

1 STATE OF ILLINOIS)
) SS:
2 COUNTY OF W I L L)

3 THE CIRCUIT COURT OF THE TWELFTH JUDICIAL CIRCUIT
WILL COUNTY, ILLINOIS

5 LEONARD C. MCCUBBIN, JR.,)
)
6 Petitioner,)
)
7 vs.) No. 19 OP 1200
)
8 JOHN NORTON,)
)
9 Respondent.)

11 REPORT OF PROCEEDINGS had in the above-entitled
12 cause before the HONORABLE FREDERICK V. HARVEY,
13 Judge of the Circuit Court of Will County,
14 Illinois, on the 11th day of July, 2019.

15 APPEARANCES:

16 MR. ROBERT HANLON,
Attorney At Law
17 for the Petitioner;

18 MR. JOEL BROWN,
Attorney At Law
19 for the Defendant.

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1 THE COURT: All right. Thanks for your
2 patience everyone. This is 19 OP 1200, Leonard
3 McCubbin, John Norton. Good morning.

4 MR. BROWN: Good morning, Judge. Let me go
5 get --

6 THE COURT: Mr. Brown --

7 MR. BROWN: -- my client from the hall.

8 THE COURT: Yes.

9 (Pause.)

10 MR. HANLON: And, your Honor, may I approach?

11 THE COURT: Yes.

12 MR. HANLON: Your Honor, on January 9 I
13 received a communication from my opposing counsel
14 that after we had --

15 THE COURT: On January 9?

16 MR. BROWN: July 9.

17 MR. HANLON: Oh, I'm sorry. July 9, Judge.

18 THE COURT: Yes.

19 MR. HANLON: I've got to get my dates right.

20 THE COURT: Yes.

21 MR. HANLON: It's bad for me.

22 But anyway on the 9th I received
23 notification at least orally from my opposing
24 counsel that he issued some subpoenas. This is

1 after we had concluded our case in chief and turned
2 the case over to opposing counsel.

3 THE COURT: Yes.

4 MR. HANLON: Following the subpoenas was a
5 subpoena ad testificandum, and the other one was a
6 subpoena duces tecum neither one of which were
7 served within the seven days that were required by
8 the Illinois Supreme Court Rules.

9 More importantly, Judge, I had
10 conferred with Mr. Brown. He had indicated to me
11 that he was going to email me the product of the
12 subpoena duces tecum. Mr. Brown did send me an
13 email, and attached to the email were secured
14 things that required access to some password
15 protected issue, so I was not able to read and
16 perceive or see what these exhibits are.

17 THE COURT: Okay.

18 MR. HANLON: So I would ask that the Court bar
19 the introduction of evidence of any document,
20 video, anything that was procured by use of
21 subpoenas after this case commenced and, you know,
22 prior to the seven days from today.

23 THE COURT: Mr. Brown.

24 MR. BROWN: Your Honor, as to the timing I did

1 email him on Monday saying that I had the
2 documents. I emailed him a copy of the documents.
3 In that email I said if you are having any
4 difficulty opening them, please let me know. I
5 will FedEx them to you. I didn't hear from him
6 that he was having difficulty opening them until
7 yesterday at which time I resent them, and then I
8 came in in the morning and had an email that he was
9 having difficulty opening them.

10 As to the seven days, I believe that
11 as I look through the Supreme Court Rules is that a
12 deposition subpoena or any sort of subpoena.

13 MR. HANLON: Judge, it's the Illinois Supreme
14 Court Rule. I believe it's 237.

15 THE COURT: The remedy, the remedy though --
16 listen. We're not going to bar. I'm not going to
17 bar the evidence. Okay. I think we don't need to
18 go through a formal discovery process in this case
19 with requests and whatnot, okay?

20 MR. HANLON: But it's trial by ambush, Judge,
21 because he issued the subpoena after we concluded
22 our case in chief.

23 THE COURT: So I'll -- I'll give you leave to
24 re-open your case if you want and I'll give you

1 time to review the documents.

2 MR. BROWN: I have no objection to that.

3 THE COURT: And I'll give you leave to re --
4 to open your case.

5 MR. HANLON: Judge --

6 THE COURT: Yes, sir.

7 MR. HANLON: -- with the expense to my client
8 command that we conclude this today. The -- if I
9 could just have a moment to confer with him --

10 THE COURT: Okay.

11 MR. HANLON: -- and let him -- let him make
12 that decision.

13 (Pause.)

14 MR. HANLON: Your Honor, I'm prepared to
15 proceed.

16 THE COURT: All right.

17 MR. BROWN: Your Honor, there is a slight
18 issue on the respondent's part. The subpoena for
19 Mike Esposito we did. It is an iAttorney. We did
20 serve it on him in person. We did tender him
21 mileage, and I believe that the Supreme Court Rule
22 237, the seven days is if you're mailing a subpoena
23 to someone.

24 At the end of hearing on the 26th

1 counsel indicated to me that Mr. Esposito and
2 Mr. McCubbin would be present. I want to call
3 Mr. Esposito.

4 MR. HANLON: Judge, he's already
5 cross-examined him.

6 THE COURT: Mr. Brown, listen. I don't
7 believe we need anymore testimony about the
8 incident that happened in the hallway, okay?

9 MR. BROWN: Yes, Judge.

10 THE COURT: I got it.

11 MR. BROWN: Yes, your Honor.

12 THE COURT: And then we're going to bring
13 somebody in. He's already testified once. What
14 could he possibly add that we can't -- and we'll
15 deal with the subpoena later as to Mr. Esposito,
16 but we're going to keep -- we're going to keep
17 moving along. We're going to move things along
18 here.

19 MR. BROWN: Yes, your Honor.

20 THE COURT: All right.

21 MR. BROWN: Then, your Honor, if I may?

22 THE COURT: Yes.

23 MR. BROWN: Counsel rests, has rested?

24 MR. HANLON: Thank you, sir.

1 MR. BROWN: We are not going to make a motion
2 for directed finding. I spoke with my -- my client
3 about that, so I would call Sarah Norton.

4 THE COURT: All right. Sarah Norton, come on
5 up.

6 MR. BROWN: She's in the hall.

7 THE COURT: Oh, okay.

8 MR. BROWN: If you would step before the Judge
9 and raise your right hand.

10 THE COURT: All right. Can you raise your
11 right hand?

12 (WHEREUPON, the witness
13 was duly sworn.)

14 THE COURT: All right. You've got to do me a
15 couple of favors. First of all state your name for
16 the record.

17 THE WITNESS: Sarah Norton.

18 THE COURT: And we're going to have you sit
19 down here so everybody can -- everyone can hear
20 you.

21 A couple of things. I need you to
22 speak loudly so everybody can hear your answers.
23 That's thing number one.

24 Thing number two, if you hear an

1 objection by either side, please wait for my ruling
2 as to whether or not you can answer that question.
3 Okay.

4 And then finally please refrain from
5 the colloquial Um-hum or Uh-uh's. Okay. I know
6 what you mean, but the court reporters who are in
7 another room who are typing down everything we say,
8 it's really hard for them to type that down, so
9 make sure you answer yes or no when appropriate.

10 Mr. Brown, your witness.

11 SARAH NORTON

12 called as a witness herein, having been first duly
13 sworn, was examined and testified as follows:

14 DIRECT EXAMINATION

15 BY MR. BROWN:

16 Q Please state your name for the record.

17 A Sarah Norton.

18 Q And how are you employed, Sarah?

19 Do you work for Wesley Township?

20 A Yes.

21 MR. HANLON: Objection. Leading. I know it's
22 foundational, Judge, but he's got to play by the
23 rules.

24 MR. BROWN: I'll rephrase it, your Honor.

1 BY MR. BROWN:

2 Q Who do you work for, ma'am?

3 A Wesley Township.

4 Q What is your job with Wesley Township?

5 A I'm the clerk.

6 Q And do you deal with any surveillance
7 cameras in the Wesley Township office?

8 MR. HANLON: Objection. Leading.

9 THE COURT: Are we not stipulating to the
10 foundation of the video? Are we not?

11 MR. HANLON: No, we are not, Judge.

12 MR. BROWN: I will rephrase, your Honor.

13 THE COURT: All right.

14 BY MR. BROWN:

15 Q Are there -- to your knowledge are there
16 any cameras in the Wesley Township office?

17 A Yes.

18 Q How many offices does Wesley Township
19 have?

20 A Technically two.

21 Q Okay. And which office do you work out
22 of?

23 A I work out of the township side.

24 Q Ma'am, I am showing you what I am

1 marking as Exhibit A.

