

account. At the end of that paragraph there is this assertion: "I did not have a copy of the account itself until the later July interview." Can you see that?

A. I do, yes.

Q. I think that is actually wrong. I think you had a copy of the account at both interviews. They may have been different copies but you were able, I think, to interview him about the account itself looking at a copy of it in October.

A. Sorry, I can't remember.

MR CHALLENGER: Can you wait there; you may be asked some more questions.

Cross-examined by Mr THOMAS:

Q. ...

A. Sorry, I can't hear you.

Q. When did you retire from the police force?

A. November last year.

Q. How many years' service?

A. 31 years three months.

Q. A long time to be in the police force, is it not?

A. Yes.

Q. Can we make this assumption from your 31 years in the police force. You know how to investigate crime. Would that be fair?

A. Yes, it would.

Q. Some of it would be pretty much common sense, would it not? Good common sense policing at times. You use that when you police.

A. I hope so, yes.

Q. Going back to the time of this incident in 2003, did you know how to use a computer?

A. Knew how to use one, yes.

Q. Yes. In fact, you certainly knew how to send and receive emails.

A. That's correct, yes.

Q. You knew how to open documents.

A. Yes.

Q. Familiar with Windows 98, or whatever the operating system was at the time on Microsoft. Would that be fair?

A. For the purpose of the work, yes.

Q. In other words, if somebody sent you an email with an attachment you would know how to open it.

A. Yes.

Q. You would know where to save it.

A. Yes.

Q. You probably had your own folders on your computer.

A. That would be correct, yes.

Q. So you knew all about the concept of folders. You knew how to delete something, put it into the recycle bin on the desktop.

A. Yes.

Q. This is all basic stuff, is it not?

A. Yes.

Q. And you were well familiar with all of this in 2003 before you met Mr Clifford.

A. Yes.

Q. How long had you been using a computer? Did you have one at home? Did you have a personal computer with the family at home in 2003?

A. I believe so, yes.

Q. And, in fact, by 2003 you had been brought into the computer crime unit.

A. No, that's incorrect.

Q. When did they second you into the computer crime unit?

A. I was not in the computer crime unit.

Q. You just told us that on any computer when you switch it on you get a screen and that is the desktop.

A. Yes.

Q. You have your ... desktop, can you not?

A. Yes.

Q. You know that when you download stuff, you can download stuff straight onto your desktop, can you not?

A. Yes.

Q. So when you switch the computer on if it is downloaded onto the desktop you see straightaway.

A. Correct.

Q. And in 2003 you knew all about the internet. You knew what the internet was.

A. Knew what the internet was, yes.

Q. And you knew how to surf the net.

A. I believe so, yes.

Q. Did you or did you not? Did you ever surf the net in 2003?

A. I'm fairly sure that - I think so, yes.

- Q. Did you ever buy anything on line?
A. No.
- Q. Did you ever book a holiday?
A. I have since.
- Q. Since when? When do you say you first booked your holiday on line? Let us help you. Where did you go?
A. The first one on holiday was Alonissos.
- Q. When was that?
A. 2004/2005.
- Q. Was it a summer holiday?
A. Yes.
- Q. So if that is when you went, you would have booked it before then. So certainly in 2004 you were surfing the web and you knew how to book a holiday. Is that a fair point?
A. To be fair, I think it was the wife who booked it but I'm not sure.
- Q. I just want to be clear on this. Are you seriously saying you were investigating this crime about internet child porn – just so his Lordship can put your evidence in context – you say you have not booked anything on line or you did not surf the web.
A. I surfed the web, but I cannot honestly say whether I bought anything on line.
- Q. That is neither here nor there. You surfed the web is here or there. So help me with this then. You knew certainly before you interviewed Mr Clifford how to use a computer, you knew that on a computer you can store things in your favourites, so you have folders in My Favourites, have you not?
A. That's correct, yes.
- Q. You knew all about My Favourites. You knew that if you downloaded something, if somebody sent you an email, you could change the attachment and you could call it whatever you wanted to call it. You could personalise the name.
A. Yes.
- Q. Give it your own file name.
A. Yes.
- Q. Before I come on to the actual specifics of this case, you were given the task to investigate child pornography or potential offenders of child pornography in relation to Operation Ore at some point. It does not matter when.
A. Operation Metropolis.
- Q. All right, Operation Metropolis. That is what the UK was calling it. Operation Ore was the American.
A. Operation Metropolis was the Hertfordshire version.
- Q. We are talking about the same thing. It is the child porn investigation.

A. Yes.

Q. Mr Hopkins, each police force who did this would not be sending its officers out completely blind without knowing what they were doing in relation to particular offences. You would have been given briefings: "Right, this is what we need to look out for. This is what we need to prove for these particular offences." That must have happened in your briefing.

A. I'm not sure I did have a briefing. I just joined the unit.

Q. You just joined the unit and they let you loose on defendants with no instructions. Is that what you are saying?

A. No, I sat with an officer who'd been on it longer than I had to learn that way.

Q. Really? Before you came on to Mr Clifford's case how many cases had you done?

A. On my own this was the second.

Q. The first case you had done: what offences did that involve?

A. Exactly the same thing.

Q. So you were a bit of a rookie then when it came to these offences if this is your second case.

A. Correct, yes.

Q. Even more reason why you would be dependent on your expert.

A. That's correct, yes.

Q. And even more reason why you would be dependent on any senior officer. Would that be fair?

A. It would, yes.

Q. This is not rocket science. I suggest that if you are investigating illegal activity on a computer, that somebody might have illegal downloads on their computer, and you said to the expert: "We suspect that this individual may have something suspect on their machine."

A. Yes.

Q. "We suspect that they may have child pornography." Okay?

A. Yes.

Q. "We want you to take the machine away and we want you to interrogate the machine in order to investigate the machine to see if there is anything of interest on the machine."

A. I wouldn't interrogate it, no.

Q. Sorry?

A. I wouldn't interrogate it, no.

Q. I am not suggesting you would. You would instruct somebody to do it on your behalf.

A. That's correct.

- Q. And whoever you instruct on your behalf, they would be your expert.
A. Yes.
- Q. Because you cannot do it. You would not know what to do.
A. That's correct.
- Q. When they come back, if they tell you they have found images on the machine – yes?
A. Yes.
- Q. You tell me, using your 31 years – how long had you been in the police force in 2003? About 26 years, something like that? 25 years?
A. About 26 years.
- Q. 26 years. So you were not green when it came to policing matters. You had 25 years' experience behind you. You just tell me this. Your expert says: "I found some images on the machine." What is the very first question you are going to ask the expert?
A. "What images?"
- Q. Child porn images. What is the second question you are going to ask them?
A. "Which computer?"
- Q. You know which computer because you asked them to examine. What is the second question you are going to ask them?
A. Ask them about the images.
- Q. You are going to ask them, are you not: "Where on the computer were they found?" are you not?
A. I don't think I did.
- Q. Think about it. It is just logical. It is common sense. Were the images found in his favourites or in his folders? Were they found on the desktop? Were they found in the delete bin? It is obvious.
A. You don't ask the expert that. We collected a CD and took his report.
- Q. No, no, no, no. I am not talking about specifics. I am talking about common sense. We will come on to the specifics in a moment. You need the information to interview the individual, do you not? You have to interview them.
A. That's correct, yes.
- Q. Turn to page 181 in bundle 1. Can you see paragraph 34?
A. Yes.
- Q. What I want you to do is I want you to look at the sentence above paragraph 34. Can you read it out to the court, please?
A. "I therefore resolved to question Mr Clifford about these matters and see if there was an innocent explanation for it."
- Q. You had to arm yourself as a police officer – the reason why you wanted to see whether there was an innocent explanation for the matters is to see whether there is

any good reason or whether Mr Clifford may have had any knowledge about the images. That is right, is it not?

