepted as such that it was identical material as what it appeared earlier. Gillespie has also admitted that there was a break where it was offline for a bit.

45 Okay. It's – just leave Gillespie's evidence?---Okay.

And just tell us what you did?---It's my position that the website was offline for a bit, because I had asked them to remove the malware. I don't know what they did. They won't tell me, but - - -

5 All right. So what happened after the August date with the site? Can you tell me that?---August, which date?

Two-thousand and nineteen. Do you still have that site?---The site's gone now. Yes.

10 And when did it go?---I have no idea. Probably when I was in jail for alleging misconduct in Queensland - - -

All right?---Corrupt in Queensland.

15 Okay. When would that have been?---I couldn't tell you. I was away for a year.

Right. All right. Now, anything else for your general explanation - - -?---Yes.

- - - about you?---Yes, there is.

20

And your contact with this site?---Well, yes, there is. I was in the process of moving house. I didn't have an office set up at the time that all this occurred. I was – I'd moved from Queensland to New South Wales to – to – to escape what I believe was unfair police harassment. So I had moved my – fetched my wife and daughter from overseas, setting up a new house down there. Of course, and your internet gets interrupted when you move house. Everything gets interrupted, and the office was in boxes there for a bit. That was directly in this period that these offences are alleged to have occurred. I – I would reiterate what Gillespie said, that he sought me and couldn't locate me in Queensland at the time, because I was in the process – and moving to New South Wales. Further to that – further to that, I only became aware of the material being – or reappearing on the site when it reappeared after the break when it had been down. That's all I'd like to say on it.

25

30

All right. Okay. Over to you, thank you, Mr Raut.

35

**CROSS-EXAMINATION BY MR RAUT**

**[12.16 pm]**

40 MR RAUT: Thank you. Mr Hickey, I have some questions to you. Now, you said on 1<sup>st</sup> – within 1<sup>st</sup> of April and 12<sup>th</sup> of June you were in custody, in prison?---Correct.

And that was related to unlawful stalking?---No, that was - - -

45 BENCH: Okay. What's the relevant - - -

MR RAUT: Sorry.

BENCH: - - - of this?

MR RAUT: Same victim. I was trying to relate it - - -

5 BENCH: Okay. So - - -

MR RAUT: Anyway - - -

BENCH: I mean, that's not relevant to this.

10

MR RAUT: Yeah. That's not – yes. Yes. That's - - -

BENCH: Okay.

15 MR RAUT: Yeah?---No, that - - -

BENCH: That's not relevant to this. Okay. That's not a relevant question.

MR RAUT: That's – yeah. I'll move on, your Honour. Withdraw that.

20

BENCH: In fact, it's prejudicial and I'd like you not to ask that.

MR RAUT: Yeah. Yeah. Withdraw that, your Honour. Now, Siobean Dash had investigated your business?---Well, she had slandered and attacked my business.

25

No. Just yes or no?---No. She'd not – she'd not investigated it, no.

And you were – you'd been dwelling on grudges against her?---I don't accept that at all.

30

You don't accept that. And when you were released on 12<sup>th</sup> of June 2019 you were still angry with her?---Not at all. That was – and I wasn't in prison for that in that period at – anyway. That wasn't the prison for that offence.

35 And you were still maintaining your website all through?---How would I maintain a website from prison?

No. Yes or no. Just say yes or no?---No, I wasn't.

40 BENCH: Well, what are you talking about “all through”? What dates are we talking about? The order is made on the 25<sup>th</sup> of January 2018.

MR RAUT: Yes, your Honour.

45 BENCH: Right. And that's a consequence of I don't know what.

MR RAUT: Yes.

BENCH: Because I'm not aware of that, but the events that occurred that are outlined are between the between dates. The 13<sup>th</sup> of July and the 3<sup>rd</sup> of August. That's the evidence of the officer. So - - -

5 MR RAUT: That is the evidence, and that's - - -

BENCH: If you could just restrict your questions to - - -

MR RAUT: Yes.

10

BENCH: - - - what he's actually charged with.

MR RAUT: And – thank you, your Honour. So you posted the materials on 13<sup>th</sup> of July intentionally?---No, I didn't.