2 MR. BROWN: May I approach? May I approach,
3 your Honor?

4 THE COURT: Yes.

5 BY MR. BROWN:

6 Q Can you tell me what exhibit, what this
7 document is, what the title of the document is?

8 A Author -- authorization, yes, by -- by
9 certification.

10 Q Okay. Thank you.

11 And did you sign this document?

12 A Yes, yes.

13 Q Do you have any responsibility for any
14 surveillance camera records?

15 A Yes.

16 Q And do you know the software used to
17 make those records?

18 A For the most part, yes.

19 Q You're not an expert on it?

20 A No.

21 Q And do you know where those records are
22 stored?

23 A Yes.

24 Q And you did make -- you did make copies

1 of records from the cameras on a June date,
2 correct?

3 MR. HANLON: Objection. Leading.

4 MR. BROWN: I'm going -- I'll rephrase it.

5 BY MR. BROWN:

6 Q Ma'am, did you make any copies of any
7 surveillance camera records?

8 MR. HANLON: Objection. Leading again.

9 THE COURT: Overruled.

10 BY THE WITNESS:

11 A Yes.

12 BY MR. BROWN:

13 Q And did you send those copies to the
14 Court?

15 A I brought them.

16 Q You brought them. This Monday?

17 A Yes.

18 MR. HANLON: Objection. Leading.

19 MR. BROWN: Your Honor, I would ask that
20 Exhibit A be admitted. It is an authentication by
21 certification pursuant to --

22 MR. HANLON: No foundation, Judge.

23 THE COURT: Well, let me see the document, see
24 what it is.

1 MR. BROWN: It's pursuant to Supreme Court
2 Rule, your Honor.

3 MR. HANLON: Judge, he has to establish
4 pursuant to the Supreme Court Rule the proper
5 foundation which requires that the document itself
6 be kept in the ordinary course of business.
7 Apparently this evidence in this matter that has
8 not been kept in the ordinary course of business.
9 I'm discouraging this evidence.

10 MR. BROWN: Your Honor, I believe --

11 THE COURT: Well, if -- what --

12 MR. BROWN: -- the document itself in the
13 title says it was kept contemporaneously in the
14 ordinary course of business.

15 THE COURT: Right.

16 MR. BROWN: Yes. And you --

17 THE COURT: I'm taking -- I'm taking the
18 document, I'm taking that it's made. Counsel, I'll
19 let you make your argument as to why as to --

20 MR. HANLON: Fair enough, Judge.

21 THE COURT: Go ahead, make your argument.

22 MR. HANLON: Your Honor, I intend to solicit
23 from the witness a prior admission from her on
24 July 3rd that the --

1 THE COURT: Hold on. Can we have the witness
2 leave the courtroom?

3 MR. BROWN: Ma'am, if you could step outside
4 again, we'll come and get you. Thank you.

5 THE WITNESS: Sure.

6 THE COURT: Go ahead.

7 MR. HANLON: Your Honor, I have a witness out
8 in the hallway who is prepared to testify to the
9 authentic -- authentication of a document that was
10 -- that he had received from Sarah Norton in
11 response to a Freedom of Information Act request in
12 which he had articulated that the township had no
13 public records responsive to his request for video.
14 The Washington -- the Wilmington Police Officer
15 Castro chose to and copied the Wesley Township
16 video to a jump drive which she took without making
17 a copy for the township, and then he was going to
18 make a copy or would not return a copy and the
19 Wilmington police detectives would contact to get a
20 copy which was denied.

21 THE COURT: Oh.

22 MR. HANLON: And so with respect to the --

23 THE COURT: Mr. Brown, have you seen that?

24 MR. BROWN: No, your Honor, I have not.

1 (Pause.)

2 MR. BROWN: Your Honor, I don't -- okay. Your
3 Honor, if you will --

4 THE COURT: Does anyone else say what counsel
5 is representing it says?

6 MR. BROWN: They're actually --

7 THE COURT: And the witness is saying that
8 she's not, doesn't have it?

9 MR. BROWN: It said that it -- I think that it
10 is that it doesn't have any that are subject to
11 FOIA.

12 I think we're kind of inflating two
13 issues. We're inflating subject to FOIA with --

14 THE COURT: Can I see the email? I mean if
15 there is a pending criminal case or whatever --

16 MR. BROWN: There is a pending criminal.

17 THE COURT: I know -- I know a lot of
18 government officials sometimes get leery when
19 dealing with FOIA requests, but if there is a
20 pending criminal case, I don't know if there is or
21 not in this case, but if there is, that would
22 remove it from that.

23 MR. BROWN: Your Honor --

24 MR. HANLON: And, Judge, the --

1 THE COURT: Hold on. However, that doesn't
2 say -- this response doesn't say that. This
3 response says we don't have it.

4 MR. BROWN: And --

5 THE COURT: Can you please stop in the
6 audience?

7 Mr. Brown, this email doesn't say
8 that. This email says we don't have it. It
9 doesn't say we gave it to the Court. It doesn't
10 say -- it says we gave it to the police. The
11 police have it.

12 MR. BROWN: Your Honor, and I believe --

13 THE COURT: Is this a video -- is this a video
14 of the incident?

15 MR. BROWN: Yes, your Honor.

16 THE COURT: I don't need to see the video of
17 the incident. I don't mean to tell anybody how to
18 do their case. If there is an argument somebody
19 spit at somebody, somebody punches somebody,
20 whatever happened happened. I got it. Why are we
21 belaboring this point?

22 MR. BROWN: Your Honor --

23 THE COURT: This is as to both sides.

24 MR. BROWN: Your Honor, as to the reason that

1 I'm playing the video, Mr. -- and just as an offer
2 of proof.

3 THE COURT: Yes.

4 MR. BROWN: Mr. Esposito stated that he saw my
5 client hock a loogie, that he saw my client spit on
6 him, on Mr. McCubbin. The video shows Mr. Esposito
7 was out in the parking lot and there was no way
8 that he could have seen Mr. -- there is no way that
9 he could have seen what he described.

10 THE COURT: All right.

11 MR. BROWN: He was in a parking lot.

12 MR. HANLON: We want to show a response,
13 Judge.

14 THE COURT: You can go ahead. Do your
15 response.

16 MR. HANLON: My objection is the admissibility
17 from an evidentiary standpoint because the record
18 wasn't kept in the ordinary course of business.
19 The certification that was provided to the Court is
20 in essence a false certification. If we take the
21 witness at her word, when she responded to a
22 lawful, you know, FOIA request, the document didn't
23 exist or the video didn't exist. The document
24 didn't exist at the time that she had sent her

1 thing and now suddenly it exists.

2 It brings to question the truth and
3 voracity as to the whatever the video intends to
4 introduce. And as I articulated earlier, I haven't
5 had an opportunity to review those videos, and so
6 while we're still willing to proceed with this
7 case, but I think that --

8 THE COURT: Can I take up what's happened
9 here?

10 Okay. I don't want to start hopping
11 down and start being a lawyer again, but couldn't
12 Mr. Brown just say okay, I'll put your client back
13 on the stand, he can watch the video and say oh,
14 yes, it fairly and accurately depicts what happens
15 and the video is in evidence anyway because that's
16 the foundation for the video --

17 MR. HANLON: Um --

18 THE COURT: So are we not just --

19 MR. HANLON: Yes, Judge.

20 THE COURT: -- spinning our wheels over
21 nothing, gentlemen? Let's get to the point.

22 MR. HANLON: If it's just the video which
23 my client is in and he wants to play that video,
24 I'm okay with that, Judge. If it's some other

1 video about some other thing where a prior witness
2 has --

3 THE COURT: I'm assuming it's the video about
4 the stuff in the hallway, right?

5 MR. BROWN: Yes, your Honor. I want to show
6 the video from within that shows the incident.
7 It's about three minutes. I want to show the video
8 from without showing my client walking into the --
9 into the building. Those are -- I mean and that's
10 five minutes of video total. It's contemporaneous
11 that --

12 MR. HANLON: Objection as to the
13 contemporaneous nature of it, Judge, because I
14 don't know that.

15 THE COURT: Have you seen it?

16 MR. HANLON: No.

17 THE COURT: Watch the video. Counsel, you may
18 watch the video and go -- oh, I want him to see
19 that. So I've expended enough time on this very
20 minute issue. I'm going to take a break. You
21 watch the video and we'll reconvene in about 15
22 minutes.