A. Yes.

Q. Which is precisely why location would be relevant. You ask your expert: "Where were they?" If your expert says to you: "They were in his folders, his favourites", that is something you are going to put to the individual or you may put to the individual in interview, is it not? It is relevant, is it not?

A. It's relevant.

Q. It is highly relevant, is it not?

A. Yes.

Q. So you have just accepted it is highly relevant. Now we can come to the specifics of this case. When you met with Mr Foughey on 8th June, as you did, you are rookie to these investigations. This is your second. Mr Foughey gives you a CD or a series of CDs, it does not matter how many, but he gives you a CD with the images on it. He comes to you, he hands the CD over to you. Let us take it from there. What happened on your version of events?

A. I honestly can't recall.

Q. You have no recollection.

A. Not at all. Sorry.

Q. So you ...

A. I haven't, no.

Q. None at all.

A. No.

Q. Did you have a recollection when you wrote your statement?

A. I would hope so. Is that this statement?

Q. Yes, this statement.

A. No.

Q. So at the time you wrote this statement in August 2008 you had no recollection as to what was discussed.

A. No.

Q. Mr Hopkins, you were told, were you not, that these images were in temporary internet files. Does that help refresh your memory?

A. Not at all.

Q. It does not mean anything to you.

A. No.

Q. Not only were you told that these images were in temporary internet files, you were told that that meant the user did not even know they were there because they are deeply buried in the machine. You were told that, were you not?

A. Not that I recall.

Q. Not that you recall. Mr Foughey came on yesterday and gave evidence exactly where you are standing and said: "That is the first thing I told him. It would be ridiculous not to tell him because he would need to know." Location is of the utmost importance. It goes to knowledge, does it not? Location goes to knowledge.

A. Yes.

Q. And knowledge was one of the factors you needed to have evidence of in order to charge, was it not?

A. Yes.

Q. And without evidence of knowledge you could not charge. You only had half the offence. It is an important part of the offence, knowledge, is it not?

A. Yes.

Q. Let me see if I can just refresh your memory, Mr Hopkins. You knew that Mr Clifford was very upset with you after his criminal case collapsed.

A. Yes.

Q. And since 2005 you have had a long time to think about this case, because shortly after the collapse of his case this man has been jumping up and down making complaints against you, saying that you had maliciously and aggressively pursued a prosecution against him.

A. Yes.

Q. So even though we are now three years down the line, you have had the last three years to think about your actions and what you have done, have you not?

A. Three years. I haven't thought about it much, no.

Q. It has not bothered you. This actually does not bother you.

A. I wouldn't say that.

Q. The fact that Mr Clifford is saying that you maliciously prosecuted him and you committed a misfeasance against him: that does not bother you.

A. I don't believe I did.

Q. No, that is not the question, Mr Hopkins. Will you answer the question? Shall I repeat it?

A. Yes, please.

Q. The fact that Mr Clifford is bringing an allegation of malicious prosecution against you and a misfeasance claim against you, and that has been going on for the last three years: are you saying that has not bothered you?

A. It's not bothered me. I've thought about it but it's not bothered me, no.

Q. Do you have many claims of malicious prosecution brought against you?

A. No.

Q. Is this the first?

A. Yes.

Q. Even more reason why you would remember what happened, is it not?

A. No.

Q. You see, I am going to suggest in the last three years this action has not gone away. It has been relentless in terms of complaining, there had been an internal investigation with the police. Hertfordshire carried out their own investigation, did they not?

A. They did, yes.

Q. And then you have had the civil proceedings. You say you cannot remember what took place, but would you agree that most people's memories at the time of the event, nearer to the event, are reasonably good?

A. Yes.

Q. So your memory nearer to the event would be reasonably good.

A. I would hope so, yes.

Q. Turn to bundle 1 and turn to divider 2. I want to take you to a letter which you will find at page 18. This is a letter dated 5th October 2005, and it is from Hertfordshire Police Force Solicitors Department and it is written by that lady who sits behind my learned friend, Mrs Grundy. Yes?

A. Yes.

Q. Can you see on the first page: "Contact Mrs A Grundy"? I want to take you to the first paragraph. The letter is written on behalf of the Chief Constable and Mr Foughey and this is a letter that is written in response to Mr Clifford's letter of claim. It sets out what the police case is. Mr Clifford's complaint essentially is about you maliciously prosecuting him and withholding evidence and holding evidence back, Mr Hopkins. Mr Clifford's complaint essentially is about you maliciously prosecuting him and holding evidence back, that you knew where these images were and you did not tell the prosecution. You kept it to yourself. Do you follow?

A. I follow what you're saying, yes.

Q. And so Mrs Grundy would have to respond to that. She would need to take instructions. She cannot make it up because she was not there. The people who were involved would be you, Mr Hopkins, and Mr Foughey.

A. Yes.

Q. You understand.

A. Yes.

Q. So Mrs Grundy would have to go to Mr Foughey and she would have to say: "Look, these allegations have come in, what have you got to say about it? Give me instructions so I can respond." You understand.

A. I do.

Q. And that is what happened. That is what Mrs Grundy did. She took instructions from you. Do you understand?

A. Yes.

Q. Let us look at the instructions you gave. Turn to page 20, and I want you to look at the second paragraph. This is before charge. "Mr George Foughey of the computer crime unit examined the Tiny computer. 12 ... images were recovered from the computer. Mr Foughey made a statement ... and told DC Hopkins verbally that he the files he had found were in temporary internet folders, temporary folders. Mr Foughey was under the impression that he would be charged with incitement to make indecent images and not possession." Turn over the page, please. Can I take you to the fifth paragraph. "It appears that DC Hopkins had not passed the information given to him by Mr George Foughey that the images had been found in temporary files. This was an error on Mr Hopkins' part but it is denied that ... is evidence of negligence or that he acted in any way unlawfully." Why were you giving instructions back in October 2005 that you had received the information but you had just failed to pass it on to the CPS?

A. I don't recall giving those sort of instructions. I'm sorry.

Q. Mrs Grundy cannot make this up.

A. I never gave instructions on this, as far as I'm aware.

Q. Let me get this straight with you, Mr Hopkins. Are you saying you suddenly have a recollection – because a moment ago you said you could not recall.

A. What I'm saying is that I believe I was interviewed by the Complaints & Discipline Department and asked questions and that's where this would come from.

Q. Mr Hopkins, can we just put your evidence in common sense so we are absolutely crystal clear where you are coming from. You are saying, for the avoidance of any doubt, you did not give these instructions which are here at page 21 paragraph 5. Is that your evidence on oath?

A. It says: "It appears that".

Q. Mr Hopkins, my question cannot be clearer. It is a simple Yes or No. Did you give these instructions or not?

MR CHALLENGER: My Lord, I am going to interject. I wanted to do so earlier. The witness really has answered the point himself. The paragraph does indeed begin with the words "It appears that".

MR JUSTICE CRANSTON: I think the witness is answering the questions.

MR THOMAS: My Lord, shall I continue?

MR JUSTICE CRANSTON: Yes.

MR THOMAS: (To the witness): Mr Hopkins, did you give these instructions?

