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IN THE SUPREME COURT  
OF NEW SOUTH WALES  
COMMON LAW DIVISION

5 SCHMIDT J

TUESDAY 30 JANUARY 2018

**2018/00004430 - TONY LIRISTIS v STATE OF NEW SOUTH WALES**

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Plaintiff appeared in person via video link  
Mr A Norrie appeared amicus curiae for the Plaintiff  
Mr JS Emmett for the Defendant

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VIDEO LINK TO LONG BAY MSPC AT 10AM

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HER HONOUR: Mr Liristis, can you hear and see us?

PLAINTIFF: Yes, your Honour, thank you very much, I can.

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NORRIE: Your Honour, I'm seeking leave to appear amicus curiae for Mr Liristis. I am counsel in his criminal law matters in the District Court which are listed for trial next week. Your Honour, I understand this application has been brought by Mr Liristis and I anticipate he will be running the application on his own, but I am here to assist wherever I can, your Honour. I don't anticipate my appearance in that capacity is a cause of concern for my learned friend.

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HER HONOUR: All right. Mr Emmett?

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EMMETT: It is not, except this far. Two witnesses have been required for cross-examination. We will have some discussion about the propriety of that and the scope of it, if necessary, but if there is counsel here it is my submission that that decision and the cross-examination be conducted by Mr Norrie, if cross-examination is to be conducted. Mr Norrie may well take a different view about whether cross-examination is appropriate in a judicial review case like this.

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NORRIE: Your Honour, if that be the case - I understand Mr Liristis would seek to cross-examine some of the witnesses. If that is my learned friend's position, I wouldn't seek leave to appear in any capacity, if that be the case, your Honour, and I simply observe from the rear of the Court.

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HER HONOUR: We will deal with the question of cross-examination when we come to it but, for the moment, you are not pressing your application?

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NORRIE: I am not, your Honour, if that be the position.

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EMMETT: I don't want to put Mr Norrie in a difficult position. The concern I have - I'm sure your Honour understands - is the undesirability of unnecessary cross-examination. Perhaps we will deal with that as it comes. I am content for Mr Norrie to indicate that he won't cross-examine and that he won't appear to the extent that that may be a bar to Mr Liristis cross-examining and we can have a discussion in due course on its merits about whether Mr Liristis should be permitted to cross-examine and, if so, the scope of it.

HER HONOUR: Mr Norrie, it is always useful to have the assistance of counsel, obviously.

NORRIE: Yes, your Honour.

HER HONOUR: There is an obvious concern about someone who's appearing unrepresented but has counsel briefed in proceedings, about which this application is essentially concerned, seeking to have that person appear as amicus because, obviously, you can't have two voices speaking for you.

NORRIE: Yes, your Honour.

HER HONOUR: So, let's leave your application for the moment and come back to it if the need arises for you to say anything. And, as I said, we will deal with cross-examination of witnesses when we get to that point.

NORRIE: Would your Honour allow me to remain at the Bar table?

HER HONOUR: Yes, certainly.

NORRIE: Thank you, your Honour.

HER HONOUR: Mr Liristis, there are numerous documents on this file. The proceedings were commenced by a summons which you filed in December, but on the file there is a further summons which was filed in January which seeks both interlocutory and final orders. Do I correctly understand that you wish to proceed on the January summons?

PLAINTIFF: Your Honour, sorry, were you the your Honour that I spoke to on the last occasion?

HER HONOUR: No, this is the first time that the matter has come before me and it is before me today for hearing of your interlocutory application, as I understand it, and I am just trying to clarify with you whether the orders that you are seeking are the interlocutory orders which appear in the summons which you filed on 19 January?

PLAINTIFF: Yes, your Honour, that's correct, that's the ones that I asked her Honour on the last occasion for leave to have them filed with the Court and her Honour gave me leave to file them in Court, your Honour.

HER HONOUR: Thank you. Can I just confirm with you also that you have

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other documents which are on the file. There were some submissions filed by the defendant, the State, on 25 January. Do you have a copy of those?

5 PLAINTIFF: I do, thank you very much, your Honour.

HER HONOUR: Do you also have - there seem to be two affidavits - one sworn by Mr Sharp on 25 January. Do you have a copy of that?

10 PLAINTIFF: Yes, your Honour, thank you very much.

HER HONOUR: And do you also have a copy of the affidavit of Ms Totoeva sworn on 19 January?

15 PLAINTIFF: No, I don't have the one for Ms Totoeva. I have received a letter of an appearance. Is that the same thing, your Honour?

HER HONOUR: No, this is an affidavit of Anastacia Totoeva of 19 January. It is very short; it has got six paragraphs.

20 EMMETT: Your Honour, can I leap to my feet and say that was for a hearing before Justice Lonergan. That has been picked up in Mr Aboud's affidavit, so it doesn't matter if Mr Liristis doesn't have that because I don't propose to read it today.