23 (WHEREUPON, a recess was
24 had in this cause.)

1 THE COURT: All right. Thank you, gentlemen.
2 I apologize for my little outburst there, but I'm
3 trying to move things along especially since
4 counsel wants to wrap things up today, and at the
5 rate we're going that's probably not happening.

6 MR. HANLON: Judge, if I --

7 THE COURT: Have you had -- yes.

8 MR. HANLON: If I may?

9 THE COURT: Have you had an opportunity to
10 view the video?

11 MR. HANLON: I had an opportunity to view the
12 video, and I took the same advice of the Court to
13 no longer object with respect to the videos.

14 THE COURT: Thank you.

15 MR. BROWN: Then I will -- if I could recall
16 Ms. Norton, your Honor.

17 THE COURT: Sure.

18 MR. BROWN: Come on in.

19 THE COURT: All right. Ma'am, you're still
20 under oath. Go ahead.

21 MR. BROWN: Your Honor, I would ask that the
22 videos be moved into evidence. There are
23 approximately four cameras as the Respondent's
24 Group Exhibit B.

1 THE COURT: All right. Are you going to play
2 them?

3 MR. BROWN: Yes, your Honor. This is for the
4 record video camera 01 Wesley Township MP4, and I'm
5 starting it now.

6 THE COURT: Please turn it. I can't see
7 unless you turn it towards me. There we go.

8 (Video playing.)

9 MR. BROWN: So that is camera 01. I'm going
10 to stop it, your Honor --

11 THE COURT: All right.

12 MR. BROWN: -- at 2:41.

13 And the video now, your Honor, I
14 would play office underscore Wesley Township. That
15 is the second camera.

16 (Video playing.)

17 MR. HANLON: Your Honor, may I just move over?

18 THE COURT: Yes, absolutely. Come on, go on
19 this side. Actually it might be easier for you to
20 see.

21 MR. BROWN: So I'm going to stop playing
22 office underscore Wesley Township for MP4 at 2:43.

23 And then finally, your Honor, I
24 would play outside Wesley Township 1 and playing

1 outside camera -- file outside. I'll just go
2 Wesley Township 1, and with the Court's permission
3 I'll fast forward, and, Counsel, do you --

4 MR. HANLON: Sure. You could go straight to
5 the end if you want.

6 MR. BROWN: And I'm playing it from 3:45.

7 (Video playing.)

8 MR. BROWN: And I will stop playing it at
9 4:26.

10 BY MR. BROWN:

11 Q Ma'am, you were -- ma'am, you were in
12 the Wesley Township office on June 13, were you?

13 A Yes.

14 Q And did you -- what, if any, interaction
15 did you have if you recall with Leonard McCubbin?

16 THE COURT: What date was that again?

17 MR. BROWN: June 13.

18 THE COURT: All right.

19 MR. BROWN: The date of the occurrence.

20 THE COURT: This is on the date of the
21 incident?

22 MR. BROWN: Yes.

23 THE COURT: All right.

24

1 BY THE WITNESS:

2 A I was in the hall doing my job, and he
3 came flying in the door and he started screaming at
4 me.

5 BY MR. BROWN:

6 Q And did you witness any physical
7 contact?

8 What, if any, physical contact did
9 you witness between Mr. McCubbin and your father --

10 A That --

11 Q -- and John Norton?

12 A That part is a blur as to what happened.

13 Q Okay. It's a blur to you?

14 A Yes.

15 Q Can you tell the Court why?

16 A Honestly I can't. Um, I honestly don't
17 know why. All of that, that -- that part is a
18 complete blur.

19 MR. BROWN: Okay. All right, your Honor, then
20 given that I am not going to ask her anymore
21 questions. It's a blur.

22 THE COURT: All right. Any questions?

23 MR. HANLON: You know, Judge, I'd like to
24 cross, but I don't want to waste the Court's time.

1 THE COURT: No, no, no. You want to cross,
2 ask away.

3 MR. HANLON: Judge, it would only go to serve
4 to waste the Court's time and I'll pass on the
5 cross.

6 THE COURT: Counsel, I don't want to do it on
7 that, on that --

8 MR. HANLON: All right. Very good, Judge.

9 THE COURT: I don't want to do it on that
10 path. I don't want to --

11 MR. HANLON: Fair enough.

12 THE COURT: -- but I appreciate it.

13 MR. HANLON: Can I retrieve the two --

14 THE COURT: Absolutely.

15 MR. HANLON: -- exhibits?

16 CROSS-EXAMINATION

17 BY MR. HANLON:

18 Q Ms. Norton, you indicated that you
19 signed this document as Defendant's Exhibit A, am I
20 correct?

21 A Yes.

22 Q And I believe that you articulated that
23 everything in there is true and correct and that
24 these documents, these videos were kept in the

1 ordinary course of business, is that correct?

2 A Yes.

3 Q All right. Returning Exhibit A to the
4 Court.

5 Do you know who John Kraft is?

6 A Yes.

7 Q Was that a yes?

8 A Yes.

9 Q Did Mr. Kraft request a copy of videos
10 that you've just -- you authenticated and we shared
11 here in the courtroom?

12 A Not that I'm aware of.

13 Q Are you sure about that?

14 A Yes.

15 Q Okay.

16 A Not that I'm aware of.

17 Q And the respondent in this case is your
18 father, correct?

19 A Yes.

20 Q Do you respond to email requests from
21 Mr. Kraft?

22 A Yes.

23 Q And --

24 A I did.

1 Q Isn't it true that on July the 3rd, 2019
2 at 1:26 P.M. and 41 seconds that you responded to
3 his request for those very same videos?

4 A I do not recall because I answer so many
5 of them.

6 Q Is there anything that would help
7 refresh your memory?

8 Let me ask it to you another way.
9 If I showed you your email, would that help refresh
10 your memory?

11 A It may.

12 MR. HANLON: Your Honor, may I hand the
13 witness --

14 THE COURT: You can approach the witness.

15 MR. HANLON: Thank you.

16 BY MR. HANLON:

17 Q Would you take a look at and let me mark
18 that?

19 MR. HANLON: It was like No. 3, right, before,
20 Judge?

21 THE COURT: I believe so. Let me check my
22 notes.

23 MR. HANLON: So this would be No. 4.

24 THE COURT: Sure.

1 BY MR. HANLON:

2 Q Would you take a look at No. 4?

3 A Okay. I do remember answering that one
4 now.

5 Q You remember this one now and you were
6 asked for those very same videos, right?

7 A Um --

8 Q His request of you was for those videos
9 that occurred within the seven days prior to his
10 request which included June 13, isn't that correct?

11 A Are we still talking about Mr. Kraft or
12 we talking about somebody else?

13 Q I'm talking about the request for the
14 videos. Do you recall receiving his request for
15 those same videos?

16 A I don't recall getting the email but I
17 do recall answering it.

18 Q Okay. And when you answered it, you had
19 articulated that the township has no public records
20 exist in response to the request, is that correct?

21 A If that's what it says on the paper,
22 then yes.

23 Q And then you went on to say Wilmington
24 Police Officer Castro chose and copied the Wesley

1 Township video to a jump drive which he took
2 without making a copy of for the township, correct?

3 A (No audible response.)

4 Q Do I need to show it to you again?

5 A No. I'm trying to remember.

6 Q Do you have a problem with your memory?

7 A I have a short term memory problem.

8 Q Is that because of some physical
9 impairment that you have?

10 A It's because I was --

11 MR. BROWN: Your Honor, I'm going to object.

12 I mean she indicated --

13 THE COURT: That objection is sustained.

14 THE WITNESS: Okay.

15 BY MR. HANLON:

16 Q With respect to the statement since he
17 made a copy the township does not have a copy,
18 Wilmington Police Detective Jurgens was contacted
19 to get a copy of the video which was denied as an
20 open case, so on July 3rd you didn't have a copy of
21 the video, right?

22 A No.

23 Q You didn't have a copy then but your
24 certification to this Court was that the video was

1 kept in the ordinary course of business, isn't that
2 correct?

3 A Yes.

4 Q So it can't be one in the same, right?

5 MR. BROWN: Your Honor, I'm going to object
6 here as to foundation. Are we talking about the
7 video that was given to Officer Norton or are we
8 talking about the video -- the entire video from
9 that night?