A. I can't answer that. It doesn't actually say that I didn't give them, because it says "It appears".

Q. I am asking you, did you give these instructions?

A. I didn't get the instructions to give, is what I'm saying.

- Q. The next question is: Is what is written there true?
A. It's written there but I don't know my part in it there at all.
- Q. What is written there is you did not pass the information given to you on that the files had been filed in temporary internet files, and this was an error on your part. Is it true that you were given the information and you did not pass it on?
A. I can't recall getting that information so how can I answer that question?
- Q. You know who Detective Sergeant Wilcox is, do you not?
A. No, I don't, actually.
- Q. No? We have been told he was an independent officer; he was asked to investigate this matter after the prosecution collapsed. You remember the prosecution collapsing.
A. Yes, I do.
- Q. And you remember that Mr Clifford had made a complaint. You remember that.
A. Yes, I do.
- Q. And that complaint was investigated internally and there is what is known as a Service Improvement Document to try and get things right in the future.
A. That I don't know about, no.
- Q. You will find that in bundle 2 behind tab 15. We do not need to read the whole document but you can see if you look at the top this is Detective Sergeant Bob Wilcox, technical support manager – and please note the date – 18th July. Yes?
A. Yes.
- Q. So very shortly after the collapse of this case he is reporting to Superintendent ... of Professional Standards.
A. Yes.
- Q. Let us take it from paragraph 4. "Mr Foughey identified 17 images on ... hard drive on the computer. His statement includes the phrase 'the picture of note is one considered to be in the interests of the investigating officer and is not necessarily an indecent photograph ... child under the age of 16 years.' Mr Foughey liaised with the officer in the case, DC Hopkins and explained that the images identified had been found within the temporary internet files." Let us just pause there. This is what Mr Foughey says. He says this is what he did. This is when he handed you over the CD.
A. Yes.
- Q. Let us read on. "These images could not be relied on ... basis of a charge because the origin of the images could not be detailed." Let us just pause there. Mr Foughey says quite clearly he made this absolutely clear to you. Does that refresh your memory?
A. I'm afraid not, no.
- Q. Let us read on. "These images can appear as advertisements without the user of the computer requesting them and even being aware that they are on the machine. They are small thumbnail pictures." Mr Foughey says he explained this to you, it was his job. You knew all of this before you interviewed Mr Clifford.
A. I don't recall it.

Q. You do not recall it?

A. No.

Q. So what you are saying to his Lordship is you are not even saying it happened; you are saying: "I just don't recall it."

A. I cannot recall that conversation. I'm sorry.

Q. "Don't recall" can mean two things. "I do not recall it and if something like that had happened I would remember it." Or "Don't recall" could mean: "It might have happened. I have no recollection of it." Which of the two are you saying you meant when you used the expression "don't recall"? The former or the latter?

A. I don't think it can be answered quite that way. I do not recall the conversation. You're trying to get me to say that it might have happened. I don't know.

Q. I am trying to get you to tell the truth.

A. I am.

Q. When we read on -- turn over the page.

A. Yes.

Q. Paragraph 6: "DC Hopkins agrees that Mr Foughey said this to him." You have the Professional Standards memo interviewing you, interviewing Mr Foughey, and this is what you were saying in July 2005. Are you saying that you did not agree with this, you do not recall agreeing this bit?

A. I don't recall agreeing to it, no.

Q. So this could be true.

A. I don't know.

Q. So that his Lordship understands your evidence, because his Lordship has to make sense of the evidence, do you follow?

A. Yes, I do.

Q. You are not saying to his Lordship this is a lie.

A. No, I wouldn't dare.

Q. Have a look at paragraph 7 on that page. "At this time it was agreed policy that persons who had entered the Landslide site and visited the level one site were to be charged with an incitement charge. This relates to incitement of persons running the Landslide organisation to commit the criminal offence of supplying paedophilia. Following his liaison with the CPS, DC Hopkins charged Clifford with incitement offences but also charged with possession of the indecent images within the temporary internet files. This was to give additional weight to the incitement charge." Why did you tell Mr Wilcox that the reason why you charged with the other offences was to just -- my expression -- boost the incitement charge?

A. I don't recall saying it to him.

Q. That is what he has recorded you saying. That would be completely improper, would it not? To throw in a few charges to boost another charge.

A. Yes

Q. It would be improper, would it not, so why do you tell Mr Wilcox that?

A. I don't remember telling him that at all.

Q. Before you can charge you have to have the evidence. You do not throw in charges just to give additional weight to the incitement. Did you just do that because you thought Mr Clifford might cough – plead the incitement? “Let's boost up the charge sheet. He might cough to one of them. He might plead to one of them. He might plead to one of them. Put his hands up to one of them.” Completely improper policing, is it not?

A. Yes.

Q. That is what you were doing.

A. No.

Q. That is what you did. You explain to his Lordship – now is your opportunity – why this memo, back at the time in 2005 having interviewed you, records you as saying this. What is your explanation?

A. I haven't got one.

Q. That is the best you can do.

A. I can't recall saying it.

Q. You knew you did not have any evidence, because you were told in relation to the other charges. I am talking about the three other charges, not the incitement; the making and the possession charges. You had no evidence against this man and you knew that.

A. I thought I had.

Q. Really? Let us examine that, shall we? Same file, page 619. This is an email you get from Roger Howell. Do you remember who he is?

A. Yes, I do.

Q. Who is Roger Howell?

A. He was a civilian investigator on police complaints who interviewed people.

Q. And he writes to you saying a complaint is coming your way, is he not?

A. Yes.

Q. He puts you on notice of it.

A. Yes.

Q. Note the date, 17th May 2005. You tell us that you thought you had evidence. Before I go any further, what was the evidence in relation to the making and possession counts that you charged him with, apart from the fact that the images had been found on the computer?

A. Let me go back to my statement.

- Q. Do you need to go back to your statement to refresh your memory of it? I am not going to stop you but ----
- A. I prefer to read it out verbatim.
- Q. All right.
- A. Paragraph 70. Let us take the first charge, which was the making and ... of an image on 26th January 2001. What I want you to do is that offence, as you have already indicated, you have to prove and the burden is on the prosecution, and before you can charge you need evidence.
- A. Yes.
- Q. So you tell me what the evidence was in relation to the image on 26th January that was said to have been found on the machine.
- A. The image was created, as you say, on that date on the computer. It was of an indecent type, as I said. The computer was in at that time, I believe, Mr Clifford's possession, and he downloaded it.
- Q. Where is the evidence that he downloaded it?
- A. The creation date.
- Q. You took us to paragraph 70.
- A. Yes.
- Q. Where does it say that in paragraph 70?
- A. These are supplemental reasons.
- Q. These are supplementary reasons?
- A. Sorry. These are the reasons I've used. That creation date you asked me exactly. That's the other thing.
- Q. Forgive me. You have taken me to paragraph 70. The first thing you mention is Landslide.
- A. Yes.
- Q. How did Landslide have anything to do with the images created on 26th January 2001? What did Landslide have to do with that charge?
- A. The fact that he had visited those sites, as I understood it, at that time.
- Q. Sorry. What did Landslide have to do with this particular charge? You understand the difference?
- A. I do understand the difference. I'm not quite sure how to answer that one. Landslide - I can't remember exactly when it closed.
- Q. What was the linkage between Landslide and the image, if any?
- A. The image was similar to those found on the Landslide.
- Q. The image was similar to those found at Landslide. Landslide had adult porn and child porn, we have understood.
- A. Yes.

- Q. This was a grade one child porn image.
A. Yes.
- Q. So similar images. So what? What evidential value does that have? It does not have any evidential value.
A. At this point it's where I believe that it does.
- Q. No, Mr Hopkins. No, Mr Hopkins. At this point it is not whether you believe it has. At this point you were putting these matters for charge, were you not?
A. Yes.
- Q. So the test that you apply is a completely different one, is it not? How many years did you say you had been in the police force?
A. 31¼.
- Q. And at this time 26 years.
A. Thereabouts.
- Q. You know you have to stand in the shoes of a reasonable prosecutor before you can charge. You know that, do you not?
A. Yes.
- Q. This is basic stuff. When you come to charge you have to have reasonable and probable cause, or reasonable suspicion. Reasonable suspicion is do you have grounds to arrest him. That is not in dispute. You had grounds to arrest him. But I am asking you what was the basis upon which you thought you had reasonable and proper cause that these matters could stand up in a court of law? You are relying on Landslide, so you tell me: how was Landslide relevant?
A. I still believed it was similar.
- Q. Mr Hopkins, let us look at basic policing. Let us look at a drug offence. Okay?
A. Yes.
- Q. You arrest somebody. Okay?
A. Yes.
- Q. And you investigate a drug offence. Okay?
A. Yes.
- Q. And they have a quantity of cocaine on them. Do you follow?
A. Yes.
- Q. And there is a factory and you have millions of pounds worth of cocaine in the factory. You are with me so far on my scenario.
A. Yes.
- Q. You want to establish that the individual that you found with a small quantity of cocaine on them is the same cocaine as in the factory. What are you going to do as a police officer?
A. Go to forensics.

