

Indictment No. CR-19-00018130-00BR

SUPERIOR COURT OF JUSTICE

HER MAJESTY THE QUEEN

v.

DEIRDRE MOORE

P R O C E E D I N G A T B A I L H E A R I N G

BEFORE THE HONOURABLE JUSTICE C.T. HACKLAND

ON October 30, 2019 at 161 ELGIN STREET, OTTAWA, ONTARIO

APPEARANCES:

M. Karimjee

J. Hale

Deirdre Moore

Counsel for the Crown

Amicus Curiae

In Person

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LEGEND

[sic] Indicates preceding word has been reproduced verbatim and
is not a transcription error.
(ph) Indicates preceding word has been spelled phonetically

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WEDNESDAY, OCTOBER 30, 2019

COURT REGISTRAR: Ms. Moore is on the way up. I called about...

THE COURT: Okay.

COURT REGISTRAR: ...ten minutes ago.

THE COURT: Mr. Hale, I gather you are going to assist us as *amicus*, are you?

MR. HALE: Yes, that's right.

THE COURT: Excellent, thank you.

MR. KARIMJEE: Did Your Honour receive the "90-day Review Materials Book"?

THE COURT: Let me double check.

MR. KARIMJEE: Thank you.

THE COURT: I have it here, yes.

MR. KARIMJEE: Thank you, and -- and does Your Honour have "Bail Review Cases and Materials"?

THE COURT: Let's see here.

MR. KARIMJEE: I can -- I had emailed a copy, but I can provide this to Madam Clerk. It's just cases and materials that I'll be referring to.

COURT REGISTRAR: Thank you.

THE COURT: Thank you very much. I was in Toronto yesterday and I was having the worst trouble trying to open the electronic attachment. So, I'm sure it is on my computer.

MR. KARIMJEE: Thank you, Your Honour.

THE COURT: Thank you for the hard copy.

MR. KARIMJEE: So, Your Honour, just to, in terms of administratively the lay of the land for today. So our hope is that we'll try to -- 'cause Mr. Hale needs to leave by two thirty.

THE COURT: Okay.

MR. KARIMJEE: And we'll try to deal with the Deirdre Moore matter first.

...UNRELATED MATTERS DISCUSSED

MR. KARIMJEE: But we will try to finish this by two o'clock, because my submissions are going to be very brief. The only curve on this is that my friend just advised me that he's been speaking to Brian Monaghan from downstairs, Elizabeth Fry Society.

MR. HALE: No, he's from John Howard Society.

MR. KARIMJEE: John Howard Society, sorry, and so I've texted him. My friend has texted him; we may want to hear from him as to what his proposed plan is.

THE COURT: Yes.

MR. KARIMJEE: And Ms. Moore may testify as well. So we'll -- we'll try to finish as quickly as we can, this matter.

THE COURT: Sure, I guess the largest variable is what she would want to say and...

MR. KARIMJEE: That's right.

THE COURT: ...you know, okay.

...UNRELATED MATTERS DISCUSSED

THE COURT: Mr. Karimjee, I think we -- we are going to -- we need to look to a way to find a way to let this lady out, if at all possible. I mean, she's -- she's been in custody for a couple of months now, which is, you know, it's always concerning.

MR. HALE: Yeah.

THE COURT: When that is the time that may exceed what the sentence would be if she was convicted,

you know.

MR. KARIMJEE: And because -- I agree, Your Honour, completely. The part of the problem is that we are not seeking -- we are seeking, if there was a finding of guilt, we would be seeking NCR.

THE COURT: Yeah.

MR. KARIMJEE: Not...

THE COURT: I see, okay.

MR. HALE: Your Honour, Ms. Moore previously had sat beside me at the table. Would Your Honour, I don't think there is any security concerns, but....

MR. KARIMJEE: I'm not opposed to it, Your Honour.

THE COURT: Ms. Moore, I think it would be better if you sat beside Mr. Hale at the counsel table. Is that okay with you?

DEIRDRE MOORE: Thank you very much, Your Honour. I appreciate that.

THE COURT: Sure. Mr. Hale, would you like me to step out just for a few minutes. I know you may not have had a chance to speak, I'm not quite sure which -- what we're on.