15

Because it was linked with your website, you were the only one who could do that?---Not at all. I've just told you that there was many users that could've logged in and done it, and I've also told you that the – I gave another company administrative rights to rectify the issues that were involved with the website, and they took it offline and – and – and it appeared – it reappeared magically on the 13<sup>th</sup> of June - - -

20

Just - - -?---On 13<sup>th</sup> of July.

25 That's completely improbable, isn't it? It can't simply magically appear.

BENCH: Okay. Are you asking a question or making a comment?---Not only is it not improbable - - -

30 MR RAUT: Putting to the statement to him that it's - - -?--- - - - it's the most likely scenario.

- - - improbable.

35 BENCH: Okay. Please don't talk over each other. Could you ask a question - - -

MR RAUT: Sorry.

BENCH: - - - not make a comment, please.

40

MR RAUT: I'm just putting to – putting the statement to him that it is improbable. What he's saying is improbable?---No, that - - -

BENCH: Well, that's the court's decision.

45

MR RAUT: Yes.

BENCH: All right. Ask a question. Don't make a statement.

MR RAUT: And there was no other people who could add or edit the website?---I've just – I've just given evidence that there were several other people  
5 that could add and edit the website at all times.

But they had no authority to do so?---Of course they did.

10 And you posted all these materials very intentionally on 13<sup>th</sup> of July?---I've just – I've just told you that I didn't post any materials on the 13<sup>th</sup> of July. I was in the process of moving house.

15 And in August 2019?---I just told you no, I was setting up a new house in New South Wales with my wife and daughter.

It was not – it were intentionally uploaded on the website. It was never happened that way?---That's exactly what I've maintained, that it was inadvertently uploaded by another party. Not myself.

20 And you were aware of the materials on the website about 13<sup>th</sup> of July and 3<sup>rd</sup> of August, both occasions?---I became aware of the materials on the website.

25 On - - -?---Around those dates. I couldn't tell you the exact dates, but I became aware of those – of that material, but I had no capacity to even remove them, if I wanted to, because I – my office was not set up. I'd just move house.

Your Honour, nothing further, your Honour.

30 BENCH: All right. Now, anything that you want to clarify in re-examination?---Well, I – I've told – I've told the court exactly what happened. I - - -

All right?---I don't – all right. Perhaps that's a statement for later.

35 All right. Okay. A reasonable person would accept that that would be in breach of the order, would one not, if one had done it?---If I had – if I had uploaded the material, then, yes, it would be in breach of the order.

Yes?---But - - -

40 All right?---I didn't upload the material and had no part in it and had – and, in effect, had no control over the site when I was in the process of moving house.

All right. Okay. Thank you. Now, anything arising out of that questioning?

45 MR RAUT: No, your Honour.

BENCH: Thanks very much, Mr Hickey.



**WITNESS EXCUSED**

[12.22 pm]

5 BENCH: Now, because you gave evidence you're the first person to give  
submissions. Now, Mr Hickey, I understand that you're representing yourself, okay.  
I also understand that you must understand that submissions are not evidence. So the  
only things that I can hear or determine the case on is what you've said in the witness  
box and also what the prosecution has presented – the way in which the prosecution  
have presented their case.

10

DEFENDANT: Thanks. Okay. The submissions I would like to make to the court  
is that the prosecution haven't proved beyond reasonable doubt - - -

BENCH: Right. Okay.

15

DEFENDANT: - - - that I uploaded – that I uploaded the material. They haven't  
provided any witnesses to the fact that I did it or any electronic or forensic evidence  
that I did it. They've only stated that – they've only had one witness describe that he  
became aware of the material on the website and arrested me for such. He – Mr  
20 Gillespie gave evidence that he made no inquiries as to the involvement of my staff  
or the access levels they had to the website. Gillespie's also accepted, or gave  
evidence, that the material that reappeared on the website of the 13<sup>th</sup> of July was  
identical to the material I was originally breached with previously to that. It wasn't  
new - - -

25

BENCH: And what was that breach, Mr - - -

DEFENDANT: It was a first – the first breach of restraining order.