- Q. Yes, exactly. You are going to test it. Is it the same batch? That is what you would do. Otherwise if you went to court and you said: "Well, we stopped this individual. They had some cocaine on them. It must have come from the factory", you would get laughed out of court, would you not, without any forensics or that linkage?
- A. Yes.
- Q. So I come back to the point I made. How on earth was Landslide going to be admissible or even relevant without any linkage?
- A. Possibly not.
- Q. Having disposed of that, shall we move on? Let us turn to the credit cards, because you mention that next. Sticking to the image of 26th January 2001, did you have any credit card transactions in 2001?
- A. No.
- Q. The credit card transactions you had related to 1999.
- A. Yes.
- Q. And they related specifically to Landslide sites, did they not?
- A. Yes.
- Q. So how were the credit card transactions relevant to this charge?
- A. Not to this charge, no.
- Q. Why did you mention it in paragraph 70 then?
- A. Because I still held the belief that it was all linked.
- Q. On what basis, Mr Hopkins?
- A. Those were downloading of illegal images and this was an illegal image.
- Q. But Mr Hopkins, what you are doing at this stage is you are charging the specific offences. You are not just investigating this generally. That is what you did when you arrested.
- A. Yes..
- Q. To charge with this specific offence, apart from the fact that the image was on the computer and the computer belonged to Jeremy Clifford on 26th January 2001, where was the evidence that he knew the image was there?
- A. I didn't have any.
- Q. Say that one more time?
- A. Didn't have any at that point.
- Q. So how did you charge?
- A. Because when I asked him about it he refused to answer.
- Q. So how did you charge?
- A. Because my belief was he'd downloaded it.

Q. But your belief is neither here nor there.
A. He was in possession of an illegal image.

Q. Possession is half the offence, is it not? Possession is half the offence.
A. Yes.

Q. You have to prove the whole offence.
A. Yes, and it had a created date.

Q. We can go round in circles all day but I do not want to do that because that is boring. Where was the evidence of knowledge? You did not have any, did you?
A. No, I didn't.

Q. So you should not have charged, should you?
A. Yes.

Q. In fact, you knew you did not have any evidence, and your witness statement that has been created for the purposes of these civil proceedings is a complete smokescreen and is what I would describe as evidence that has been tried to be created three years after the event by lawyers, not by you, I suggest. Do you accept that?
A. No.

Q. Really? If what you are saying in your witness statement is true, and you believed there was all this evidence, can you help me with this. Can you turn, please, to page 625. What we see at page 625 is Mr Clifford's complaint in a bit more detail. "... DC Hopkins ... unnecessarily and aggressively and maliciously pursued the investigation. The evidence was poorly prepared and prolonged the investigation and trauma." That is his complaint. Yes?
A. Yes.

Q. Your reply to that complaint is to be found at 631. This is what you say. "I feel that I carried out the investigation correctly. The evidence that I used came from America and was to the best of my knowledge carried out. I acted in good faith throughout." Yes?
A. Yes.

Q. "The evidence was given by an expert in computer forensics and when his evidence was challenged" – just pausing there, you are talking about Mr Foughey, are you not?
A. Yes.

Q. "It was he who changed his stance leaving me without evidence in the case." Yes?
A. Yes.

Q. Let us just look at that and examine it. You say that Mr Foughey changed his stance. The evidence of Mr Foughey was that the information was in the temporary internet cache.
A. Yes.

Q. He told you that from the beginning.
A. No, not until December.

- Q. Ah! Why when I asked you that question earlier on you said you could not remember. That was one of my very first questions.
- A. You were going on about the July when I picked up the CD, not December.
- Q. Bear with me a second, Mr Hopkins. The question I put to you was you had a conversation with Mr Foughey and you had that conversation on 8th June and he told you where the images were, where they were located. Do you remember me putting all of those points to you?
- A. Yes.
- Q. You said you could not recall.
- A. Not the conversation, no.
- Q. What else was I putting to you?
- A. That's what I'm saying. I couldn't recall those comments.
- Q. But now you are saying no, no, no, no, he did not tell me until 21st December.
- A. Yes.
- Q. So you can recall.
- A. No, that's when I know that I got that statement from him.
- Q. I will come back to that. Let us just run through what I am saying. I do not accept what you say. We say, for the avoidance of doubt, that you are a liar and you are lying throughout this. I want you to be clear that we are accusing you of blatantly lying. Do you follow? You understand what we are saying, do you not?
- A. Yes.
- Q. So you say that your expert changed his stance, leaving you without any evidence. Correct?
- A. Yes.
- Q. How is that right? You just told his Lordship that you had evidence. You had the other evidence that you referred to at paragraph 70. Mr Challenger on your behalf is going to say there was loads of evidence to bring these charges. Look at Mr Hopkins' statement. If there was all this evidence, why were you telling the investigators that when Foughey changed his stance, you were left with no evidence?
- A. Because they were in temporary internet files.
- Q. So let us be clear on this. If you had been told – I know you say you were not ----
- A. Correct, yes.
- Q. If you had been told that these were in temporary internet files at the very beginning before you charged, you would never have charged.
- A. I'm not clear on that now. I still think I might.
- Q. On what basis? Tell us.
- A. I can't now but I feel as though I might still have done it.

Q. You have a feeling.

A. Yes.

Q. What, police officer's intuition?

A. No.

Q. Tell us, because before you can charge you have to have evidence.

A. Having him not commented to everything when I asked for the evidence and give an innocent explanation as to why they were on his computer and not answering ----

Q. He does not have to answer.

A. That's right, so I then leave it to a court of law to make that decision.

Q. No, no, no, no. You then have to decide whether you have the evidence before you can charge. What is the evidence? Tell us. This is your opportunity.

A. He had them on his computer.

Q. What was the evidence of knowledge?

MR JUSTICE CRANSTON: He is answering; let him do so.

A. They were on the computer. I believed he'd downloaded them because there was a creation date. The computer was in his possession and they were illegal.

MR THOMAS: Anything other than why you ...

A. No.

Q. You see, can you explain this to us. Why do you say at page 181 in bundle 1 at paragraph 35 – this is your witness statement and it is the last sentence or the last two sentences – “I do not recall being told anything about temporary internet files until December 2004 when additional statements were obtained from George Foughey and passed to the CPS. If I had known the files were in temporary folders and that there was no evidence suggesting the user of the computer would know the images were there, I would not have asked for Mr Clifford to be charged with these offences.”

A. Mmm.

Q. Which comes back to my original question. If you had known that these were images, small thumbnail images, perhaps pop-up advertisements, you would not have charged. This is what you say, is it not?

A. What I say there.

Q. Yes.

A. However, I didn't know that Mr Clifford didn't know they were there because he wouldn't answer the questions.

Q. Mr Hopkins, I want to take this in stages so we do not misunderstand what you are saying. Do you stand by what you say at paragraph 35 that I have just read out? Is that true?