MR. HALE: Well I think what I can do, and Deirdre you can have a seat if you like. I'll just explain where we're at.

THE COURT: Yes.

MR. HALE: So, Your Honour -- Your Honour would be aware that Ms. Moore was actually before Justice Parfett on Monday for a detention review and the matter was put to today. Ms. Moore has, in the course of representing herself, has assembled a --

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5 a witness list that includes four Superior Court judges, one of whom is Justice Parfett. So, those judges are effectively disqualified from hearing any detention review. So the matter was put to today for a detention review, and in the meantime, I've been in contact with Ashley Dicintio, it's D-I-C-I-N-T-I-O. She's a social worker in the women's unit at the OCDC, who's been working with Ms. Moore, who has been trying to get something lined up with the Elizabeth Fry Society Bail Bed Program for women. It's a -- it's called Lotus House and for whatever reason, apparently EFry was not willing to step in because Ms. Moore was not represented. But because *amicus* was involved now, because there was a lawyer attached, they met -- they met with Ms. Moore yesterday and Ms. Moore's been approved for the Lotus House Bail Bed Program, but the bail program is -- it's a joint operation of EFry and the John Howard Society. So the second part of it is that while she's accepted to Lotus House, she also has to be approved for the John Howard Society Bail Supervision and Verification Program, and that is -- that's a program that is run by Mr. Brian Monaghan, who's office is here in the courthouse outside court number 1. I emailed Mr. Monaghan yesterday afternoon, after getting word that Lotus House was willing to accept Ms. Moore, asking him to interview Ms. Moore this morning. Unfortunately Mr. Moore -- Mr. Monaghan didn't see the -- the email. I called him this morning and I appreciate he's very busy. Oh here's Mr. Monaghan now. So,

5
10
Mr. Monaghan, because this is essentially a last-minute request, and he has, I think there's already other commitments in place, he's not had a chance to meet with Ms. Moore to determine if from the John Howard end, if she is a suitable candidate for the Bail Supervision Program. Bail supervision means that she would have to report to -- to the John Howard Society on Old St. Patrick once a week or it may be something different when it's with Lotus House.

MR. KARIMJEE: I don't mean to interrupt, I apologize, Mr. Hale for interrupting, but Mr. Monaghan is here and he...

15
THE COURT: Thank you for attending, Sir.

MR. KARIMJEE: ...he's able to meet with Madam right now. So I'm willing to step out and -- and facilitate that -- the private meeting between the two of them.

THE COURT: Absolutely.

20
BRIAN MONAGHAN: Thank you, Your Honour.

THE COURT: That's what we'll do then.

MR. KARIMJEE: Thank you.

MR. HALE: All right.

25
THE COURT: Sure, how long do you think we might need.

MR. KARIMJEE: You can meet here if you want to.

30
BRIAN MONAGHAN: Depending on how things are downstairs, Your Honour, probably take about 45 minutes to do the interview, then to do the verification report.

THE COURT: Sure.

BRIAN MONAGHAN: About 45 minutes.

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THE COURT: H'hmm.

MR. HALE: Or could it be, could you meet with her up here, or do you need to go downstairs?

BRIAN MONAGHAN: No, we'll go downstairs.

MR. HALE: All right. All right.

THE COURT: All right.

BRIAN MONAGHAN: Thank you.

THE COURT: Sure, so let's see now, so how about if -- if we come back at, well, at eleven thirty, okay.

MR. KARIMJEE: Thank you.

COURT REGISTRAR: Thank Your Honour.

THE COURT: All right, thank you all. This is Ms. Moore's file, good. Okay, thank you.

R E C E S S

U P O N R E S U M I N G:

COURT REGISTAR: I did call up for the accused about 15 minutes ago, Your Honour. I'm not sure what the delay is. I'll just call and check on her status, Your Honour. Hi, we're checking on the status of the Deirdre Moore, we called about 10, 15 minutes ago. She was coming up. Is she on the way up? Okay, and our judge is on the bench. Thank you. She should be on the way up, Your Honour.

THE COURT: Thanks.

MR. HALE: While we're waiting Your Honour. I can tell Your Honour that my client's been approved by the John Howard...

THE COURT: Oh.

MR. HALE: ...or not my client but Ms. Moore's been...