25 HER HONOUR: You refer, Mr Emmett, to an affidavit of Mr Aboud. That is not on the file. I don't have that affidavit. If you could provide me with a copy?

30 EMMETT: I will get that for your Honour. Your Honour, my instructor has prepared a bundle of materials that has in it, just for the transcript and for Mr Liristis, it has got the summons of 19 January and the orders made by Lonergan J on 19 January. It has got Mr Liristis's affidavit of 26 December 2017 and of 25 January 2018. Then it has got the defendant's material, being the outline of submissions from me. It does have a copy of the affidavit of Anastacia Totoeva but, as I say, I don't propose to read it; the affidavit of Patrick Aboud; the affidavit of Antonio Fiorenza; the affidavit of Peter Sharp; 35 and, finally, the reply affidavit of Mr Liristis dated 26 January 2018 (handed up).

40 HER HONOUR: Neither the affidavit of Mr Aboud or of Mr Fiorenza are on the file. Just to explain to you, Mr Liristis, sometimes things don't necessarily reach the file. It is not only people in custody who experience problems of that kind, but can I just check with you that you have the affidavit sworn by Mr Fiorenza on 25 January and that sworn by Mr Aboud on that day?

45 PLAINTIFF: Yes, your Honour, I do, thank you very much, your Honour, and I appreciate your Honour saying that, thank you.

50 HER HONOUR: Thank you. That means that I haven't read those two affidavits and I will need, before we go very much further, to do that. But just before we come back to that, can I just deal with one procedural thing.

5 You said, Mr Liristis, that you had the Crown's submissions. In those submissions, it is said in paragraph 1 that the submissions are not only made on behalf of the State but also on behalf of the Commissioner for Corrective Services who is said to be the appropriate contradictor and that the record should be regularised by identifying the Commissioner for Corrective Services as the correct defendant in the proceedings. Do you have any objection to that occurring?

10 PLAINTIFF: I do, your Honour, and I will explain the reasons why I do. One is because that was the action that was taken by - I have other proceedings against Corrective Services which aren't relevant to these orders; they are completely different, but in the District Court proceedings before Justice Wass of the Parramatta District Court, Ms Anastacia Totoeva, the solicitor for the  
15 Crown Solicitor's Office representing the State of New South Wales, had asked me to change the Corrective Services to the State of New South Wales, which I did what I was asked to do.

20 Now they're saying that the Commissioner is the correct person and I can't understand that because if the Commissioner was the correct person then it would be putting on an affidavit and I'd be seeking to see what the Commissioner would be saying, and now they're saying here that they want that - that is the right person, yet in the District Court they said the correct party is the State of New South Wales. This is my honest understanding.

25 HER HONOUR: Mr Liristis, the District Court proceedings that you are referring to, are they - I don't know what they are - they are proceedings that you've brought in respect of what?

30 PLAINTIFF: I brought them in respect of the treatment that I've been receiving by Corrective Services and I put down Corrective Services and Corrective Services are not an entity which Ms Totoeva explained to me, and she was right, so they asked me to change it to the State of New South Wales which I did, so they are separate proceedings to these proceedings, but just in the  
35 scheme of things is they asked me that the correct party is the State of New South Wales. In these proceedings now they are saying the correct party is the Commissioner and I am confused why the difference.

40 HER HONOUR: Thank you, Mr Liristis. No need to repeat yourself.

PLAINTIFF: Thank you, your Honour.

HER HONOUR: Mr Emmett, do I need to deal with this at the moment?

45 EMMETT: Your Honour, I may be able to assist, first, by offering an easy solution and; second, to give Mr Liristis some comfort about this. First, the easy solution, I suggest, is joining the Commissioner as a second defendant. Leave the State as the first defendant and join the Commissioner as a second defendant. To give Mr Liristis some comfort and, hopefully, ameliorate the  
50 confusion, Corrective Services is not an entity; the Commissioner is.

5 The District Court proceedings are tort proceedings, so a claim in tort in respect of Mr Liristis's alleged treatment in custody. In relation to a claim of that kind, because of the Crown Proceedings Act the State is the appropriate named defendant. Here, where the claim is a judicial review claim in respect of decisions made or the exercise of control over Mr Liristis in custody, the proper defendant, in my submission, is the Commissioner because the Commissioner is the public officer who has direction and control of the officers of Corrective Services.

10 That's the reason for the different position in relation to the two different proceedings, but an easy way through all of it is to simply join the Commissioner as a second defendant, so that Mr Liristis has the comfort of having the State as one defendant but also the person who, in my submission, is the proper defendant is also before the Court.

15 HER HONOUR: Mr Liristis, you have heard that explanation and the suggestion which has been made. Do you have any objection to the Commissioner being joined as a defendant?

20 PLAINTIFF: No, your Honour, I accept what the gentleman is saying. What he says makes sense and I appreciate his assistance.

25 HER HONOUR: Thank you. By consent then, the Commissioner for Corrective Services will be joined as the second defendant to the proceedings.