A. Yes.

- Q. And is that the position? If you had been told that the files were in temporary folders, there is no evidence suggesting that the user of the computer would know the images were there, you would not have asked for Mr Clifford to be charged. Is that true?
- A. Yes.
- Q. So the issue for his Lordship is whether you were told.
- A. Yes.
- Q. You say: "I wasn't told."
- A. I don't recall being told, no, that's absolutely correct.
- Q. Can you help me with this. Mr Foughey on 8th June gave you a disk or a series of disks with the images on them.
- A. Yes.
- Q. On your evidence you had not had any conversation with him.
- A. I'm sure I spoke to him.
- Q. "Here's the disks." No conversation of substance.
- A. Not that I can recall.
- Q. We know at that stage you did not have Mr Foughey's report because he does not create his report until 21st July two days after charge.
- A. Yes.
- Q. So apart from the disks that you had, you did not have any account from Mr Foughey, did you?
- A. I thought there was one on the disk but I may be wrong.
- Q. On the disk you had what was on the disk, the images. Is that not right?
- A. Had the images, I know, yes.
- Q. Mr Foughey's first written account is the 21st, two days after charge, is it not?
- A. If you say so, yes.
- Q. If I have that wrong I will be corrected.
- A. No, I'm not going to dispute that. I haven't got it in front of me.
- Q. Can I assure you the Chief Constable is represented by lawyers and they would be on their feet if I was putting something wrong to you. Mr Foughey's statement is two days after charge. It is 21st July.
- A. Yes.
- Q. My question is this. Why did you tell the investigators that your expert had changed his stance? What stance was there to change? When you charged on the 19th you did not have anything from him and you haven't spoken to him of anything of substance. What was changed?
- A. When I submitted the statement that he did supply which didn't mention internet ----
- Q. Forgive me. You had charged Mr Clifford before you had anything from the expert.

- A. Yes.
- Q. So what had changed?
- A. I'm saying I wasn't aware that they were in temporary internet files. ✓
- Q. You were not told they were anywhere if you did not have any conversation, were you?
- A. I knew they were on the computer.
- Q. Mr Hopkins, why would you not ask where they were on the computer, bearing in mind my very first questions to you? Suppose these images were that as soon as you booted up the computer – you know what a screensaver is, do you not?
- A. Yes.
- Q. You can have photographs as your screensaver, can you not? You know that, do you not? Some people have their families. Portrait of a loved one. Suppose the screensaver was the child porn image. As soon as you switched the machine on, bang, right in front of your face, this image. That would be important, would it not? You would want to know that, would you not? As a police officer you would want to know that, would you not?
- A. I don't believe I did at that time, no.
- Q. No? So you do not believe you ----
- A. I don't believe I would have asked that, no.
- Q. That is not my question. You would want to know that, would you not?
- A. I would want to know later, yes.
- Q. You would want to know that before charge. You would want to know that during your interview, would you not? If you booted up Mr Clifford's machine and the screensaver was the child porn image, you would want to know that before you interviewed, would you not?
- A. Yes.
- Q. If the images had been changed and instead of having random numbers they had "Jeremy Clifford 1, Jeremy Clifford 2, Jeremy Clifford's favourites, Jeremy Clifford really loves this one", that is something else you would want to know.
- A. Each image had its file path printed with it.
- Q. Yes, and they were random numbers.
- A. Yes.
- Q. The point being that location and whether the images had been viewed or altered is something that you would want to know.
- A. And they're within the file path.
- Q. The file path did not mean anything to you.
- A. I knew enough to ----
- Q. You knew enough. Where on the machine was it then?

- A. I can't recall now.
- Q. If I were to take you to the file path in the bundle and showed you what the file path was, you would be able to tell me where on the machine it was.
- A. Probably not, no.
- Q. Because you would have to ask the expert, would you not?
- A. Yes.
- Q. And you did not, did you?
- A. I'm sure I did but I can't recall it.
- Q. Ah, you are sure you did. There we go. We have got the truth now. You did ask and you were told. You have just admitted: "I'm sure I did ask." What is the truth now? Why did you say yes, that you are sure you did ask?
- A. I'm sure I would ask questions but I can't recall.
- Q. No, no, no, no, Mr Hopkins. You are sure you did ask the location. That is what you just said on oath.
- A. I'm not sure about the location.
- Q. That is what we are talking about. You have just been caught out, have you not?
- A. No, I don't believe so.
- Q. What did you mean then when you said, when we were talking about file paths, "I'm sure I did ask"? What did you mean, Mr Hopkins, and why did you say it?
- A. Because I would look at the file path and the date created. That is what I would look at.
- Q. No, no, no. What did you mean when you said: "I'm sure I did ask"? You were talking about speaking to the expert.
- A. On which computer they would be found. On which computer.
- Q. You knew which computer. It was not as if there were hundreds of computers. It was one computer, a Tiny.
- A. No, there were five computers.
- Q. Mr Hopkins, the information was supplied from the Tiny machine. It was obvious it was - what was the exhibit number of the Tiny? JB/1?
- A. I think so, yes.
- Q. So it was not as if there was a confusion over which computer it came from. It was obvious it was from the Tiny computer, was it not?
- A. I've no doubt it is.
- Q. You knew then it was from the Tiny computer. You knew about the file path because you asked, because it would have been the very first thing you would have done, whereabouts on the computer, and you were told these images cannot support a charge of making or possession. You were told that before you charged. Yet the reason why you charged was to boost.

- A. I don't believe that, no.
- Q. Why did you tell Wilcox that then?
- A. I don't recall telling him that.
- Q. So you do not recall the instructions in the letter before the claim. I made a mistake but it was an innocent mistake. I was told. You do not recall telling Wilcox this. You have been caught out lying time and time again, have you not?
- A. No.
- Q. In fact, you were really upset with Jeremy Clifford, were you not?
- A. No.
- Q. And the reason why you were very upset with him was because he had made your job difficult, had he not? He was complaining about you. Do you remember when his solicitors threatened you with a complaint in the February? In relation to saying that you were hanging on to his goods, his equipment, for too long. Do you remember that?
- A. I know they wrote in, yes.
- Q. And they threatened to complain about your conduct, did they not? I will take you to the letter if you want me to but I am sure you remember. You do remember, do you not?
- A. I remember the letter, yes.
- Q. So here is somebody who is complaining against you and did you think because of the fact that he had the Landslide information on his Visa card: "I know, let's charge him with possession. Maybe he'll plead. The more charges we put on in relation to this, he might put his hands up to one of them." Was that your thinking?
- A. No.
- Q. But he did not, did he? So you decided to bring a little pressure to bear on him and you told his enemy. You told Lloyd Gerard.
- A. No.
- Q. You knew it was perfectly improper to have done that, do you not?
- A. Yes.
- Q. And you know that that would have been a real abuse of your office to have done so.
- A. Yes.
- Q. Help us with this. Lloyd Gerard was seen in the October of 2003 when the computer was taken initially.
- A. Yes.
- Q. But was not ... by your colleagues.
- A. That's correct, yes.

- Q. We know that there are several months when he is completely oblivious to it because he does not say anything, but when he sees you – because you personally take his statement on I think 9th July.
- A. Yes.
- Q. Let us have a look at that statement. File 1 behind divider 10. This is a statement you took on 9th July. Up until the time that this statement is taken, despite the fact that this investigation is ongoing, there is nothing heard from Mr Gerard. You take this statement from Mr Gerard, and we can see that you asked him to provide a statement in relation to the computer, have you not?
- A. Yes.
- Q. You need the statement from him because you wanted to know who owned the computer, when the computer was bought, and so on and so forth. Yes?
- A. Yes.
- Q. For the charges you had in mind. Is that right?
- A. I didn't think about the charges at that point.
- Q. Turn over to the second page of the statement. Look at the second paragraph. There is a suggestion that he took it away for several weeks to clean it.
- A. Yes.
- Q. How did that come about?
- A. That was his statement, what he said.
- Q. How did Mr Gerard know what to provide a statement about? He must have been asked some things. He would not just say to you: "Here's a statement" out of the blue.
- A. No.
- Q. You would say to him: "I need a statement from you."
- A. Yes.
- Q. And you would tell him what you wanted the statement to cover, would you not?
- A. Yes.
- Q. So you would want to know from him, and you have given a list of things that you want him to include in his statement.
- A. Didn't give him a list, no.
- Q. All right, you tell him what you want him to include in the statement.
- A. Yes.
- Q. You agreed to make sure that the statement covered the matters that you required and you told him what the investigation was about.
- A. No.
- Q. I suggest you did, and that is why, despite the fact that your officers have been dealing with Mr Gerard previously with nothing, as soon as you deal with him, lo and behold,

within a few weeks he is on the phone making allegations about: "I'll help you up to your paedophile", and so on. We have heard the tapes for ourselves.