THE COURT: Good.

MR. HALE: ...approved by John Howard Society.

THE COURT: Good, good, good.

MR. HALE: Mr. Monaghan is going to attend to explain the program. He can't be here until twelve thirty. So I am going to call Ms. Moore and just ask her a couple of questions.

THE COURT: That would be fine.

MR. HALE: To confirm that she is willing to comply with conditions imposed by the court. I know my friend provided....

THE COURT: Do you think -- do you think she will be? Is it your impression that she will be, or?

MR. HALE: Yeah.

THE COURT: Good.

MR. HALE: Yes, I met...

THE COURT: Good.

MR. HALE: ...with her downstairs and...

THE COURT: H'hmm.

MR. HALE: ...and...

THE COURT: She's on board for that?

MR. HALE: ...yes.

THE COURT: Good. Good.

MR. HALE: I'm going to be referring, and I know my friend has already provided it, I've got a highlighted copy of the -- the *Meyers* decision.

THE COURT: Thank you.

MR. HALE: I'm sure Your Honour is well aware of it anyway, but...

THE COURT: Yes, I have had occasion to be...

MR. HALE: ...detention reviews...

THE COURT: ...dealing with it just the other day,
but...

MR. HALE: ...have been quite revived.

THE COURT: Yeah.

MR. HALE: So I've highlighted what I think are
the key passages.

THE COURT: Sure. Just excuse me for just a
minute, Mr. Hale.

...UNRELATED MATTERS DISCUSSED

THE COURT: May I keep this "Bail Review Cases and
Material" book that you have?

MR. KARIMJEE: Yes, please. Yes, Your Honour.

THE COURT: That would be very handy.

MR. KARIMJEE: Thank you.

MR. HALE: Ms. Moore is present now, Your Honour,
and as it turns out Mr. Monaghan just came into
the courtroom and provided the letter for the
verification report.

COURT REGISTRAR: You can have a seat Ma'am.

DEIRDRE MOORE: Thank you.

MR. HALE: So now that Mr. Monaghan's here I think
our preference is to call Mr. Monaghan first.

THE COURT: Yes, Mr. Hale, that would be quite
appropriate.

MR. KARIMJEE: Thank you.

COURT REGISTRAR: Come forward to the witness
stand, Mr. Monaghan. Just make sure and remain
standing for a moment. Do you wish to make a
religious oath or a solemn affirmation?

BRIAN MONAGHAN: Religious please.

COURT REGISTRAR: On which type of religious oath?

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PATRICK MONAGHAN: The bible, please.

COURT REGISTRAR: Please hold in your hand and please say and spell your first and last name for the record.

PATRICK MONAGHAN: It's Patrick Brian Monaghan, P-A-T-R-I-C-K, Brian, B-R-I-A-N, Monaghan, M-O-N-A-G-H-A-N.

...COURT REGISTRAR ADMINISTERS THE OATH

10 PATRICK MONAGHAN: SWORN

THE COURT: Yes, Mr. Hale.

MR. HALE: Your Honour, before I ask Mr. Monaghan questions, I'm just wondering if Your Honour's familiar with -- with the John Howard Society Bail Supervision and Verification Program?

THE COURT: Well I've heard this evidence in the past, but it's been awhile.

MR. HALE: All right.

THE COURT: So if you wanted to lead that evidence.

MR. HALE: So, I'll go through it then.

THE COURT: It would assist me.

MR. HALE: All right.

25 EXAMINATION IN-CHIEF BY MR. HALL:

Q. So, Mr. Monaghan, I understand that you work here at the courthouse?

A. Yes, I do.

30 Q. With the John Howard Society?

A. Yes, I super -- or I interview all clients that are accepted onto the Bail Supervision Program.

Q. All right, and you're the person who assesses whether somebody would qualify or not qualify for that...

A. That's correct.

Q. ...program? And what are the criteria for
5 acceptance into the program?

A. Well in this situation we're looking at a criminal record prior to doing the interview. So prior to doing the interview I look at the criminal record. In this instance there is none. If there was one, we would be looking at the last
10 four years of the criminal record and if they had anymore than three convicted breaches in the last four years, well then, we could not accept them.

Q. All right.

A. So we will accept up to three convicted
15 breaches in the last year but no more than -- last four years, but no more than.