30

BENCH: It was the first breach of the restraining order.

DEFENDANT: Yeah.

BENCH: Okay.

35

DEFENDANT: He's given evidence that it was identical to that material, which  
would be consistent with the position of – with the evidence that he – or I gave that  
the material – the website was down and it was loaded from backup, because I had  
no way to fix the coding issues or the malware issues. It was beyond my technical  
40 ability. The – Gillespie has given evidence that the phone number that appeared on  
the website, the 0422 764 363 that appeared on the website as of the 13<sup>th</sup> of July was  
different to the phone number that I had given him and that I had been using for my  
business. Given that this website was the main business website for a company,  
there's no logical reason why it would have an old phone number or an incorrect  
45 phone number on it on the 13<sup>th</sup> of July. It should have a proper, reachable,  
functioning phone number so that customers can reach the business.

5 There's several inconsistencies with when it reappeared, such as the phone number, the material, the fact that it was offline for a little while. The submission that the prosecution made about being – it being improbable I believe is incorrect. I believe it's the most likely – the position that I have – the defence that I've raised is not only plausible, but it is the most likely answer to what's gone on. I'll just check my notes before I finish up.

BENCH: All right.

10 DEFENDANT: Gillespie's also given evidence that I'd left Queensland, or I was in the process of leaving Queensland, which is consistent with the defence's position and my evidence that I was in the process of leaving Queensland, which would render me in a difficult position to maintain a website in that moving house is stressful and no one's got an office or got an active internet, and this is not the sort of  
15 thing you can do with your phone. You need a proper computer setup to do these sorts of modifications.

It's not likely that I was able to do that, because it's not true. I didn't do it. Having no – being the administrator of a website doesn't render automatic liability in the  
20 case of illegal or inflammatory material appearing on it, as in the case of Zuckerberg, for example, with Facebook, when material appears on Facebook. Zuckerberg owns Facebook, but he's not arrested or challenged in any way, apart from being requested to remove it, and exactly the same scenario applies here. While I was the administrator of the website and paid the bills, there were other active users. There  
25 was half a dozen other active users at the time.

Gillespie's also given evidence that the brother had logins, or had access to the website over that time, and he was one of the users I had intended to introduce. Being the administrator of a website does not confer automatic liability and,  
30 especially, if there was no knowledge of the – no intention to post the material and no knowledge of the material being posted until after the event. The case today – the offence in question, I did not become aware of the material appearing on the website until after it had been posted or reloaded.

35 I wasn't able to remove it at the time, because I had no office, and I was arrested soon after, so I had no opportunity to remove it, nor was I asked or requested to or engaged in any way by the Queensland Police. They didn't contact me about it. They simply issued a warrant and arrested me. I believe that they acted – or prematurely by not investigating the matter properly in that there were other users to  
40 the website. Simple investigations could have established that in that the printouts are available from any authority level on the website. They could have easily established that, but they didn't. I intended to introduce that evidence today, but was unable to.

45 Bottom line is I'm not guilty of the offence. I didn't upload the material. I had no knowledge of the material being uploaded until after it had appeared, and I was unable to – I was not in a position to remove it after the fact because I didn't have an

office, I was setting up, moving house, and then I was arrested soon after. That's all I would like to say.

5 BENCH: Thank you, Mr Hickey. Mr Raut.

MR RAUT: Thank you, your Honour. Your Honour, if I can start with what we say, which conditions of the order the - - -

10 BENCH: Yes. Well, I know what they are.

MR RAUT: Yeah.

15 BENCH: And, of course, the internet – remove any content on the internet or in a public place relating to her, not to post anything on the internet or in a public place about her. That's the terms and conditions of the order.

MR RAUT: Yes, must remove – yes. Thank you, your Honour. Must remove.

20 BENCH: All right. I'm aware of what's in the order. That's exhibit number 1 - - -

MR RAUT: Yes.

BENCH: - - - in the proceedings.