A. No.

Q. Did anybody else from your department have a need to speak to Mr Gerard?

A. No.

Q. It was you.

A. Didn't tell him.

Q. In the same way you say: "I didn't discuss with Mr Foughey before charge where the images were." In the same way you say to this court: "I didn't tell Mr Wilcox that we added the charges to give extra weight." You are a liar and you have been caught out.

A. No.

Q. Let me move on to a completely different matter. I want you to look at something, please.

MR JUSTICE CRANSTON: Mr Thomas, I am just wondering if this is an appropriate point or not.

MR THOMAS: This is a convenient moment. I am going to move on to a completely different point which will take me about ten minutes, and then I have finished. But it is a good point to have a break now.

MR JUSTICE CRANSTON: We could keep going for the ten minutes if you want. It is up to you.

MR THOMAS: My solicitor is showing me something. Perhaps if he shows me in the break.

MR JUSTICE CRANSTON: Yes.

(Discussion re timetable)

(Adjourned for a short time)

MR THOMAS: Mr Hopkins, we had just left off looking at Mr Gerard's witness statement in bundle 1 behind tab 10 at page 441. In this witness statement you say that you did not discuss with him the allegations that Mr Clifford was facing. Is that right?

A. Yes.

Q. And so he was writing his witness statement completely out of the blue without knowing about the allegations.

A. Yes.

Q. I have already put to you that we say you are lying about that, so I am not going to go over that again. There is one point I want to take up with you in relation to the statement, and it is this. Did you make a personal note? You have made a personal note in relation to the witness statement. Is that right?

A. Normally, yes.

- Q. Let us see if we can find your personal note. If you turn back two pages to 439, we see some notes for Lloyd Gerard.
- A. Yes.
- Q. Do you remember I said to you, you did a list of things and you said: "No, I wouldn't do a list." Earlier on, before lunch, you said: "I wouldn't do a list of things." Do you remember saying that to me in my questioning? I said to you: "You would do a list of things that you would need to get out of the witness statement." Do you remember me saying that or not?
- A. Yes.
- Q. And your reply was: "No, I wouldn't do a list of things, Mr Thomas." Do you remember saying that?
- A. I do.
- Q. What do we see at page 439?
- A. A list.
- Q. A list of things that you want in the statement, is it not?
- A. Yes.
- Q. So why were you telling us that you did not do a list of things?
- A. I must have forgotten.
- Q. There are a lot of things you have forgotten, are there not?
- A. Yes.
- Q. You are a bit all over the place, are you not, in your evidence? Anyway, let me move on. In this list of things that you want the statement to cover, we can read that for ourselves but I am interested in the handwritten notes at the bottom. That is in your hand, is it?
- A. It is, yes.
- Q. Obviously you would want to ensure that what Mr Gerard was telling you was correct, would you not?
- A. Yes.
- Q. Because you knew there was bad faith between what Gerard was saying and what Clifford was saying. There was bad faith between the two men.
- A. Yes.
- Q. You knew that, did you not?
- A. Yes.
- Q. So you knew you had to be careful in relation to what Mr Gerard was saying about Mr Clifford. You would need to have it verified, would you not?
- A. Yes.

- Q. One of the things that Mr Gerard says is that he took the computer away, and in your handwritten notes can you find where he says he took it away?
- A. He says it took two weeks to clear and clean.
- Q. Yes. Which page is that?
- A. Page 440.
- Q. "Took two weeks to clean." Yes?
- A. Yes.
- Q. So that would be one of the factors. This is what Gerard is saying about Clifford about the computer. That would cause you to raise your eyebrow. "Oh, the computer has been cleaned." With your police officer's investigative mind. "I wonder what he was cleaning it for." Yes?
- A. Yes.
- Q. Would that be right? That is the sort of thing that would cause you to raise a police officer's eyebrow.
- A. Yes.
- Q. When you eventually get the statement – turn to 442 second paragraph – what does Mr Gerard say?
- A. He took it away to clean.
- Q. But for how long?
- A. Several weeks.
- Q. There is a difference, is there not?
- A. There is, yes.
- Q. Did you query that, knowing that there was bad feeling between the two men? In the words, Mr Hopkins, did you ever take any steps to verify whether or not the machine had been cleaned?
- A. No.
- Q. We know that, in fact, it had not been cleaned.
- MR CHALLENGER: We do not. There is no computer expert evidence in this case and we know that on 11th February 2001 Windows 98 was reinstalled. That is the beginning and the end of what we know.
- MR THOMAS: Let me continue. (To the witness): You know that you interviewed Mr Clifford on two occasions.
- A. Yes.
- Q. On 30th October, you interviewed him again on 19th July.
- A. Yes.
- Q. We know that you asked him about the computer. Correct?
- A. Yes.

Q. Bear with me for a moment. (Pause)

MR JUSTICE CRANSTON: Do you want to come back to it?

MR THOMAS: I will come back to it. (To the witness): Can I ask you to turn to your witness statement and the exhibits to your witness statement. It is file 1. I want to take you to one of the exhibits to your witness statement which is referred to as a SAD(?)1, which is at page 192 and 193.

A. Yes.

Q. In fact, these are said to be the credit card transactions of Mr Clifford's credit card in relation to him accessing the Landslide website. Yes?

A. Yes.

Q. This is the information that you had. One of the things that you were concerned with is whether or not there was an innocent explanation for these transactions. Correct?

A. Yes.

Q. What might be the innocent explanations that you would have in mind for instance?

A. That he'd lost his credit card.

Q. Whether the card had been lost, whether the card had been stolen, whether there had been fraud, because it is right, is it not, and you were aware of this, that in relation to Landslide, one of the key problems about the Landslide website was there had been widespread incidence of fraud. That is correct, is it not?

A. I'm not sure if I was aware of it at that time.

Q. You certainly are aware of it now, are you not?

A. Yes.

Q. But fraud is certainly one of the things that would be operating on your enquiring mind. As you said, lost, stolen card, fraud. It would be one of the things that you would be thinking about. You said you are certainly aware of it now, because one only needs to do a search of old editions of newspapers and the internet to see how widespread the fraud was on the Landslide site, which you are aware of now, are you not?

A. Yes.

Q. BBC on 10th May 2007: "Credit card trail. Lawyers and computer experts said that some forces did not carry out proper checks to see if suspects arrested as part of the investigation were fraud victims. Operation Ore launched in May 2002 when the police received a list of the names of people whose credit cards had been used by child pornography ... website Landslide. So far, 2,300 people on the list have been found guilty but another 2,000 people spent many months under investigation before charges were dropped because of fraud." It is well known now, is it not?

A. Yes.

Q. That is a BBC report. Then there is a similar report in the **Daily Mail**, similar reports in the **Guardian**. "Operation Ore flawed by fraud." You say you did not know that

at the time but you were a police officer with some 26 years' experience and you said that you had this information before you interviewed Mr Clifford, what we are looking at now.

A. Yes.

Q. Just how enquiring was your mind? Have a look at page 193. Mr Hopkins, have a look at the date column. As you look at that, do you notice anything unusual about those dates and times?

A. They're 1999.

Q. Oh, 1999. That is the only thing that is unusual that you notice, is it? I am going to hand you up a table. (Handed) This is something I prepared. Let me explain it. All I have done is I have taken the dates and times from this - I have put them so we can have a look at the date and the times. Yes?