Q. All right, so there is that kind of a threshold where you can't have that number of breaches...

A. There is.

Q. ...that disqualifies you?
20

A. That's correct.

Q. But I take it that -- that you don't accept everybody into the program who doesn't have....

A. Well past -- past the -- the initial look at
25 the criminal record, well then, I interview the person and based upon my interview, I could accept or deny bail supervision to them.

Q. Okay and I understand that you've accepted Ms.
Moore?

A. That's correct.
30

Q. And what are you looking for when you're determining whether or not to accept a person?

A. Well I go downstairs, and I explain to them the criteria that they need to follow as it pertains to us, okay. Deirdre will be in the Bail Bed Program. So the criteria as it pertains to John Howard Society changes a little bit. Normally a person would report to us once a week but because she's in the Bail Bed Program, she would need to report to us twice a week.

Q. Okay.

A. She's agreed to do so.

Q. And is that done in person?

A. That's done in person.

Q. And that's on Old St. Patrick Street?

A. 550 Old St. Patrick Street.

Q. And how would she get back and forth from Lotus House, the Bail Bed Program?

A. Well she would expect -- be expected to do that herself.

Q. All right, and I -- you've talked about the -- the Bail Bed Program, that's run by the Elizabeth Fry Society?

A. That's correct.

Q. But I take it it's done in conjunction with John Howard Society.

A. Well it's their own proper program and they make their own house rules and regulations. We liaise with them. We certainly have contact with them. We make sure to -- to be knowledgeable of how the -- the accused is doing over at the Bail Bed Program. If they believe there was any potential breaches that might -- should be filed, they contact us. They let us know about that. So there's a constant contact between the Bail Bed Program and the bail supervisor.

Q. All right and are you aware of what, just generally speaking, what the rules would be at the bail bed?

A. Well I believe she -- she should have been

explained the rules. Basically there -- there is, if I'm not mistaken, okay, it's been awhile since I've spoken on the female Bail Bed Program, 'cause usually their coordinator does that, but it's similar to ours. There's a curfew over there. She would be expected to follow all rules and regulations, all house rules and regulations. No alcohol, no drugs. So there -- it is quite strict.

Q. Right.

A. The rules of the house.

Q. And this, Lotus House, is a -- it's literally a house on Russell Road, near Walkley out in the -- in the east end?

A. It's -- it's a house, unlike our house, the girls over there share rooms.

Q. Yeah.

A. Our Bail Bed Program they have individual rooms, but over at the female house they are sharing rooms.

Q. All right and I take it that, I know you don't speak for EFry, but from your experience they would have criteria that they would have to be satisfied on before they would accept a person into their bail bed program, is that right?

A. They have their own interview that they do. Though in this case, to tell you the truth, I'm hearing that Lotus House didn't even interview the -- the client. That she was interviewed by somebody at the Ottawa Carlton Detention Centre for the program. I'm trying to get confirmation of that, but Deirdre indicated to me that she was interviewed by a social worker at the Ottawa Carlton Detention Centre for the Lotus Program, which is -- is the first time I'm hearing this.

MR. HALE: Yeah, I can tell Your Honour, I spoke with Marie-josée Poulin yesterday morning and she -- she works with EFry here at the courthouse and my understanding from her was that she was going

5 to arrange for an interview to take place, and perhaps she delegated it to a social worker. But she was going to arrange for the interview to take place yesterday afternoon. So there was an interview.

THE COURT: Thank you.

10 A. I just wanted to make sure that the court was fully aware that as things stand right now, I don't know exactly whether that person works for the Ottawa Carlton Detention Centre or works for Elizabeth Fry. But it's -- it's not quite the way normal interviews were done...

MR. HALE: Q. Yeah.

15 A. ...through EFry.

Q. I take it...

A. It's a little different.

Q. ...you ended up receiving by email a...

A. I did, yes.

Q. ...a letter of acceptance?

20 A. That's correct.

Q. From Lotus House?

A. Yes.

Q. So whoever did the interview, Lotus House, somebody at Lotus House was satisfied?

25 A. I guess so.

Q. Enough to...

A. Yeah.

Q. ...provide a letter of acceptance. So on your program, Ms. Moore would have to report twice a week?

30 A. That's correct.

Q. And...

A. I explained to her...

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Q. ...and you've provided a....