30 Mr Liristis, could you just confirm something for me because you will appreciate that, as always, I am catching up. Have I correctly understood that you are in custody on remand, bail refused, at the moment?

35 PLAINTIFF: Yes, your Honour, that's correct.

40 HER HONOUR: And you have been charged with a number of criminal offences?

45 PLAINTIFF: Yes, your Honour, that's correct.

50 HER HONOUR: Which are due to be heard in the District Court in Sydney in a trial which is listed to commence on 5 February; is that correct?

PLAINTIFF: That's correct, your Honour.

HER HONOUR: How long is that listed for?

45 PLAINTIFF: I understand it was ten weeks said last time. I don't know what is said this time, your Honour.

50 HER HONOUR: Thank you. Mr Liristis, there are on the file, again, a number of affidavits which you have sworn. They are affidavits of: 1 November 2017; 26 December 2017; 25 January 2018; and 26 January 2018. Are they all the

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affidavits that you filed?

PLAINTIFF: Yes, your Honour, thank you very much.

5 HER HONOUR: And do you seek to rely on all of those affidavits as the evidence in support of your application?

PLAINTIFF: Yes, your Honour, yes, please. Thank you, your Honour.

10 HER HONOUR: Just by way of explanation, what would ordinarily happen is I would receive those affidavits and deal with objections and questions of cross-examination and so on. I would also receive the affidavits on which the defendants seek to rely and deal with objections and cross-examination  
15 questions as well and then hear submissions from you both, so that is the evidence that you wish to rely on. I will just inquire then from Mr Emmett, are there objections?

EMMETT: Just before we come to objections, your Honour mentioned an affidavit of November 2017. I don't have that affidavit. I have just been  
20 told - there was an understanding in my camp that that wasn't being relied on today, which is why I have not been briefed with it. I can take steps to obtain it if it is being relied on, but I am instructed that it was taken over by the December one.

25 HER HONOUR: Let's just clarify that, Mr Liristis. Mr Emmett understood that your 26 December effectively overtook your November affidavit and that you were relying on the December affidavit, not the November affidavit. Is that correct, you're not relying on the November affidavit; just the December one?

30 PLAINTIFF: Your Honour, I don't have the November, but I accept what the gentleman's saying, it does ring a bell, so I appreciate the gentleman bringing that.

HER HONOUR: So the three affidavits - the two January ones and the  
35 December one that you rely on - are there objections to those?

EMMETT: Not that I think the Court needs to go through one by one, by which I mean all three - and I don't say this critically because Mr Liristis is self-represented - well, has prepared them himself. All three contain significant  
40 argumentative material that might be regarded as argumentative or submissions and they contain material of doubtful relevance. I don't propose to take up time on that, but subject to that - so, for instance, indications of what previous judicial officers have said but, subject to that, no, I don't propose to object.

45 HER HONOUR: So, let me just explain again, Mr Liristis, Mr Emmett is telling me that the affidavits contain relevant materials which is admissible by way of evidence. They also contain material which he says is strictly irrelevant and some of which is strictly not evidence but rather submissions. He is not taking  
50 any formal objection to those affidavits, nevertheless, and in those

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circumstances what I will do is mark them as exhibits in the proceedings, so the 26 December affidavit becomes exhibit 1; the 25 January affidavit exhibit 2; and the 26 January affidavit exhibit 3.

5 EXHIBIT #1 AFFIDAVIT OF THE PLAINTIFF SWORN 26/12/2017  
TENDERED, ADMITTED WITHOUT OBJECTION

EXHIBIT #2 AFFIDAVIT OF THE PLAINTIFF SWORN 25/01/2018  
TENDERED, ADMITTED WITHOUT OBJECTION

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EXHIBIT #3 AFFIDAVIT OF THE PLAINTIFF SWORN 26/01/2018  
TENDERED, ADMITTED WITHOUT OBJECTION

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EMMETT: Your Honour, there is one last bundle of emails that I understand, and I am grateful to Mr Norrie for this, that Mr Liristis wants to tender. They are three email chains: One of 30 October 2017; 6 January 2018; and 7 January 2018. Can I hand them up now? There is no difficulty with the first email which is in fact an email that he quotes in his affidavit (handed up). The second two - I think I understand the relevance, but it ought to be explained because there is a question whether or not I can meet the proposed evidence today and whether we need to meet it today.

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HER HONOUR: I will just mark that bundle of documents that you have just handed up as MFI 1.

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MFI #1 BUNDLE OF EMAILS

Mr Liristis, there is no objection to the tender of the 30 October 2017 material, but Mr Emmett is asking what you say the relevance is of the rest of the material. Mr Emmett, what you have handed up is a document which has a date on it "30 January" - it begins with an email of 30 October.

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EMMETT: Yes, that is where I was taking 30 October from.

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HER HONOUR: That is the one there is no objection to?