A. Yes.

Q. I am sure you will agree that the times or dates match.

A. Yes.

Q. Have a look at my table and look at the times. Anything jump out at you in relation to five of the times?

A. Round about quarter to three.

Q. All within a minute or so. Do you see that?

A. Yes.

Q. Does that not strike you as a bit odd? You are looking at somebody's credit card being credited or being debited all about the same time, more or less to the minute. Your enquiring police officer's mind. Does that not strike you as a little bit odd on different days?

A. Looking at it now, yes.

Q. But you had this for several months. What this indicates, I suggest, is that somehow some automated system at about 14.45 was debiting this card, apart from the one occasion on 4th July. Do you not see that?

A. I couldn't speculate on that.

Q. You see, I am going to suggest to you that the reason why the incitement got dropped very early on is because anybody with half an ounce of brain looking at this and scratching their head, would say: "Hang on a second, something is not right there."

A. I disagree on that.

Q. Did it even enter your contemplation with your police officer's enquiring mind that something may have been odd about these transactions?

A. No.

Q. Because you were so sure in your mind that Mr Clifford was guilty.

A. I wasn't looking at it that way, no.

- Q. And that is the reason why you decided to charge him regardless of the evidence. You did not look at the evidence. You tell us. Is it because you do not like ...
- A. No.
- Q. You do not like people who are involved in child porn so you were going to charge him regardless of the evidence. Is that what was going on?
- A. No.
- Q. I suggest it is. You thought he was guilty regardless of the evidence. You charged him. If I am wrong, tell us what the evidence was.
- A. I said it before.
- Q. You rely on the answer you gave earlier on.
- A. Yes.
- Q. Do you remember I was asking you to look at the issue about whether the machine had been cleaned. The one thing you did know, and if you turn to file 1 divider 8 page 319. Now, one of the things that Mr Clifford was saying to you in interview – in fact turn back one page just to put it in context about cleaning the machine. Do you see this at the very bottom of the page? You ask him in October 2003: “Didn’t you think to wipe it?” You are talking about wiping the hard drive, are you not?
- A. Yes.
- Q. What does he say? He says there is nothing too personal on it and then he says: “I mean, for example, my accounts package is password protected. So he” and when he says “he”, he is talking about Mr Gerard, “wouldn’t log on to that. I may have probably erased it. I can’t remember, to be honest, but I wouldn’t have worried about it because it was all password protected.” When Mr Gerard was telling you: “I took the machine away to have it cleaned”, did you check with the experts, just in terms of checking Mr Gerard’s veracity, bearing in mind that he knew that Gerard had a grudge or potential grudge between the two men, did you check with the experts whether the machine had been cleaned or whether there was an accounts package on it, because that is one thing that could have gone to credibility, would it not?
- A. Yes.
- Q. It would have gone to the credibility of Jeremy Clifford and it would have gone to the credibility of Lloyd Gerard. Did you check that?
- A. I can’t recall. I’m sorry.
- Q. There is no evidence to suggest it has been checked. You did not ask Foughey to do it, did you?
- A. No.
- Q. In other words, again it comes back to the fact that Gerard told you something. You did not check it because you have it in your head that this man must be guilty. What sort of policing is that, Mr Hopkins?
- A. It’s not how I am, sir.
- Q. It is shoddy policing. It is terrible policing, is it not?
- A. No.

Q. No?

A. Sorry, I'm not guilty of that. Sorry.

Q. You were the officer investigating this. You are the officer in charge.

A. Yes.

Q. This is your case. This was not in the local media. This first court appearance was not in the local media. What did you do when he rang you up from Spain saying: "Brian, Gerard is doing this"? What did you do about it? You remember the call, do you not?

A. I remember reading it here, yes.

Q. What did you do about it?

A. As I recall, I phoned Mr Gerard.

Q. And?

A. Asked him not to pass on comments that he couldn't substantiate.

Q. Why did you not say to him: "Where did you get that from"? Because you told him, is it not?

A. No.

Q. Instead of saying: "Where did you get that from?" he knew it from you.

A. No.

Q. Your answer is informative, you see, is it not?

A. No.

Q. You knew at the outset that these charges were baseless, because you did not have the evidence. I will move on to another point. You allowed this charge to continue. You could have stopped it at any point by saying to the CPS: "Actually, I know, because my expert has told me, we do not have any evidence here. Acknowledge."

A. It's as I did in December.

Q. You did not in December because if you did in December, explain to us, please, why it continued until the April.

A. It's with the CPS and I have no control over it.

Q. Really? We are going to hear from a CPS lawyer tomorrow. Are you saying that you told the CPS lawyer in December that you knew that the images were in the temporary internet files? Is that your evidence? Your evidence appears to be - correct me if I have this wrong - "I had known the images were in the temporary internet files until December." Is that right or is that wrong?

A. That's how I feel, yes.

Q. When did you tell the CPS lawyer that the images are in the temporary internet folders?

A. When they received the report from Mr Foughey.

Q. Did you tell them that that meant that the user did not know that they were there?

A. That was said in Mr Foughey's statement.

Q. Let us have a look at Mr Foughey's statement? That is in bundle 1 divider 7 page 220. Have a look at that. Our case is that you knew before these charges were commenced that these were in temporary internet folders and that that meant that the user did not know they were there, because they were buried. May have been pop ups, advertisements, and so forth. Now, it is not mentioned there, is it? All it says is ... Do you see?

A. Yes.

Q. So tell us, please, when did you as the officer in the case, tell the CPS - "And this means we cannot prove knowledge"?

A. I thought I'd explained it then.

Q. You explained it then, did you?

A. I asked if he'd reviewed the expert evidence.

Q. What do you mean? What does not make sense is this. Why did Mr Foughey make his second statement? That is the first question. That has not been explained yet. You explain it.

A. It was from a comment at court, I believe.

Q. What comment at court?

A. If I could see the case papers I could answer that.

Q. A comment when?

A. It was in a pre-trial review. I can't recall exactly.

Q. None of this is in your witness statement so I do not know what you are referring to. Nowhere on the face of the papers can I see anywhere where it explains how and why Mr Foughey came to make the second statement, so you explain to us, because I do not know what you are talking about, Mr Hopkins, so you will have to explain it.

A. Was asked by CPS to supply a second statement, but I recall what it meant or where it

Q. From when you got Mr Foughey's first statement on 21st July, did you have any need to be in communication with him?

A. I can't recall.

Q. You got that second statement in the November, did you not? You sat on it for a month, did you not? 21st November. That is the date that Mr Foughey sent you that statement.

A. 21st December.

Q. I know that is the date of the statement but he had sent it to you on 21st November, a month earlier, had he not?

A. Sorry, I can't recall that.

- Q. You have the fax transmission sheet. File 2 divider 12 page 488. Have a look at the bottom of the page. In fact turn the file upside down so you can see the page on the bottom. Look at the fax transmission date. Do you see the date?
- A. 21st November.
- Q. Yes, which is what I put to you. Did you have the statement – because I suggest you did – for a month sitting on it?
- A. I can't recall it.
- Q. But the one thing that is clear is this: When you got Foughey's second statement, the one thing that you must have asked is: What does this mean? You would have asked that, would you not?
- A. Yes.
- Q. No doubt in your mind when Foughey came up with the second statement, the first question you would have asked is: What does this mean? What do you mean, temporary internet folders? Yes?
- A. Yes.
- Q. If you asked that, you would have been given an answer, that this means they were deeply buried and all the rest of it. You were told that – yes? Is there any reason to think you were not told that?
- A. No, no reason to not.
- Q. Right. Can you explain this. You would have known then that you did not have a case, bearing in mind what Mr Foughey was saying.
- A. Yes.
- Q. Did you tell the CPS lawyer that? Did you tell the CPS lawyer that?
- A. I can't recall what I told the lawyer. All I know is I sent it with a letter, a note.
- Q. Let us have a look at what you said in it. Page 487. This is the memo that you sent with that statement. Got it?
- A. Yes.
- Q. Have a quick read of that to yourself.
- A. Yes.
- Q. Bearing in mind what you just said, and you are the officer in the case, you have had a conversation with Mr Foughey and Mr Foughey has explained to you the significance. Effectively Mr Foughey has told you for the first time: "You ain't got no case." That must have come as a shock to you. Correct?
- A. Yes.
- Q. Where in this memo do you pass that information, that shock, to the CPS? They do not know, do they?
- A. No.
- Q. And the CPS are only as good as the information they are supplied with, are they not?
- A. Yes.