A. ...that she would be expected to actively participate in any rehabilitative programs that are identified for her by her bail supervisor.

5 Q. All right, and her first, looking at your verification report, which would be incorporated into any bail order, her first reporting date would be next Monday, the 4th of November at 10:00 a.m.?

A. That's correct.

10 Q. And then from there, she would be told when the next time is, she'd have to come back?

A. Exactly.

Q. All right. I take it you -- you would have ended up being satisfied from your interview with Ms. Moore, that
15 -- that she would be able to comply with conditions?

A. I made it very -- very clear to her that -- that she would have to comply with all of the conditions and what would be the consequences if she didn't, and she accepted all of those.

20 Q. All right and if you had -- if you had serious concerns that she wouldn't be able to comply, you wouldn't have accepted her?

A. That's correct.

Q. All right.

25 MR. HALE: Those are all my questions, Your Honour.

THE COURT: Thank you. Mr. Karimjee, do you have any?

MR. KARIMJEE: Yes, thank you.

30 CROSS-EXAMINATION BY MR. KARIMJEE:

Q. Mr. Monaghan, this reporting twice a week is to a probation officer basically, right?

A. Well it's, the person hasn't been convicted so they're reporting to a bail supervisor.

Q. But the bail supervisor is somebody who works as a probation officer, am I?

5 A. No, no. A bail supervisor is a bail supervisor and a probation officer is a probation officer. We are following people who haven't been convicted of a crime, so they're out on conditions and released by the court pending their trial.

Q. And their caseload is around 60 people?

10 A. Yeah, I'd say around 60, yeah.

Q. And this meeting would last about how long, each of this reporting?

A. Normally they're scheduled for a half hour.

Q. Half an hour and one of the things you
15 mentioned was that you made it clear that Ms. Moore would have to actively participate in rehabilitative program recommended by the bail supervisor?

A. That's correct.

Q. Correct me if I'm wrong, if Ms. Moore says that
20 she doesn't suffer from a mental illness, for example, the bail supervisor would not be requiring the person to obtain mental health?

A. Well, if the court feels it fit to put some type of condition that she report to a psychiatrist, psychologist,
25 or any social workers that she might be currently doing business with, well than the court is more than capable to do that. But as from our point of view, you know, what we force her to report to has to be based upon the -- the charge sheets, the criminal record, whatever. So it's an ongoing thing. She's given me some
30 information on who exactly she is currently meeting with in the community and, you know, we -- if we believe that she should continue to follow with those people, we would certainly expect

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her to do so.

Q. Okay, so who is she meeting with currently in the community?

A. Well she indicates that she is followed by a social worker by the name of Jessica Peloso (ph) and she's provided me with her phone number, and she says she is also followed by a psychologist and she's provided me with her phone number.

Q. So let's talk about the Jessica Peloso social worker with what organization?

A. I didn't go into that.

Q. Okay. And the psychologist, what name were you provided?

A. A Ms. Iris Jackson, and I believe that's Doctor Iris Jackson.

Q. And do you know what -- what clinic she is with?

A. No, I didn't go into that but, you know, she -- she did indicate that there has been a diagnosis and Doctor Jackson had some input into that diagnosis and she's provided me with what she believes she's been diagnosed with.

Q. What did she communicate about her diagnosis?

A. It's a brief psychotic disorder that she was -- that she was diagnosed with.

COURT REGISTRAR: Stop.

MR. KARIMJEE: Q. Any other persons that she has been seeing other than those two people?

A. Not that she relayed to me but she also indicated she saw -- she was seeing a, I believe a psychiatrist at Peter Kay.

Q. Be to who?

A. Kay.

Q. K-A-Y.

A. I believe that's right, yeah.

Q. You know which hospital?

A. I remember she said who -- which hospital it
5 was but I didn't -- I didn't indicate it down.

Q. So going back to my question, in terms of the -
- the -- the bail supervisor, him or herself. If she was to say;
I don't need -- I'm not mentally ill right now. I'm fine, I'm not
going to obtain any help, the bail supervisor, him or herself,
10 would not compel treatment?