EMMETT: Yes.

HER HONOUR: Can you explain, Mr Liristis, what you say the relevance of the other email chains is?

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PLAINTIFF: Yes. Can you explain to me, your Honour, if you'd be kind enough to let me know, which email you want me to address your Honour?

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HER HONOUR: Yes. There is no objection to the chain of emails which begins on 30 October. The question has been raised in relation to the chain of emails which begins with the email of 10 January from Mr Schumer and the email of 17 January from Mr Schumer.

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PLAINTIFF: Are they addressed to who, your Honour? Who are the

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communications with? Is that the Data Recovery Centre?

HER HONOUR: The first is from Mr Schumer to D Samji.

5 PLAINTIFF: Is that from Data Recovery Centre, your Honour?

HER HONOUR: No, it is Greg Schumer. The date is 10 January and it is to "dsamji@drcaustralia.com", so Data Recovery Centre, I'm imagining.

10 PLAINTIFF: Yes, your Honour, that's correct.

HER HONOUR: What is the relevance, do you say, of that material?

15 PLAINTIFF: Your Honour, the relevance of that material is certain hard drives, your Honour, that were ordered by his Honour Justice Conlon of the District Court for the DPP to supply me with certain digital material, and we forward those digital material to Data Recovery Centre and the Data Recovery Centre have located no files that were ordered by the Court and it also shows an email trace where the - Dilip from the Data Recovery Centre has stated that he  
20 needs passwords that were encrypted by the State Evidence Electronic Branch and/or the police. They are relevant, your Honour, when it comes to the issue of the evidence that has been ordered by the District Court and I haven't received that evidence.

25 HER HONOUR: Well, you say, as I'm following you, that the District Court has made some orders that you be given access to certain materials and those orders have not been properly complied with, you say?

PLAINTIFF: Yes, your Honour, that's correct.

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HER HONOUR: And you say that's relevant to this application?

PLAINTIFF: Yes, your Honour, it is.

35 HER HONOUR: Does that assist Mr Emmett?

EMMETT: It does. In that case, I object first on the simple ground that it is not relevant in my submission. If the District Court orders have not been complied with, that is a matter for the District Court, but I have no instructions about this  
40 and can't get them today. I can't indicate whether or not documents ordered to be provided have been provided.

The question for today is whether Mr Liristis's three claims, one of which has been dealt with - the three questions for today are whether the Court can order  
45 the provision of a laptop and, if so, whether it should; whether the Court can order the provision of a private printer and, if so, whether it should; and the third, which is no longer in issue, is the location of Mr Liristis being held and that is because Mr Aboud, who has not been required for cross-examination, has confirmed that he will continue to be held in Long Bay where Mr Liristis  
50 has said that, for as long as he is in custody, he wants to be held.

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HER HONOUR: Thank you, Mr Emmett. I propose to receive those documents and will mark them as exhibit 4.

5 EXHIBIT #4 BUNDLE OF EMAILS TENDERED, ADMITTED WITHOUT OBJECTION

10 They seem to me to be relevant to the questions which he has identified and I must say I am not convinced of the impossibility of obtaining instructions about them, if necessary, during the course of an adjournment, but if there is some problem, we will deal with it in due course.

15 That is Mr Liristis's evidence. You might confirm, if you would, Mr Liristis, that that is all of the evidence you want to rely on?

PLAINTIFF: Yes, thank you, your Honour, I'm sorry for not mentioning those emails, I apologise. Thank you very much, your Honour.

20 HER HONOUR: That's all right. I will just ask Mr Emmett about his evidence. You are relying on the affidavits of Mr Aboud and Mr Fiorenza?

EMMETT: Yes.

25 HER HONOUR: They are at tabs 7 and 8 of the documents.

EMMETT: Yes, your Honour.

HER HONOUR: Are there objections to those, Mr Liristis?

30 PLAINTIFF: The only objection I have is for one affidavit which is Antonio Fiorenza, your Honour.

35 HER HONOUR: Just one moment. There is no objection to Mr Aboud's affidavit?

PLAINTIFF: No, your Honour.

HER HONOUR: So I will mark that then as exhibit 5.

40 EXHIBIT #5 AFFIDAVIT OF MR ABOUD TENDERED, ADMITTED WITHOUT OBJECTION

HER HONOUR: What is the objection to Mr Fiorenza's affidavit?

45 PLAINTIFF: Your Honour, Mr Fiorenza in his affidavit, which I have thoroughly gone through, states nothing that is relevant to these proceedings, nor can it give you any background of the relevance to these proceedings. I understand that your Honour may need to understand a bit of background as to the reasons, but they are covered clearly in the affidavit of Mr Sharp which I have  
50 no objection, which is the defendant's affidavit.

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5 Mr Fiorenza has attached documents which are highly prejudicial to me and they are unsupported facts and there will be a lengthy cross-examination against Mr Fiorenza for the false and misleading statements that he has made in that affidavit which are, again, your Honour, irrelevant to these proceedings before the Supreme Court and that's my strongest argument. Thank you, your Honour.