10 THE COURT: That objection is overruled.

11 MR. HANLON: May I retrieve Exhibit A again,
12 your Honor?

13 THE COURT: Yes.

14 BY MR. HANLON:

15 Q And by your silence I'm assuming you
16 can't reconcile these two positions that you've
17 taken, is that correct?

18 MR. BROWN: Your Honor --

19 BY THE WITNESS:

20 A I'm confused.

21 BY MR. HANLON:

22 Q You're confused. All right. So let's
23 help clear up your confusion. It says pursuant to
24 Illinois Supreme Court Rule 236. Do you know what

1 Illinois Supreme Court Rule 236 is?

2 A No.

3 Q The attached records listed herein were
4 made in the regular course of business?

5 A Okay.

6 Q And then it goes on, furthermore, it was
7 in the regular course of business to make such
8 records contemporaneous with the act, transaction
9 occurrence within the event at a reasonable time
10 thereafter, right?

11 A Yes.

12 Q And that these records were kept in the
13 ordinary course of business, correct?

14 A Yes.

15 Q But if you didn't have the records for a
16 production in response to a FOIA request, how were
17 they kept in the ordinary course of -- I'm
18 returning Exhibit A to the Court.

19 MR. BROWN: Your Honor, I'm going to object to
20 that question as being -- we don't have the FOIA
21 statute and I think we're conflating a bit.

22 THE COURT: Well, Mr. Brown, we're not
23 conflated. This Court isn't conflated at all
24 because that, that her email response doesn't make

1 any mention about pursuant to FOIA authority thing.
2 She's saying we don't have it --

3 MR. BROWN: Yes, your Honor.

4 THE COURT: -- basically. And then when it's
5 requested by you, oh, we definitely have it and I'm
6 the keeper of records and here you go. It's a fair
7 -- it's a fair issue to examine, so your objection
8 is overruled.

9 BY THE WITNESS:

10 A I'm not the one who wrote that. I am
11 the one who sent it, but I am not the one who wrote
12 that paragraph to put on there.

13 BY MR. HANLON:

14 Q So is it fair to say that your father
15 and his attorney handed you that piece of paper and
16 you just signed it because they asked you to?

17 A No.

18 Q Did you read it before you signed it?

19 A I read everything before I sign it.

20 Q Well, how was it that these records were
21 kept in the ordinary course of business and you
22 didn't have it? Do you believe in miracles?

23 A The paragraph --

24 MR. BROWN: Objection, your Honor.

1 THE COURT: Objection sustained.

2 BY THE WITNESS:

3 A The paragraph was not written by me.

4 MR. HANLON: Your Honor, I think I've made my
5 point.

6 THE COURT: Mr. Brown.

7 MR. BROWN: Your Honor, one moment.

8 (Pause.)

9 REDIRECT EXAMINATION

10 BY MR. BROWN:

11 Q Do you recall how much video -- your
12 Honor, nothing further of the witness.

13 THE COURT: All right. You can step down.
14 Thank you.

15 MR. BROWN: Please wait in the hall.

16 THE COURT: All right. Call your next.

17 MR. BROWN: Your Honor, I would call -- I
18 would call John Norton.

19 THE COURT: All right. Mr. Norton, come on
20 up.

21 THE WITNESS: Good afternoon, your Honor.

22 THE COURT: Good afternoon, Mr. Norton. Raise
23 your right hand for me, please.

24

1 (WHEREUPON, the witness
2 was duly sworn.)

3 THE WITNESS: With the exception of the last
4 line, yes, your Honor.

5 THE COURT: Hold on a second. Do we have the
6 oath for the non-God oath? It's in there I just
7 realized. Right, right. It's affirm. Which one
8 is it? Oh, here we go. This is it.

9 All right. Can you raise your right
10 hand, please?

11 (WHEREUPON, the witness
12 was duly sworn.)

13 THE COURT: Okay. Thank you. Have a seat.

14 Mr. Norton, a couple of things.

15 THE WITNESS: Yes, your Honor.

16 THE COURT: Speak up --

17 THE WITNESS: Yes, your Honor.

18 THE COURT: -- so everybody can hear you. If
19 you hear an objection by either side, wait for my
20 ruling before you answer, and please answer yes or
21 no when appropriate instead of Um-hum or Uh-uh's,
22 okay?

23 THE WITNESS: Yes, your Honor.

24 THE COURT: All right. Go ahead, Mr. Brown.

1 JOHN NORTON,
2 called as a witness herein, having been first duly
3 sworn, was examined and testified as follows:

4 DIRECT EXAMINATION

5 BY MR. BROWN:

6 Q Please state your name spelling the last
7 for the record.

8 A John Norton, N-o-r-t-o-n.

9 Q And you live in Wesley Township?

10 A Yes, I do.

11 Q And on June 13 of this year, 2019 you
12 were at the Wesley Township hall, correct?

13 A Yes, I was.

14 Q For what purpose?

15 A To attend a meeting.

16 Q And did you go into the office building?

17 A Yes, I did.

18 Q Can you -- and can you describe the
19 office part of the Wesley Township hall?

20 A The office part there is an entrance on
21 the southeast corner of the building facing south.
22 It goes down, traverses a hallway, 28 feet long, 5
23 feet wide coming in the front door for the office
24 side leading into an open forum a little bit

1 smaller than this courtroom.

2 Q So the hall leading into the office, are
3 there any doors or anything off of that hall?

4 A Yes, there are.

5 Q What are they?

6 A Two restrooms, one female, one male.

7 Q Are there -- how many entrances are
8 there to each of the restrooms?

9 A Only --

10 MR. HANLON: Objection to relevance, Judge.
11 We had a video. We can just skip this and move
12 along.

13 MR. BROWN: Your Honor, I mean I'm asking him
14 to show that there was no way that it could have
15 been answered, that anyone could observe from that
16 hallway. That's the reason I'm asking it, so --

17 MR. HANLON: I'll offer a stipulation, Judge.

18 THE COURT: Hold on. All right. Just answer
19 my -- Mr. Brown, I know what that room looks like.
20 I've seen the hall.

21 MR. BROWN: Okay.

22 THE COURT: And I know where the witness
23 you're talking about was at the time that the
24 incident happened.

1 MR. BROWN: Okay. All right. So, sir, I'll
2 move along, your Honor.

3 BY MR. BROWN:

4 Q You saw the videos that we played today,
5 correct?

6 A Yes, I did.

7 Q And can you tell the Court who the
8 gentleman in the second amendment shirt was?

9 A Michael S. -- Michael A. Esposito.

10 Q Okay. So you saw him in videos inside
11 the hall, correct?

12 A Yes, I have.

13 Q And you saw him in the video in the
14 parking lot to the hall, correct?

15 MR. HANLON: Objection.

16 THE COURT: Yes, I have.

17 MR. HANLON: Leading.

18 THE COURT: He's identified who that person
19 was. The video is in.

20 MR. BROWN: Yes, your Honor. I will --

21 THE COURT: Ask him what you want. Go ahead.

22 BY MR. BROWN:

23 Q Sir, did you ever spit on Mr. McCubbin
24 that evening?

1 A No.

2 Q What, if anything, were you saying when
3 you walked into the office?

4 MR. HANLON: Objection. No foundation. It
5 calls for hearsay.

6 MR. BROWN: I'm asking him what he was saying
7 as he was walking in.

8 MR. HANLON: Yes, Judge. It's an out of court
9 statement offered to prove the truth of the matter
10 asserted, and even though it's his own statement,
11 it still counts as hearsay underneath the hearsay
12 rule.

13 THE COURT: Well, unless he's using it to
14 admit it just for the utterance itself and not for
15 the truth. He's not offering it -- the truth of
16 whatever Mr. Norton said, those words aren't at
17 issue with this case, right? I'll allow him to say
18 it.

19 Mr. Norton, what happened? What did
20 you --

21 THE WITNESS: From point -- from which point,
22 your Honor?

23 BY MR. BROWN:

24 Q When you were walking into the building,

1 what -- tell us what happened when you walked into
2 the building.

3 A I walked into the building, stated --
4 asked the question what's going on due to the fact
5 I heard Sarah screaming at somebody. I walked in,
6 got just about to the end of the hallway when the
7 petitioner ran up and got right in my face.