A. Well that's not for us to say whether she's
doing well or not. What I could put that under is the heading
that she wouldn't be actively participating in rehabilitative
programs. If we thought there was something wrong with her and we
15 thought she should explore certain avenue to either validate that
or, you know, put an X on it, well we would expect her to do so.
If she wasn't willing to do so, well then at that point she's not
really following through on what she indicated to me that she
would do.

20 Q. And I guess...

A. And actively participate.

Q. ...what I'm trying to understand is how far
would you go in saying that she needs something if she said she
doesn't need something?

A. Well I think on a mental health level, it's not
our expertise to do that. We would be in touch with Doctor Kay,
Doctor Jackson and from there if they indicate to us that there's
certain things that they would like her to do, we would certainly
expect her to follow through on those.

30 Q. I guess that's why I wanted...

A. Yeah.

Q. ...clarification on, is that the supervisor,

him or herself, would not say, I expect you to do a, b, c?

A. No, it would be as I indicated, in touch with health care professionals that could provide us with information that we're not, you know, not able to make ourselves.

5 Q. And you personally have no knowledge of Jessica Peloso (ph), Doctor Iris Jackson, or Doctor Peter Kay?

A. No, Doctor Kay I've heard of, yes. Everybody's heard of Doctor Kay. I believe it's the same Doctor Kay that we're talking about who is at the -- does visit with the Royal
10 Ottawa Hospital. I think it's the same one. But the other two psychologist and social worker I have never heard of before.

Q. And you yourself have -- have made no diagnosis, obviously you're not qualified to do any diagnosis. You're basically relying on what she tells you -- Ms. Moore tells
15 you?

A. She interviewed well. She was able to provide me with a world of information that many other clients are not able to provide me with.

Q. H'hmm.

20 A. So she's quite organized in her -- in her paperwork and was able to provide me with much more than, as I indicated, I normally get from clients.

Q. So your criteria for admission into the program are basically up -- if there are up to three convicted breaches in
25 the last four years, the person is not eligible?

A. Well that's pertaining to somebody who has a criminal record.

Q. That's right.

A. In this case we have no criminal record to look
30 at.

Q. And other than that, my friend mentioned to you, well if you had serious concerns, you wouldn't accept

someone? I just want to elaborate on that. So what would cause you serious concerns?

A. Well during my interview with -- with her, she didn't seem to be accepting of a 516 order, okay, with her
5 children or her husband. That would be a serious concern for me, okay. We spoke about the 516 order that she has with her husband and her two children. She was -- she -- she indicated that she was understanding of it and she was accepting of it.

Q. When you say understanding of it, did she say -
10 - did she say to you I will abide by the order of no contact?

A. She did, yes.

Q. Okay.

A. And as I indicated earlier, I explained to her what would happen if she didn't? If we found out that she didn't.
15

Q. And in terms of supervision that's provided by you and the Lotus House. I know you don't speak for the Lotus House but you are familiar with them, would you agree?

A. H'hmm.

Q. You're saying yes?

A. Yeah, I'm familiar with them, yes.
20

Q. And the supervision does not include monitoring cellphone use?

A. No, it doesn't.

Q. It doesn't involve seeing what she does
25 outside, when she leaves the premises?

A. That's correct.

Q. And in fact the curfew, as far as I understand is pretty late, isn't it?

A. Well as far as I'm aware, okay, the curfew is
30 10:00 p.m. till 6:00 a.m., but as I indicated to Ms. Moore, the courts are free to tighten that curfew up a bit, though neither our house nor the Lotus House are accepting of a pure house

arrest. The client needs to have some time in the community to be able to go to the bank, get food, because they're expected to make their own meals after buying their own food. So they do need some time in the community.

5 Q. Okay, so basically no house arrest but tight -- it can be tightened up a bit?

A. That's correct.

Q. And by a bit, what do you mean?

A. I don't want to get into that. That's --
10 that's His Honour's decision to make. But as I indicated, the client does need some time in the community, the client is here and what time they in the community, I'm sure they can explain to the judge.

Q. And you have not done any sort of risk
15 assessment as part of your interview as to whether she is likely or not to abide by conditions of no contact with her ex-husband or children?