10 HER HONOUR: Just one moment. Now you have referred to the affidavit of Mr Sharp. That is the one of 25 January. You rely on that affidavit as well?

EMMETT: I do, your Honour.

15 HER HONOUR: I take it there is no objection to Mr Sharp's affidavit?

PLAINTIFF: No, your Honour, because it is relevant, your Honour.

HER HONOUR: That appears at tab 9. I will mark that as exhibit 6 then.

20 EXHIBIT #6 AFFIDAVIT OF MR SHARP OF 25/01/2018 TENDERED, ADMITTED WITHOUT OBJECTION

25 You say that Mr Fiorenza's affidavit is irrelevant and contains prejudicial documents, some of which are incorrect. As I have indicated to you, I haven't had a chance to read this so, in order to rule on the objection, I am going to have to read that affidavit obviously.

PLAINTIFF: I appreciate that, your Honour.

30 HER HONOUR: And I will take an adjournment in a few moments to do that. Can you just tell me, Mr Fiorenza's affidavit has got a number of annexures: Annexure 1, which seems to be a history of the District Court proceedings; annexure 2, emails; annexure 3, other emails; annexure 4 some correspondence, again about the District Court proceedings and an indictment and some alleged facts, a brief index. Which of those annexures is it that you  
35 are objecting to? Is it some of them or all of them?

40 PLAINTIFF: The main one I am objecting and it was accepted - and please excuse me, I don't mean to say that your Honour should take the same view, but it was objected in the District Court and it was accepted on my objection that it won't be tendered meaning the facts - sorry, I apologise, your Honour, which is annexure 1, which is the Court history, so that was objected to, then it was accepted. And, again, I don't want to say to your Honour that you should take the same view. Annexure 2 is an email from Mr Fiorenza to my former  
45 solicitors which, again, has no relevance to these proceedings.

5 PLAINTIFF: Annexure 3 is the same email, is a similar email. Again no  
relevance to these proceedings. Annexure 4 is the notice of prosecution's  
case under Section 142. Again no relevance to these proceedings. The  
indictment which again has not relevance to these proceedings which is (a).  
And then (b) is the facts, the alleged facts. Again no relevance and highly  
prejudicial and highly misleading, especially with the evidence that has now  
been obtained. The table of contents, I don't understand how that's relevant.  
And then the witnesses for the police, again I don't understand the relevance in  
these proceedings.

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HER HONOUR: Just one moment. I'll ask Mr Emmett in a moment if he's  
going to press all of these but just to follow your submission, in your affidavits  
Mr Liristis you've explained the problems which you say you have had in  
custody in accessing documents which have been produced to you  
electronically, I take it in part and the voluminous material that you now have in  
custody in tubs and problems which will be created if you've got to take them  
back and forward to court. So that if I look at the brief index for example, that  
sheds some light on what you're talking about in your affidavit.

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20 PLAINTIFF: I sincerely appreciate that. Your Honour is a hundred percent  
right.

HER HONOUR: So it's hard for me to understand I must say firstly why you're  
objecting to me receiving that material, and secondly how it could be thought  
to be irrelevant to what I've got to decide because it tells me, in fact it supports  
it would seem some of things you have said. So you will appreciate that you  
know a great deal about what's in issue in the District Court and I know nothing  
about that and it's the evidence which the parties lead which is intended to  
shed light on all of that. So are they objections ones that you want to press?

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PLAINTIFF: No, your Honour. I thank you very much for explaining that to  
me. You're a hundred percent right and I accept and appreciate your Honour's  
assistance and yes, I won't press that your Honour because it's very important  
for you to understand. Sorry about that your Honour.

35

HER HONOUR: No need to apologise.

EXHIBIT #7 AFFIDAVIT OF MR FIORENZA TENDERED, ADMITTED  
WITHOUT OBJECTION.

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I do need to read, as I indicated earlier, the affidavit of Mr Aboud and  
Mr Fiorenza. It won't take me very long but I'll need to retire to do that.  
Mr Emmett?

45 EMMETT: Your Honour, this is just to hopefully give Mr Liristis some level of  
comfort, particularly about annexure 4 which is documents setting out the  
prosecution's case. This may go without saying but for avoidance of doubt I  
don't ask you to accept as fact any of the statement of facts or the indictment,  
that's nothing more than a statement of what's been charged.

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HER HONOUR: I certainly won't do anything more than understand that that's the case that's alleged.

5 EMMETT: And I'm not going to try to establish any of those facts here because that's obviously a matter for the criminal trial and not for this one.

PLAINTIFF: I appreciate that very much sir.