8 Q And then what happened?

9 A I put my hands behind my back as you
10 could see in the video and said shut up, Lenny, and
11 stepped around and walked away.

12 Q And then what happened?

13 A He hit me on the -- right about the
14 brain stem area on the left side.

15 Q And what did you do next?

16 A I turned to Sarah and told her to call
17 the police.

18 Q Now when you walked into the office, who
19 did you see?

20 A All I saw was I saw as I come in the
21 door, I could see Sarah partially because out of
22 the corner, the eastern wall was -- the corner was
23 blocking her, but I seen Lenny standing almost dead
24 ahead of me.

1 Q And by Lenny you mean Leonard McCubbin?

2 A Leonard McCubbin, yes.

3 Q Okay. At any time did you make any
4 physical contact with Mr. McCubbin?

5 A No.

6 Q All right. Now let me direct you -- you
7 -- you've read this petition, correct, the petition
8 for an order of protection?

9 MR. HANLON: Objection, Judge. Again calls
10 for a response to hearsay document, assumes facts
11 not in evidence.

12 MR. BROWN: Your Honor, I'm just directing --

13 THE COURT: No, that's okay. That objection
14 is overruled.

15 BY MR. BROWN:

16 Q You've read the petition in this case,
17 correct?

18 A Yes.

19 Q All right. Now the petition discusses
20 various postings on Facebook?

21 A Yes.

22 Q And are you familiar with the postings
23 that the petition discusses?

24 A Yes.

1 Q Did you write any of those posts?

2 A No.

3 MR. BROWN: Nothing off of that, your Honor.

4 I mean that's, that's it, your Honor.

5 THE COURT: All right. Cross.

6 CROSS-EXAMINATION

7 BY MR. HANLON:

8 Q Mr. Norton, do you recall testifying in
9 a separate order of protection matter that you had
10 brought in this courtroom before this judge
11 involving Cynthia Brzana?

12 A Say --

13 MR. BROWN: Your Honor, I'm going to -- I'm
14 going to object here as to hearsay. If it's the
15 goose, goose for the gander, if it's also being --
16 he's asking him about something that --

17 THE COURT: No, this is a question about a
18 party pointing. It's definitely not goose for the
19 gander.

20 MR. BROWN: Okay, yes, your Honor, you're
21 right.

22 THE COURT: That objection is overruled.

23 BY THE WITNESS:

24 A Restate the question.

1 BY MR. HANLON:

2 Q All right.

3 A And speak up. I can't -- or your voice
4 falls outside my hearing.

5 Q Yes, I'll help you out there,
6 Mr. Norton. Can you hear my voice now?

7 A Yes, I can.

8 Q And you've been here in this courtroom
9 before today, correct?

10 A Yes, I have.

11 Q Okay. And you stood here and you were
12 asking for an order of protection against Cynthia
13 Brzana, correct?

14 A Actually I put on a defense from this
15 one.

16 THE COURT: All right. Mr. Norton, you were
17 here?

18 THE WITNESS: Yes.

19 THE COURT: You were here, right?

20 THE WITNESS: Yes, your Honor.

21 BY MR. HANLON:

22 Q And you can hear my voice now, correct?

23 A Yes, I can.

24 Q Okay. And at the time that you were

1 present in this courtroom testifying before this
2 judge you did not articulate that you were an
3 administrator of the Wesley -- the Guardians of
4 Wesley Township Facebook page?

5 MR. BROWN: Your Honor, I'm going to object.
6 Outside of the scope of direct. I never asked him
7 about administration of the page.

8 THE COURT: And that objection is overruled.
9 He can answer.

10 BY THE WITNESS:

11 A That's not exactly what I said.

12 BY MR. HANLON:

13 Q So are you saying that you did not say
14 the word minister -- administrator of the Wesley
15 Township Facebook page?

16 A I clearly stated I have
17 administrative --

18 Q Okay.

19 A -- access.

20 Q The answer to my question -- my question
21 calls for a yes or no answer.

22 THE COURT: All right, Counsel. Counsel, let
23 him answer the question.

24

1 BY THE WITNESS:

2 A I clearly stated I have administrator
3 access due to the fact that the name of that is my
4 intellectual property.

5 BY MR. HANLON:

6 Q So, Mr. Norton, as you sit here today
7 it's your contention that you did not articulate to
8 this Court that you were administrator of the
9 Guardians of Wesley Township web page, is that
10 true?

11 MR. BROWN: Objection. Asked and answered.

12 THE COURT: No, that objection is overruled.

13 BY THE WITNESS:

14 A I stated to this honorable Court on that
15 day I have administrative access to that site.

16 BY MR. HANLON:

17 Q Are you familiar with the penalties of
18 perjury?

19 A Yes, I am.

20 Q Do you have any problems with your mind
21 or memory?

22 A Say it again. I can't hear you. You
23 stepped away.

24 Q Do you have any problem with your mind

1 or memory?

2 A For the most part, no.

3 Q What do you mean the most part?

4 A Other than certain environmental or
5 conditional things I usually remember. I do not
6 have a hyperphotographic memory so I don't remember
7 every single detail.

8 Q Well, do you remember the details when
9 we were here last on June 27 where there was your
10 counsel distinguished between Guardian of Wesley
11 Township and the Guardians of Wesley Township?

12 A Yes, I do vaguely recall that.

13 Q And are you aware that on Tuesday,
14 December 18, 2018 there was an announcement on the
15 Guardians of Wesley Township Facebook page that
16 reads the administration of this site consists of
17 several residents and former employees of the
18 township?

19 MR. BROWN: Objection, your Honor. Hearsay
20 and lack of foundation.

21 MR. HANLON: I'm asking him if he knows it.

22 THE COURT: Let him ask the question. The
23 objection is overruled.

24

1 BY THE WITNESS:

2 A What was your question again?

3 MR. HANLON: Your Honor, every time I get an
4 objection he seems to forget the question.

5 THE COURT: Counsel, let's save the
6 editorializing and ask your question.

7 BY MR. HANLON:

8 Q So there was an announcement that was
9 published on the Guardians of Wesley Township web
10 page on Tuesday, December 18, 2018 in which it
11 articulated that the administrators of the site
12 consist of several residents and former employees
13 of the township, do you recall that?

14 A I recall seeing it, yes.

15 Q All right. You used to be an employee
16 of the township, correct?

17 MR. BROWN: Your Honor, relevance. Objection
18 as to relevance.

19 THE COURT: Thank you. No, that objection is
20 overruled.

21 Sir, you used to be employed by the
22 township?

23 THE WITNESS: I was the appointed as highway
24 commissioner, not specifically an employee but as

1 an elected official.

2 THE COURT: You were appointed or elected?

3 THE WITNESS: Appointed to serve out the
4 remainder of a term of a previous one.

5 THE COURT: Okay.

6 BY MR. HANLON:

7 Q All right. So you got a paycheck from
8 the township?

9 A Yes, I did.

10 Q And that was for doing work at the
11 township?

12 A Yes.

13 Q So you were employed by the township,
14 right?

15 A Yes.

16 Q It also said on that same announcement
17 both this page and the previous page are the same
18 administrator, isn't that correct?

19 A I do not recall that.

20 Q You don't recall that. Anything refresh
21 your memory?

22 A If you got something, please present it.

23 MR. HANLON: I'm going to mark this as

24 Plaintiff's No. 5. Showing Plaintiff's No. 5.

1 Hang on. I have to show it to
2 counsel.

3 (Pause.)

4 MR. BROWN: Your Honor, are we talking -- I'm
5 going to object as to foundation. There are two
6 guardians. There are -- there is the Guardian of
7 Wesley Township page and there is the Guardians of
8 Wesley Township page. I believe we went over that
9 on the last court date.

10 MR. HANLON: Yes, and this piece of paper --

11 MR. BROWN: And the discussion and the OP, and
12 the previous OP hearing that counsel referenced was
13 for Guardians of Wesley Township. He's -- we're
14 now going on to the other page, the Guardian of
15 Wesley Township, and we're sort of -- I mean I
16 don't know, A. I mean we're going onto a different
17 web page, and, B, I'm going to ask that, you know,
18 and if he's trying to get a statement in evidence,
19 then I believe we have the right to see, and I've
20 got the right to see under Illinois Rules of
21 Evidence 106 the entire chain. I mean we're kind
22 of -- he's showing parts of it. We -- and I want
23 to see the whole thing.