A. Well, as I believe I am aware, there has been no -- there's no criminal record to fall back on to see if she's
20 willing to follow rules and regulations of the court. So I have to assume that she is willing to follow those rules and regulations 'cause she's indicated that she is.

Q. I guess what I'm trying to say is that by risk assessment, you haven't looked at -- you haven't formed any -- you
25 don't have any direct knowledge, from medical reports, as to what mental condition she may suffer from?

A. That's correct.

Q. And whether that would cause her to abide or
not abide by the conditions?

30 A. That's correct.

Q. Thank you, Sir. Those are all the questions I
have.

THE COURT: Mr. Hale?

RE-EXAMINATION BY MR. HALE:

5 Q. A little re-examination and this may -- it may
circumvent the need to have Ms. Moore testify. This comes up from
a question asked by Mr. Karimjee. Your -- you testified
specifically about having reviewed the section 516 order and the
importance of non-contact with -- with her family members?

10 A. Well the importance as it pertains to the
conditions of release while...

Q. Yeah.

A. ...on bail, okay.

MR. KARIMJEE: Act...

15 A. I made it clear to her, as I indicated, she
appears to be aware that she has a 516 non-contact order. She has
indicated that she's willing to follow that order, and I've
indicated to her what the consequence could be if she didn't
follow the order.

20 MR. KARIMJEE: Your Honour, I just want to stand up
and indicate that my cross-examination on that
point was very limited because I was expecting her
to take the stand and indicate her willingness and
for me to challenge her on her willingness to abide
by court conditions. So -- so my friend may be
25 circumventing the need for -- for her to testify.
I just want to put that on the record. It was --
my cross-examination was not as thorough on that
point as I would have been because I was expecting
her to testify to that.

30 MR. HALE: Well there is -- there is no legal need
for a person to testify at a bail hearing. In fact
they very often don't. It was explored with this

5 witness that he had already gone -- he had gone over with her what the potential conditions, or at least the main conditions the release would be, which would be the no contact with -- with her family members. That -- that's really, I think, what this detention review boils down to is whether there's still a risk that can't be satisfied by conditions. Whether there's still a risk that if Ms. Moore is released, she will be going back to the house or being in contact with her ex-husband, and Mr. Monaghan, as I understand it from Mr. Karimjee's questions, went through that with -- with Ms. Moore.

10 THE COURT: Yes, he's just -- he's just said that. So Mr. Karimjee, I mean, we're not, obviously, even if she was testifying, we're not going to be canvassing with her what happened in the past.

15 MR. KARIMJEE: No, no.

20 THE COURT: That led her to this situation, and she's -- she has assured Mr. Monaghan that she's a cognizant of this no contact order and would respect it and also, he's told her the consequences of not doing so. Do we really need further?

25 MR. KARIMJEE: I think we do and the reason for this is that it's one thing to say it, as I'll point -- when it's time for the ultimate submissions we'll see that there is significant evidence of significant mental health difficulties with complying with that. So it's one thing for her to say in a -- a interview with Mr. Monaghan, I'll comply. It's an order to be challenged on 30 that assertion in cross-examination and my friend

5 is correct that in a 90-day review, there is no requirement by the rules for her to provide an affidavit. But generally in a bail review the Superior Court requires an affidavit from the accused saying that he or she would comply with the bail conditions and be subject to cross-examination. So if -- I cannot compel her for a 90-day review to testify, that's her choice. And if that's the position that my friend is taking, then I will simply ask leave to - to sort of explore that a little more extensively in cross-examination with Mr. Monaghan.

MR. HALE: I -- I'm...

15 MR. KARIMJEE: And I'll make a submission during my submissions, I'll go to the materials I've already filed, indicating why the absence of her testimony is fatal, or Your Honour should give so little weight to her indication to Mr. Monaghan that she'll be complying. And I think that as I go through the materials, because that -- included in her video tape interview to the police, Your Honour will realize that this, at least, may -- may realize -- may agree with the Crown, that there are significant concerns that need to be addressed.

25 THE COURT: Well the concern that I have, is that given -- well I told you what they were before we started. I just -- this lady -- it is not assisting anyone, really anyone, by leaving her incarcerated in this -- in this situation. Now, I appreciate there's always the risk that she will not comply with her undertaking to the court and to the John Howard Society that she'll -- she will

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