10 HER HONOUR: What I'm going to do is take a short adjournment to read this material. It might be of assistance for the parties to use the time to have a conversation about whether there is any common ground as to orders which might be made in resolution of what has brought the parties to court. I say that in part because I'm always saying that. It's always more difficult when one of the parties is in custody. I imagine there hasn't been a great deal of  
15 opportunity for Mr Emmett to speak to you, for example, Mr Liristis. It may be that there's some common ground which a discussion can find. If not when I return I think we will be at the stage where I'll hear submissions from you Mr Liristis and then I'll hear submissions from Mr Emmett. We'll take the short adjournment now.

20 PLAINTIFF: Can I just ask one thing. Would you be kind enough if you can ask the court officer if he can let the officers here know if I can go back to my cell for 2 minutes just to pick up some documents which I've misplaced, would that be okay your Honour? I'll only be gone for 2 or 3 minutes.

25 HER HONOUR: I'm anxious not to lose you. I will ask the court officer to provide that assistance.

30 PLAINTIFF: I appreciate that very much your Honour. Thank you.

SHORT ADJOURNMENT

35 HER HONOUR: Mr Emmett, the parties have been having some discussions I take it while I've adjourned, is there anything to report at the moment?

EMMETT: No. It was in a sense a useful discussion but one that I won't report back to your Honour but no, your Honour still needs to decide the two questions, that is the application for order in relation to a laptop and for order in relation to a printer.

40 HER HONOUR: Thank you. Now Mr Liristis, I did omit to deal with the question of cross-examination of any of these witnesses, is that still being pressed?

45 PLAINTIFF: Yes, your Honour.

HER HONOUR: Who do you want to cross-examine, just clarify for me?

50 PLAINTIFF: Mr Fiorenza and Mr Sharp.

HER HONOUR: What are you seeking to cross-examine about?

5 PLAINTIFF: Clarification for Mr Fiorenza which will provide evidence to the Court of the difficulty that I do face in obtaining evidence, crucial exculpatory evidence. And Mr Sharp, there are certain items that Mr Sharp has left out of his affidavit which if one reads Mr Sharp's affidavit alone without obtaining the questions and answers from Mr Sharp, it would tend to mislead the honourable court and your Honour in the ability of the laptop and how there's other inmates in custody currently with laptops and that's been left out by Mr Sharp. And then without that cross-examination it would be difficult to provide that evidence to the Court.

15 HER HONOUR: Thank you. Now just before I call on Mr Emmett can I just ask you, I now having read this other material and bearing in mind what you've said in your most recent affidavit and Mr Norrie's appearance this morning, is the position now that you are not self-represented in the proceedings in the District Court which are due to commence next week but you are represented by a solicitor and Mr Norrie, have I understood that correctly?

20 PLAINTIFF: Your Honour, there was a little bit of a misunderstanding. The issue is that Mr Norrie has been instructed to cross-examine the three complainants because I was advised by Justice Tupman on 17 January that I won't be allowed to cross-examine the complainants and I asked her Honour why, where I have already cross-examined one of the complainants and I've obtained an AVO against that complainant, and her Honour said, "Look in these proceedings because they are related to sexual assault you won't be able to cross-examine them". So Mr Norrie has been instructed to cross-examine the complainants where I'm cross-examining the witnesses and the police because I'm the one who's gone through the whole thing and written all the questions for the last three years.

35 HER HONOUR: Just let me stop you there. The answer to my question is that then, as I'm following, that you will be representing yourself other than in relation to the cross-examination of the three complainants in respect of which Mr Norrie has been briefed; is that correct?

PLAINTIFF: Yes, your Honour. At this stage yes. Exactly your Honour.

40 HER HONOUR: All right. Thank you. Now Mr Emmett, you've heard what I asked about the cross-examination of Mr Fiorenza and Mr Sharp, do you wish to be heard to oppose that?

45 EMMETT: In fact I wish to be heard hopefully to save the difficulty. Can I indicate in relation to two of them, and I do want to come back to the question of representation because I'm confused myself, but in relation to Mr Fiorenza as I understand it it's clarification to show the difficulty in preparing for the hearing.

50 It may be what I'm about to say goes for Mr Sharp as well, he's indicated the subject matter, if it's possible to indicate the facts he wants to put forward I can get instructions.

HER HONOUR: You could agree them?

5 EMMETT: Yes, especially in relation to Mr Sharp. If the proposition wasn't anything he said was untrue, as I understood it the proposition was it left things out. It may be that if Mr Liristis indicates what he says has been left out I can get instructions on it and cut through that or make the submission it's not relevant and the Court doesn't need to take up time on it.

10 HER HONOUR: Let's just see if the parties can agree about the matters that firstly Mr Liristis wants to raise with Mr Sharp.

15 Mr Liristis, you've said that Mr Sharp has left out some things in his affidavit and Mr Emmett is suggesting if you indicate what those things are that you might actually be able to agree with each other. Are you able to indicate what you are wanting to have Mr Sharp agree?