24 THE COURT: Your response.

1 MR. HANLON: All right. My response, Judge,
2 is I asked the witness if there was anything that
3 would refresh his memory. He said if you got
4 something, show it to me, and so I'm attempting to
5 refresh the witness's recollection. Opposing
6 counsel is talking about admissibility of something
7 when --

8 THE COURT: Okay.

9 MR. HANLON: -- it's not offered for
10 admissibility.

11 THE COURT: All right. It's overruled then.

12 BY MR. HANLON:

13 Q And the witness Exhibit No. 5.

14 A And what was your question about this?

15 Q Well, I want you to take a look at it.
16 I want you to refresh your memory.

17 A Okay.

18 Q Is your memory refreshed?

19 A I remember seeing this, yes.

20 Q Now you were one of the administrators
21 of the Guardians of Wesley Township. This says
22 that they're the same and it says both this page
23 and the previous one are the same administrator.
24 You said you were the administrator of one. Were

1 you the administrator of both?

2 A Incorrect. I never said I was an
3 administrator of either site. I clearly stated
4 numerous times on the record I have administrative
5 access for a couple of purposes.

6 Q Who's the administrators of the website?

7 A I refuse to answer that on the grounds
8 due to the threats been made to myself and others
9 even associated with that.

10 THE COURT: Hold on. Hold on, Mr. Norton.
11 That's not a grounds for you to not answer the
12 question. Okay. You're under oath --

13 THE WITNESS: Yes, your Honor.

14 THE COURT: -- under affirmation. Counsel
15 asked you a very straightforward question which
16 this Court appreciates straightforward questions.

17 THE WITNESS: Yes, your Honor.

18 THE COURT: Answer the question.

19 BY THE WITNESS:

20 A I'm not going to tell him the answer,
21 who they are --

22 MR. BROWN: Your Honor, may I have a --

23 BY THE WITNESS:

24 A -- due to --

1 MR. HANLON: Judge, that's contempt.

2 MR. BROWN: May I have a moment with my
3 client, please, just a very brief moment?

4 THE COURT: Let's take a break. Talk to your
5 client.

6 MR. BROWN: John, please see me in the hall.

7 Thank you, sir.

8 (WHEREUPON, a recess was
9 had in this cause.)

10 MR. BROWN: Thank you, your Honor.

11 THE COURT: All right. We're back.

12 Where is Mr. Norton? Oh, he's back
13 on the stand. All right. I didn't see you there.

14 All right. Show we're back after a
15 brief recess. Mr. Norton, you're still under
16 affirmation. We took a break for you to speak to
17 your attorney.

18 Go ahead.

19 THE WITNESS: Repeat your question again.

20 BY MR. HANLON:

21 Q Did you not hear the Judge's order to
22 answer a question that I ask you?

23 THE COURT: All right, Counsel, don't argue.
24 Just answer the question. Just answer the

1 question, ask the -- why don't you ask the question
2 again.

3 BY MR. HANLON:

4 Q Who are the administrators of the
5 Facebook page Guardians at Wesley Township?

6 A Sandy Vasko, Christian Duncan, two
7 different Sean Millers, Zoey Wilkes are the ones
8 who have, currently have administrative access to
9 it.

10 Q So it's your position that you have no
11 access to that?

12 MR. BROWN: Your Honor, objection. I mean
13 asked and answered. I mean he --

14 THE COURT: That's not true. He didn't list
15 himself in that list of people.

16 MR. BROWN: Oh.

17 THE COURT: No, objection is overruled.

18 Are you a part of that list too,
19 Mr. Norton?

20 THE WITNESS: I have the administrative
21 access, yes, I have it, sir, but I did not create
22 it.

23 THE COURT: That wasn't the question.

24 MR. HANLON: He didn't ask who created it.

1 THE COURT: Go ahead. Sorry.

2 MR. HANLON: Okay.

3 THE COURT: I'll remove myself from the
4 proceedings.

5 MR. HANLON: Judge, I don't want to see you
6 remove yourself. I may need your assistance.

7 BY MR. HANLON:

8 Q Mr. Norton, I asked you a very simple
9 question. Are you in the list of people who are
10 administrators of the Guardians of Wesley Township
11 Facebook page? It's a yes or no question.

12 A I stated there are two different things.

13 Q I asked you a yes or no question.

14 A Administrator, no.

15 Q Do you have administrative access to the
16 Guardians of Wesley Township Facebook page?

17 A Yes, I do.

18 Q Do you have administrative access to
19 Guardian of Wesley Township --

20 A Yes, I do.

21 Q -- Facebook page?

22 And have you posted on behalf of
23 those two respective Facebook pages statements of
24 and concerning the petitioner?

1 A No.

2 Q You mentioned two Sean Millers?

3 A Yes.

4 Q What's the spelling of Sean Miller's
5 first name?

6 A Which one?

7 Q Well, why don't you share with me what
8 you know that there two first names to be?

9 A S-i-a-n, S-e-a-n.

10 Q S-i-a-n, would that be Gaelick?

11 MR. BROWN: Objection, your Honor. What's the
12 relevance of all of this?

13 THE COURT: That objection is going to be
14 sustained.

15 BY MR. HANLON:

16 Q Mr. Norton, you've heard testimony, two
17 witnesses that you spat in the face of
18 Mr. McCubbin, is that correct?

19 A I heard that, yes.

20 Q And --

21 A I can't hear with them behind me. The
22 hallway noise is too loud. It's echoing.

23 Q Well, we want you to be comfortable,
24 so --

1 THE COURT: Can we close the door? I will
2 note Mr. Norton is not in a solid, doesn't -- this
3 back wall doesn't go floor to ceiling. Give me one
4 moment.

5 (Pause.)

6 THE COURT: All right. Hopefully that helps.

7 THE WITNESS: Thank you, your Honor.

8 THE COURT: You're welcome.

9 MR. HANLON: Judge --

10 THE COURT: Yes, sir.

11 MR. HANLON: -- I don't think I have anymore
12 questions for Mr. Norton.

13 MR. BROWN: Very briefly.

14 THE COURT: Yes.

15 REDIRECT EXAMINATION

16 BY MR. BROWN:

17 Q Do you have a Facebook account, sir?

18 A (No audible response.)

19 Q Do you have a Facebook account?

20 MR. HANLON: Objection. It goes beyond the
21 scope of cross, Judge.

22 THE COURT: We're on Facebook. Let's see.

23 Let's see where this goes.

24

1 BY THE WITNESS:

2 A My --

3 THE COURT: So it's overruled.

4 BY THE WITNESS:

5 A My own personal one?

6 BY MR. BROWN:

7 Q Correct.

8 A Never.

9 MR. BROWN: Okay. Thank you. That's it.

10 THE COURT: Oh, okay. Anything based on that?

11 All right. You can step down.

12 Thanks, Mr. Norton.

13 THE WITNESS: Thank you, your Honor.

14 MR. BROWN: Judge, I'd like to call Mike
15 Esposito, a person I subpoenaed but he's not here,
16 and for reasons that I'm clear, that I would argue
17 were clear from the video he stated, he made
18 statements about what he had served. The video
19 kind of contradicts that. I wanted -- I wanted to
20 ask him about that.

21 MR. HANLON: Unfortunately, Judge, he didn't
22 give him proper time for the response to the
23 subpoena, and even if he wanted to do it, he's not
24 here to testify. He's got to go on with whatever

1 else he's going to call.

2 MR. BROWN: Your Honor, I mean he was given
3 notice of it. I was told that he would be here on
4 the last court date. I mean as counsel said he
5 would make them available for me to question, and
6 when I did the subpoena as just ask that --

7 THE COURT: I --

8 MR. BROWN: And I did ask for the right to
9 recall I believe Mr. McCubbin at least in my --
10 when I was questioning.

11 THE COURT: Well, you haven't rested yet. You
12 can call whoever you want. Outside of Mr. Esposito
13 who is not here, Mr. Brown, and I'm not sure what
14 you plan on eliciting from that person's testimony,
15 but it is clear to this Court and watching that
16 video that his testimony will be given the proper
17 weight.

18 MR. BROWN: Yes, your Honor. Then --

19 THE COURT: Then based on his testimony
20 combined with the video that this Court saw.

21 MR. BROWN: May I have a moment to talk --

22 THE COURT: Absolutely.

23 MR. BROWN: -- to my client?

24 (Pause.)