Q. They are only as good as the information they are supplied with.

A. Yes.

Q. You are the one with the information, are you not?

A. Yes.

Q. Why did you not tell the CPS lawyers?

A. I have no idea.

Q. This is the misfeasance, you see. You are retaining information and this is your opportunity to tell his Lordship why you sat on the information. So tell his Lordship.

A. I can't comment at this time. I believed I did it on 21st December.

Q. We know that. Mr Hopkins, I do not know if you follow what I am saying, and I would not want to sit down with you being confused. The point is a simple one. You have just told his Lordship: "I didn't know about this before charge. The first I knew about this was on receipt of Foughey's second statement." So then I asked you: "When you had received Foughey's second statement, you would have read it and you would have said, 'What does this mean?'" You have agreed with me. You would have said: "What does this mean?" You would have asked Mr Foughey about that. I see you nodding your head. You are in agreement with me. Mr Foughey would have explained to you that this means you have not got a case, and you would have been shocked. So my question is: As at 21st December when you were writing your memo to the CPS, why did you not tell the CPS that you did not have a case? It is a simple question. Explain.

A. The interesting thing – sorry – is I look at the fax again and Mr Foughey's got the date of 21st of the 12th of the top. I know it says "21st November" at the bottom. I can't answer that. I thought it was on 21st December.

Q. That is fine. Just put that to one side. That is in relation to the facts. You are not going to avoid answering my question though, and I will come back to the question, Mr Hopkins, and I want you to answer it because it is a simple question. Let me repeat it. You say you do not know about Mr Foughey's change in stance until 21st December.

A. Yes.

Q. You say when you received Mr Foughey's statement you query it. That is one of the first things you do. "What does this mean?" Nods do not pick up for the tape.

A. Yes.

Q. You query it. You are told: "It means that we haven't got a case. The files are buried. We cannot prove that he knew about them."

A. Yes.

Q. My question is, and please answer it because this is the third time of asking it, when you learned that on 21st December and you wrote your memo which we are looking at on page 487, why did you not tell the CPS?

A. I don't know.

- Q. Because you have deliberately caused this prosecution to go on for much longer than it needed to, for another five months. The information was in your hands. The very information which causes this case to collapse, namely the files are in temporary internet files and that means this, is not given to his lawyers until a couple of weeks before the case collapses in April 2005. I am asking you to explain yourself.
- A. I'm afraid I can't.
- Q. You have no explanation.
- A. No.
- Q. Did you tell Mr Foughey to suppress that evidence, because I suggest you did. When Mr Foughey told you in June 2004 about the significance of those images, you told him to suppress that information, did you not?
- A. No.
- Q. And that whole suppression of the information was going on and it was occurring again in December, was it not?
- A. No.
- Q. In fact, the only reason why this case drops is because it is not until Mr Clifford instructs his own expert and spots the point. You would have been happy for him to have gone to trial, despite what you knew, would you not? You wanted him to go to trial despite what you knew, did you not?
- A. No.
- Q. You did not want him to face trial.
- A. You're trying to say that I was being malicious in that and the answer is no.
- Q. That is exactly what I am alleging, because that is what the case is about. Help me with this. There were several hearings in January. I think there were two hearings in January. You do not say at any one of those hearings, you do not pass a message saying: "Our case is crap." Forgive me, "Our case is rubbish." Do you?
- A. I can't recall if I went to them.
- Q. Whether you went to them or not is not the point. You do not get a message to the CPS lawyer, being the officer in the case, telling them that, to stop this wrongful prosecution because you have no evidence at any stage. In other words, Mr Hopkins, what I am suggesting to you is that this prosecution, despite your knowledge, does not come to a halt because of anything that you do, does it?
- A. No.
- Q. You understand that the allegations being made against you – and I am a frank speaking person – we call you a liar, we say that you have been standing there and you have been lying upon lie upon lie in relation to your involvement in that. You understand that is what I put to you.
- A. Yes.
- Q. You remember I took you a document which I referred to as the SID document, which is in file 2 at page 652.
- A. Yes.

Q. We do not need to read it again but there is one thing I am going to give you the opportunity to comment on. The SID document says that you knew about this before charge. Yes? You have read it.

A. I've read it, yes.

Q. This indicates that you knew about the location of the images before charge.

A. No.

Q. Mr Hopkins, look at paragraph 5 and read paragraph 6 and paragraph 7. We have been through this already. I do not want to go into this again. It indicates that you knew about the location before charge. It is a document that says: "I charged to give extra weight" ----

MR CHALLENGER: Your Honour, I do reluctantly have to climb to my feet again and say this. If a question goes on for seven or eight sentences and lasts for three or four minutes, it really is impossible for the witness to deal with it. Could I ask my learned friend to put his points to Mr Hopkins one at a time and then perhaps we will get sensible answers and know what they are answers to.

MR THOMAS: To assist my friend, who does not seem able to follow my question, look at page 652.

A. Yes.

Q. Read paragraph 5 to yourself.

A. Yes.

Q. Read paragraph 6 to yourself.

A. Yes.

Q. Just let us pause there. These are paragraphs that indicate that you knew about the location. Correct?

A. They do, yes.

Q. They indicate that you knew about the significance of the location.

A. Yes.

Q. Now read paragraph 7.

A. Yes.

Q. Read together with paragraph 7 it indicates that you knew about those matters before charge. Do you see?

A. It indicates that, yes.

Q. The point I was making is this. This document was made without reference to the reply to the letter of claim. You will find that in file 1 page 20.

A. Yes.

Q. When your solicitor wrote that letter, or I should say when the Chief Constable's solicitor wrote that letter – that is Mrs Grundy who sits behind my learned friend –

she did not know about the SID document. She did not know about it. She did not know of its existence. I will take you to that reference, if that is in doubt, in a moment. In other words, the letter of claim and the replies and responses in it are given completely independently of the SID document. Do you follow?

A. Yes, I do.

Q. So you have two independent documents suggesting that you knew about the location and the significance before the charge. The question is this. Can you offer us an explanation as to why two independent police sources would indicate that you knew if you did not know?

A. All I'm saying is I can't recall. I can't recall that being said.

Q. Mr Hopkins, it is not a question of cannot recall it being said. You do recall because you just told his Lordship: "The first I knew about the location was in the December." You just said that.

A. Yes.

Q. So it is not that you cannot recall. That is your evidence. You are saying: "I was not told until December."

A. Yes.

Q. My question is if that is right, why were you saying to two wholly independent police sources, namely the police solicitors and Mr Wilcox, who was investigating a police complaint, why did you tell them two different things?

A. I can't recall.

Q. That is the best you can do.

A. Yes.

Q. The reason is because you are lying and you have been caught out, have you not?

A. No.

MR THOMAS: My Lord, I have finished. I am just looking for that reference about the police solicitors not knowing about the SID document. As soon as my instructing solicitor has it, I will give you it.

MR JUSTICE CRANSTON: Very well.

Re-examined by Mr CHALLENGER:

Q. Mr Hopkins, I hope I can be reasonably brief. I have lost the score – I was keeping it – of how many times you have been called a liar whilst in the witness box, but you were in the police force for 31 years. It has probably happened before.

A. Yes.

Q. You knew, of course, before you got here what the substance of Mr Clifford's allegation was in this claim, namely, putting it in everyday terms, that you had fabricated charges against him, kept them running by not telling the truth to the Crown Prosecution Service and acted maliciously. Is that your understanding of the allegation against you?