20 PLAINTIFF: Well your Honour it's a little bit difficult because I've set out questions for Mr Sharp based on his affidavit. For example Mr Sharp has left out that there is a number of inmates, meaning inmates in custody, that currently have laptops and currently do not have any court proceedings. So they have laptops for personal use. Now Mr Sharp has left that out and to me that would be misleading the honourable court and your Honour to say well why should certain inmates be allowed a laptop for not legal purposes and where the laptops are required for legal purposes are not allowed. That is a huge issue.

30 HER HONOUR: You perceive it to be a huge issue but let's just list them. The first thing is that you are asking the State to agree, as I followed, is that many inmates in custody have laptops at a time when there are no pending court proceedings for personal use, that's the first thing. What is the second thing?

35 PLAINTIFF: The second thing is the laptops that are in the pilot program at the moment do not allow for anything above 64 gigabytes of information to be accessed where I've got 9 terabytes which is 9,000 gigabytes of digital media that I need to go through. Mr Sharp hasn't stated in there what's the capacity of the laptops that they provide.

40 HER HONOUR: Thank you. What's the third thing?

45 PLAINTIFF: The third thing is as states with the email that the gentleman, Mr Emmett, was kind enough to not object to which shows from the state evidence and electronic branch of the police that for me to obtain access to the drives that were ordered by Justice Conlon in the District Court, I need to gain access to the BIOS of the laptop, and in particular the only way that these drives can be accessed is by the Dell XPS 13 laptop. Now I wish to put to Mr Sharp if that is the case as the email states--

50 HER HONOUR: Just one moment. You want the State to agree that to obtain access to the drives which Judge Conlon has ordered that you be given

CNK:CAT

access to, you need to use the Dell XPS laptop?

PLAINTIFF: Yes, your Honour that's correct.

5 HER HONOUR: Is there a fourth matter?

10 PLAINTIFF: The fourth matter is the New South Wales Police Service has given 160 laptops to the Corrective Services to be passed on to inmates to be used for their legal cases. Now those 160 laptops, we've requested to find out where they are and since February 2015 we haven't obtained where those laptops that were given by the New South Wales Police to Corrective Services to give to inmates to use for their legal matters--

15 HER HONOUR: Just one moment. To summarise, the fourth thing that you want agreement to is the New South Wales Police has given 160 laptops to Corrective Services to pass on to inmates to be used for legal cases and their whereabouts have not been disclosed to you. Is there another?

20 PLAINTIFF: The last one your Honour the digital formats to read, there is no software on the pilot program laptops or any of the computers supplied by Corrective Services means the red computer that I'm currently using, for example, formats which are .alb; second format is .pwl; third format is .au; and the fourth one is .3gp. So in overall your Honour the computers that I'm using now or in Corrective Services and the pilot program laptops do not have the software to access a number of those formats your Honour.

25 HER HONOUR: Those formats, am I following correctly, are formats which you say are necessary in order to access the material that Justice Conlon has ordered you be given access to?

30 PLAINTIFF: Exactly your Honour.

35 HER HONOUR: So the fifth thing that you are asking the State to agree is that the computers to which you have access don't contain the formats necessary to enable you to access the material Justice Conlon has ordered you be given access to?

PLAINTIFF: Exactly right your Honour.

40 HER HONOUR: Thank you. Now Mr Emmett, it was your suggestion they were things that agreement is sought in respect of, are you able to respond or do you need instructions?

45 EMMETT: I certainly need instructions. I understand with these urgent matters everything develops. These arguably are things that could have been in-chief but let me get instructions about them but it may be that the faster way is simply to put Mr Sharp in the box rather than a sort of process of negotiation which may get us nowhere.

50 HER HONOUR: Shall we call Mr Sharp?

EMMETT: Could I have 5 minutes to get those instructions? Having heard those, I don't say this critically, having heard those it may simply be easier to let him explain it.

5

HER HONOUR: We'll just take an adjournment so Mr Emmett can get those instructions.

PLAINTIFF: Just one second your Honour, I'd like to bring to your attention if I may. I have two documents your Honour that I wish to tender and I apologise for not getting them earlier but it's because the affidavit of Mr Fiorenza was concerning. There's two documents your Honour which I've asked Mr Norrie to see if he's able to retrieve them or would it be faster your Honour, and I've got no objection to Mr Emmett to read them, would it be faster your Honour if they could be faxed to the Court from here or emailed?

10  
15

HER HONOUR: Just one moment. Mr Court Officer, can we arrange for documents to be faxed to us here? We might need to make some enquiries during the adjournment. We might let Mr Norrie and Mr Emmett have a conversation. We'll take the adjournment.

20

EMMETT: I should also indicate if there is cross-examination I have some non-contentious questions for Mr Liristis. We can deal with that after we get back. There are some other matters that perhaps ought to be brought out.

25

HER HONOUR: It becomes a question of when that should happen, before Mr Sharp is cross-examined perhaps?

EMMETT: Subject to the point Mr Sharp is only available until the luncheon adjournment. That would work in any event. Could I have 5 minutes?