1 MR. BROWN: Then, your Honor, I'd rest.

2 THE COURT: All right.

3 MR. HANLON: Your Honor, I believe that --

4 THE COURT: Any rebuttal evidence to present?

5 MR. HANLON: No, I didn't need it because
6 there was a blur here, so I'm prepared to go to
7 closing arguments, Judge.

8 THE COURT: All right. Proofs are closed.
9 Argument.

10 MR. HANLON: Judge, the facts and the evidence
11 that have been submitted to this Court in this case
12 demonstrate that the respondent has on numerous
13 occasions attacked the plaintiff with either
14 threats or acts of physical violence against the
15 plaintiff. The act of physical violence being the
16 loogie. The time of the occurrence of the event on
17 June 13 as well as the long, you know, history of
18 provocative statements and of threats of the
19 physical well-being of the petitioner.

20 We've submitted to the Court and
21 it's in evidence a stack of respective Facebook
22 pages, and even though the respondent in this
23 proceeding alleges that he is not the administrator
24 of those particular pages, he previously admitted

1 that under oath, but more importantly why we're
2 here today is to secure an order of protection.

3 And the Court has received in
4 evidence three videos. Of the three videos that
5 the Court received in evidence there is no
6 testimony that they were taken contemporaneous at
7 the time of the purported occurrence. There is no
8 testimony from Mr. Norton with respect to that, no
9 testimony from Sarah Norton. In fact Sarah
10 Norton's testimony was that she's technically
11 incompetent with respect to the video surveillance
12 systems.

13 And there was nothing introduced
14 into evidence with respect to the time that those
15 particular videos were taken, and it's very likely
16 that those videos, you know, may not have been
17 taken all at the same time. And because they were
18 potentially taken at different points in time and
19 selected by the respondent, that the weight that
20 should be given to them as it relates to
21 Mr. Esposito's testimony should be placed into
22 consideration of the fact that there was nothing
23 that was advanced or articulated as it relates to
24 his testimony. And even though he has shown an A

1 video, at some point in time there was no testimony
2 by the defendant's witnesses that placed
3 Mr. Esposito someplace other than what he said he
4 was at.

5 And then with that, Judge, I'd ask
6 the Court enter the order that was requested in
7 this case.

8 MR. BROWN: Your Honor, the videos were
9 stipulated to. I believe Mr. Norton identified the
10 person in the video as Mr. Esposito, and I mean
11 this raises the point, the question how many times
12 has Mr. McCubbin punched Mr. Norton in the face?

13 And, you know, there are other
14 videos. You know, there are other videos, and
15 we're not sure if this is the one. He could have
16 -- if that was the case, he could have put that on
17 in rebuttal. Yes, it would be how many, so I think
18 that saying that it's not the video is -- it's not
19 of the incident is disingenuous.

20 As to Mr. Esposito, as to it not
21 contradicting Mr. Esposito, your Honor saw the
22 video. Mr. Esposito knew today's court date, is
23 not here. We can't ask him. All we've got is the
24 video and some testimony. And the video is clear.

1 It doesn't -- the video is clear. It shows
2 Mr. Esposito, where he was.

3 I would argue as to the punch in the
4 face, Mr. -- Mr. McCubbin said that he hocked, got
5 a loogie hocked in his face that was stinky. That
6 he was disgusted that he -- I believe if you -- I
7 did tender the Court, to the Court a courtesy copy
8 of the transcript from the other hearing date.

9 MR. HANLON: Judge, I have to object on the
10 basis of ex parte communication.

11 MR. BROWN: I emailed counsel a copy of the
12 transcript.

13 THE COURT: I have just so -- I was going to
14 put this -- I was going to bring this to
15 everybody's attention. I opened this during these
16 proceedings. I opened this letter. I'll do it
17 right now, and the letter is from Mr. Brown dated
18 July 8th. It's a courtesy copy of the transcript.
19 I haven't read the transcript. I don't need the
20 transcript. I've got my notes. I can read the
21 transcript if you'd like me to.

22 MR. HANLON: No, Judge. I believe it's
23 improper at this point because proofs were closed.

24 THE COURT: Right. I agree.

1 MR. BROWN: Your Honor, I believe that
2 Mr. McCubbin testified that it was stinky, but I
3 mean the video shows him not wiping his face off.
4 I mean so you get -- I would argue -- my argument
5 is, your Honor, somebody spits in your face, you --
6 it's stinky. It's annoying. The first thing that
7 you do is wipe that off your face. You see about
8 15 seconds, 10 to 15 seconds I would argue.

9 MR. HANLON: Objection. Assumes facts not in
10 evidence, Judge.

11 THE COURT: That -- well, it's argument, but
12 that objection is sustained. Let's -- let's just
13 make our arguments.

14 MR. BROWN: The video doesn't -- I don't --
15 the fact that he didn't wipe it off in the video I
16 would argue tends to support the fact that my
17 client didn't spit in his face.

18 So, your Honor, as to the -- as to
19 the Facebook post my client -- my client stated a
20 couple of times he did not alter any of those
21 Facebook posts. That's unrebutted.

22 My client stated that there are
23 administrators to the Facebook groups. He stated
24 that there are multiple administrators. Him

1 stating that he didn't write the Facebook posts are
2 unrebutted.

3 And even if your Honor believes that
4 my client wrote the Facebook posts, A, the one, the
5 comment starting it's fun to make them angry, they
6 do stupid things when they're angry, that's not
7 directed to anyone. I mean that's -- that's
8 directed to -- I don't see how Mr. McCubbin could
9 argue that that was directed, directed -- to be
10 directed at him. I mean that's them. It's fun to
11 make them angry. That means that's a group of
12 people.

13 As to the other Facebook postings, I
14 mean even -- I mean even assuming for the sake of
15 argument that if the Court believes that they were
16 written by my client, so what. I mean you've got
17 the right to -- I mean you've got the right to be
18 petty. But my -- again my client is arguing that
19 he didn't write them.

20 So, your Honor, you've got some
21 Facebook posts that my client said he didn't write,
22 that even if he did I don't think would give enough
23 for an order of protection.

24 And you've got the events and the --

1 you've got the events and the on the 13th in the
2 township hall which I mean I would argue that the
3 video showed that my client clearly was not the
4 aggressor and didn't spit in his face. Thank you.

5 MR. HANLON: Reply, Judge.

6 THE COURT: Absolutely.

7 MR. HANLON: Judge, words are taken in
8 context. It is clear that there was threats to
9 Mr. McCubbin at the time that these Facebook posts
10 were made. We heard testimony during
11 Mr. McCubbin's, you know, case in chief that these
12 posts are contemporaneous with, you know,
13 interfacings with the respondent.

14 It is clear from the totality of the
15 evidence, not just from the what my opposing
16 counsel says is the unrebutted claim of Mr. Norton.
17 Mr. Norton has on numerous occasions here
18 contradicted himself. The problem with respect to
19 the position that the respondent is taking is that
20 in the totality of what he's doing, he is in
21 essence saying I will assume some identity. I will
22 draw a distinction between what an administrator is
23 or having administrative access to these pages.

24 Not one of these other purported

1 individuals was called as a witness to this case
2 which he could have done since he was the only one
3 that knew who they were, and he certainly didn't do
4 that, and the inference from that testimony is
5 that, you know, well, we might be able to speculate
6 that they may not even exist. However, what we do
7 know is that Mr. Norton had the administrative
8 access rights and he knew what was being put on
9 that site.

10 So with respect to the assertions of
11 wiping off or not wiping off the loogie, a party,
12 you know, who is in that particular set of
13 circumstances could very well have gone to the
14 bathroom later.

15 It's also articulated that in the
16 response that the comments are not directed at
17 Leonard McCubbin. He is Lenny. He is the Lenny
18 that is reflected in numerous claims and statements
19 that are contained within a batch --

20 MR. BROWN: Objection.

21 MR. HANLON: -- of material that --

22 THE COURT: Hold on a second. There is an
23 objection.

24 MR. BROWN: Misstates -- misstates my

1 argument. I stated that the comments it's fun to
2 make them angry weren't directed at anyone.

3 THE COURT: Oh, that one. You see he wants to
4 talk --

5 MR. HANLON: Oh.

6 THE COURT: -- about that one specific
7 message.

8 MR. HANLON: Okay. Well, I think that the
9 totality of all the messages that we have
10 demonstrate that it is directed directly to him.
11 In fact there is one in particular that has his
12 full name, so I think that the totality of this
13 undermines and mitigates this claim that one
14 particular one wasn't specifically directed at
15 Leonard McCubbin.