25 MR RAUT: The reason I wanted to start with that is, your Honour, even with the defendant's evidence, even relying on the defendant's evidence itself, the charge is proved because what – the evidence he gave is that he only knew or come to know the material some time after 13<sup>th</sup> of July. That's his evidence, and I do not accept that, but - - -

30 BENCH: I'm not interested in what you accept. Could you make a submission, please.

35 MR RAUT: Yeah. Your Honour, we don't – the prosecution doesn't accept that, that I can make submissions with that, but, your Honour – but what he - - -

BENCH: Okay. Well, let's look at his argument, shall we.

40 MR RAUT: Yes, your Honour.

BENCH: Okay. His argument is - - -

MR RAUT: That - - -

45 BENCH: - - - "I'm just out of prison".

MR RAUT: Yeah.

BENCH: "I'm the administrator of the website".

MR RAUT: Yeah.

5 BENCH: "I'm not responsible. I'm busy".

MR RAUT: Yes.

BENCH: Have I got that right?  
10

DEFENDANT: Well, I wouldn't put it in those terms, but - - -

BENCH: Well, in a - - -

15 DEFENDANT: Essentially, yes.

BENCH: - - - quick précis of what you've told me. He's busy. Right.

MR RAUT: Yes.  
20

BENCH: The police come along. They arrest him, which they're required to do, because the matter does go up on a public place and it involves the previous person that he's been involved with and the order is made as a consequence of that - - -

25 MR RAUT: Yes.

BENCH: - - - stalking order.

MR RAUT: Yes, your Honour.  
30

BENCH: So - - -

MR RAUT: Your Honour – yes, your Honour. Your Honour, I will quickly move  
35 onto the next level, but although his evidence was that, your Honour, he knew after 13<sup>th</sup> of July and he didn't remove, so even with that, his evidence, he was obliged to remove, but he didn't remove. Even with that, he breaks the condition order, but, now, moving onto our evidence, your Honour, is that, now, yes, your Honour has viewed the material in relation to 13<sup>th</sup> of July and saw the post.

40 BENCH: Well, it's clear.

MR RAUT: Clear.

BENCH: I don't think - - -  
45

MR RAUT: I don't need - - -

BENCH: I don't think Mr Hickey would say that it's anything other than a breach of the order, it's just whether he is responsible. That's the question.

5 MR RAUT: Yes, your Honour. Now, and he says that it – it weren't intentionally uploaded on the company – by the company, which is absolutely improbable, and I ask your Honour to take that factor, that he's just relying on a simply fanciful proposition that does not make sense in terms of the facts, your Honour, and analyses of the evidence.

10 BENCH: Yes.

MR RAUT: And that he – your Honour, in his evidence, he did not talk about anything about August in – on uploading. He only briefly talks on 13<sup>th</sup> of July incident. So he has pretty much accepted about 13<sup>th</sup> – sorry, 3<sup>rd</sup> of August. He didn't  
15 tell anything, he didn't make any comment on that, so, your Honour, basically, your Honour, my ultimate – I don't need to go through too much, your Honour. My ultimate submission is that based on the evidence what your Honour has viewed from the police and also from the evidence from the Constable Gillespie, your Honour, the prosecution case has been proven beyond reasonable doubt.

20 The only point Mr Hickey is relying on, he didn't do it, someone might have done it or, magically, it might have happened has – it doesn't make sense. It is nothing supported by any evidence, and in terms of any person could have done, he could not say who would have done it, who would have authority to do that; therefore, again,  
25 that part also makes no sense. On the whole of the evidence, your Honour, the prosecution case is proven beyond reasonable doubt, your Honour. They are the submissions.

BENCH: Thank you. Now, anything in reply, Mr Hickey?  
30

DEFENDANT: Yeah. Two things in reply, your Honour.

BENCH: Okay. That you haven't already told me. All right.

35 DEFENDANT: I understand that.

BENCH: You know, sometimes less is more.

40 DEFENDANT: I understand that. The only point I'd like to make that the prosecution suggesting that I had breached the order by not removing it after I'd become aware of it is not something I was in a position to do, as I've explained I was – I had no office at that - - -

BENCH: Yes. I think you've made that point.

45 DEFENDANT: Okay. Then I won't repeat myself.

BENCH: All right. Thank you.

**TAKE IN DECISION**