16 THE COURT: All right. Anything else?

17 MR. HANLON: No, your Honor.

18 THE COURT: All right. I'm looking at the
19 text messages. Now I will say this. Some of these
20 messages are possibly not appropriate, okay, to
21 talk about somebody getting on their Golden Knee
22 pads and other things that are unsavory. Okay.
23 And I'm not sure, and I'm not here to resolve the
24 issue or make any comment whatsoever about if there

1 were some kind of lawsuit involving libel, slander
2 or whatever. I'm not -- I have no idea if there is
3 or isn't and I'm not commenting on that. Okay.
4 We're here for a stalking, no contact order.

5 All right. I will note these are
6 posts. That while -- that while we have poor
7 taste, they are not sent to Mr. McCubbin. Okay.
8 And I believe Mr. McCubbin is somewhat of a public
9 figure at least out in Wesley Township, correct or
10 incorrect?

11 MR. HANLON: I think you're incorrect, your
12 Honor.

13 THE COURT: Okay. Okay.

14 Well, if Mr. McCubbin doesn't like
15 what's being said or written about him on Facebook,
16 then I think the appropriate thing to do is to not
17 go on the -- not go on the website. Okay. I --
18 they're not sent to him. If they're being sent to
19 him directly through his email, through the regular
20 mail, on the phone, face to face, we're having a
21 different conversation and a different ruling, but
22 they're just in a Facebook group. Okay. Don't go
23 on that Facebook group I guess is my answer.

24 And this Court's given this case a

1 lot of thought, and I -- I understand some of the
2 frustration that is going on in Wesley Township.
3 However, this Court cannot think of a situation
4 even if I were to grant any kind of order,
5 stalking, no contact order, order of protection
6 order, civil, no contact order that would ever
7 infringe on someone's right to participate in
8 government and attend government meetings. And
9 that if there was an order that was entered, it
10 would certainly not include limiting somebody's
11 right to assembly and to speak under the First
12 Amendment and to more importantly express their
13 voice in a democracy.

14 There was this incident that
15 happened. You know, when I talk about the video,
16 everybody is at this meeting. There is some
17 dispute. Okay. Your client or you can be a
18 hundred percent right, mad about whatever numbers
19 are wrong, voices that opinion. We've got the
20 clerk then yelling back which I'm not sure about
21 the appropriateness of that either. And the video
22 shows the Mr. Esposito guy on the outside and
23 clearly shows then Mr. Norton going inside walking
24 down the hall, and that appears to be when

1 everything happened.

2 I will note as far as while we're
3 throwing around subpoenas, this Court is curious as
4 to what was -- what's on the video that
5 Mr. Esposito was taking during that, during that
6 exchange that was depicted in that video. He's
7 holding, he's clearly holding a cell phone
8 recording everything that's going on in that room.
9 That's, that's plain as day. Okay.

10 Mr. Norton --

11 MR. NORTON: Yes, your Honor.

12 THE COURT: You don't have to say anything.
13 You just have to listen. Okay.

14 You're walking a very fine line,
15 okay, and quite honestly I'm making my ruling
16 despite your testimony and not because of it, okay,
17 because you hurt your credibility in court today.
18 What this Court does not appreciate is splitting
19 hairs and semantics and whatnot. When you affirm
20 to speak the truth, that's what this Court expects.
21 What we don't expect is spending 10 minutes on a
22 simple question of hey, who administers this
23 website? It's a simple question.

24 And I will note this, Mr. Norton.

1 Did you post these? No, I didn't. That's -- that
2 was the answer right away, very straightforward.
3 However, whatever counsel -- whenever counsel asked
4 you a question or opposing counsel asked you a
5 question, that's when we decided to split hairs and
6 whatnot.

7 You didn't have any, any problems
8 comprehending Mr. Brown's questions. Okay.
9 Mr. Hanlon questioned -- Mr. Hanlon asked you some
10 questions, then we start getting -- then we start
11 playing cute, okay, and I imagine it's similar
12 behavior that's getting you into all of this hot
13 water here. Okay.

14 Now this Court will as unpopular as
15 it is at times, will make sure that your rights are
16 protected for you to participate in government and
17 voice your opinion, okay, but you have to do so
18 respectfully. You have to do so not insightfully,
19 without any hate speech or anything like that. All
20 right. The people who serve in government
21 positions, it's sometimes a thankless job and
22 they're getting it from all sides on some days.
23 Okay.

24 That being said, people who live in

1 a community have a right to voice their displeasure
2 with the leaders of that community if they disagree
3 with them. Okay.

4 And I will say, Mr. Norton, you made
5 my decision today harder than it needed to be,
6 okay, because I do think when push comes to shove,
7 the petitioner who does have the burden of proof,
8 I've got a series of messages posted on a Facebook
9 post which at best comes from a website that
10 Mr. Norton is an administrator of and one of
11 several administrators of, so therefore those can't
12 be contributed to him as being -- as being the
13 author of. You know, I don't know if there is some
14 kind of remedy of reporting it to Facebook or some
15 other kind of civil proceeding.

16 I don't find that's an instance of
17 stalking, no contact under the statute. I
18 certainly don't believe that the incident in the
19 hallway which led to the petitioner striking the
20 respondent, loogie or no loogie, that is a mutual
21 argument turned into a fight situation and not
22 grounds as well.

23 So I don't believe the petitioner
24 has sustained his burden of proof. A lot of it, a

1 lot of the allegations, a lot of the highlighted
2 messages don't even deal with Mr. McCubbin but
3 basically speak disparaging of some of the people
4 that Mr. McCubbin associates himself with. Okay.
5 Therefore I cannot grant the stalking, no contact
6 order, and that will conclude these proceedings.
7 Thank you.

8 MR. NORTON: Thank you.

9 MR. HANLON: Judge, do you need us to draft an
10 order or is --

11 THE COURT: I'll do the order.

12 MR. HANLON: All right.

13 (Pause.)

14 MR. BROWN: Your Honor, retrieving Exhibit A.

15 THE COURT: Oh, yes, and where is -- I need
16 counsel back so he can take all of his stuff back.

17 MR. BROWN: Okay.

18 (Pause.)

19 MR. HANLON: I -- my apologies, your Honor.

20 THE COURT: That's okay. I have -- I have
21 your items if you'd like --

22 MR. HANLON: Oh, yes, Judge.

23 THE COURT: -- your items back. I know I have
24 these two giant stacks.

1 MR. HANLON: Thank you.

2 THE COURT: There you go.

3 Mr. Brown, here, you can take your
4 correspondence that I didn't look at until the
5 hearing today back. Here is another one. This was
6 the first one.

7 MR. HANLON: Judge, the last time I left your
8 courtroom I said I hope to never see you again.

9 THE COURT: I know, right.

10 What is going on? What is going on
11 in Wesley Township?

12 MR. HANLON: I don't know, but Mr. --

13 THE COURT: Mr. Norton, I mean you're in the
14 room so I'll bring -- I mean I know there is people
15 here. If they want to come in and we -- I'll be
16 more than happy to talk to anybody that wants to
17 talk to you, but --

18 MR. HANLON: I think it would be improper,
19 Judge.

20 THE COURT: I agree too, but my goal is I
21 don't want to see anybody again.

22 MR. HANLON: Yes.

23 THE COURT: Mr. Brown, go outside --
24 Mr. Brown.

1 MR. BROWN: Norton.

2 THE COURT: Mr. Brown, stay. Mr. Norton, go
3 outside.

4 (WHICH WERE ALL THE
5 PROCEEDINGS HAD IN THIS
6 CAUSE ON THIS DATE.)

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1 THE CIRCUIT COURT OF THE TWELFTH JUDICIAL CIRCUIT
2 WILL COUNTY, ILLINOIS
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4

5 I, TAMMY M. MAIER, an Official Court
6 Reporter for the Circuit Court of Will County,
7 Twelfth Judicial Circuit of Illinois, do hereby
8 certify the foregoing to be a true and accurate
9 transcript of the electronic recording of the
10 proceedings of the above-entitled cause which
11 recording contained a certification in accordance
12 with rule or administrative order.
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20 OFFICIAL COURT REPORTER
21
22

23 DATED this 19th day
24 of JULY, 2019.