30

HER HONOUR: We'll just take the short adjournment.

SHORT ADJOURNMENT

35

HER HONOUR: We've had some documents that have been emailed to my associate printed and hopefully you have those Mr Emmett.

EMMETT: I do. I haven't had an opportunity to review them yet but can I hand it up? I think Mr Liristis would like a copy to be provided to your Honour and I have got no difficulty with that. (Handed up).

40

HER HONOUR: What I've been handed is a letter of 18 December 2017 addressed to Justice Conlon and a letter of 31 December 2017 addressed to Mr Fiorenza. I'll just put those to one side for the moment and we'll return to those after Mr Emmett has just had a chance to look at them. Any objection to them?

45

EMMETT: There's not. I will need to consider further whether there's anything I need to say about it over the luncheon adjournment.

50

EXHIBIT #8 LETTER ADDRESSED TO JUSTICE CONLON DATED 18/12/17  
TENDERED, ADMITTED WITHOUT OBJECTION

5 EXHIBIT #9 LETTER ADDRESSED TO MR FIORENZA DATED 31/12/17  
TENDERED, ADMITTED WITHOUT OBJECTION.

HER HONOUR: What's the position in relation to the cross-examination of  
Mr Sharp?

10

EMMETT: I've taken some instructions. I think the fastest way rather than my  
indicating a response from the bar table will be to call him and allow him to  
explain it to your Honour.

15 HER HONOUR: What should we do first then, for you to ask Mr Liristis the  
questions that you want to put and then for Mr Sharp to be called or what?

EMMETT: I think that's the most appropriate course. If it gets to 12 - Mr Sharp  
will be here in about 5 minutes. I don't anticipate being more than 20,  
20 25 minutes with Mr Liristis in which case it will all be done by lunchtime.  
Mr Sharp has asked to be excused by lunchtime if possible. That's a matter  
that can be dealt with if need be.

HER HONOUR: Now Mr Liristis, you've heard that. Given your pursuit of the  
25 cross-examination Mr Emmett has some questions to put to you in  
cross-examination which would require you to be sworn and then to be  
cross-examined. Now do you want to say anything about that before we  
proceed?

30 PLAINTIFF: No, I'm happy for the gentleman to ask me questions your  
Honour.

<PLAINTIFF, AFFIRMED(11.53AM)

<CROSS-EXAMINATION BY MR EMMETT

5

Q. Mr Liristis, am I right that the current charges, the proceedings that are due to start on 5 February, that was committed for trial in December 2014?

A. Yes sir. That's correct, sir.

10

Q. At that time you were serving a sentence, is that right?

A. Yes sir, that's correct sir.

Q. And that sentence came to an end on 26 February 2016, is that right?

15

A. I think it was earlier. It was 15 months which I think expired sir in February and then a parole period after that sir.

Q. Would it be right to say that the earliest possible release date on parole was 26 September 2015 and then the sentence itself came to an end on 26 February 2016, does that sound right to you?

20

A. I don't have the exact date sir, yes but I accept what you are saying, you would have the correct dates in front of you.

Q. Does that sound about right?

25

A. That's sound about right, yes sir.

Q. The trial was first listed for hearing on 31 August 2015, is that right?

A. Yes, sir. That's correct sir.

Q. And it was vacated on your application?

30

A. Yes, sir. That's correct sir.

Q. Then it was listed on 27 June 2016, is that right?

A. Yes, sir. That's correct.

35

Q. And it was vacated then on your application?

A. Yes sir, that's correct.

Q. Then it was listed on 6 March 2017, is that right?

40

A. Yes, that's correct sir.

Q. And then on 17 February 2017 it was vacated on your application pending a fresh legal aid grant application?

A. Yes, it was vacated but my application wasn't heard. I'm sorry, do you want me to--

45

Q. Was it your application to vacate the trial?

A. I made an application but my application wasn't heard. His Honour Justice Whitford vacated it because they found that the Crown had failed to supply evidence that a tendency and coincidental notice was served and his Honour said, "How can youse go to trial". His Honour vacated it without me having my

50

application heard but I did make an application but my application was not heard. His Honour vacated it because of those reasons.

Q. I understand. And then it was listed on 6 November 2017, is that right?

5 A. Yes, sir. Sorry sir, date did you say?

Q. 6 November 2017, does that sound right?

A. The first was 9 October sir. It was listed for 9 October and then it was put over till 6 November.

10

Q. And at that time in October you were looking for counsel, is that right?

A. Yes, sir. That's correct sir.

Q. Did you have a legal aid grant again by that stage?

15 A. I had a restricted and limited legal aid grant, yes sir.

Q. And you also said that you were seeking to engage a forensic expert, is that right?

A. Yes, sir that's correct, we have engaged a forensic expert.

20

Q. You have engaged one?

A. Yes, sir that's correct.

Q. Just so I can understand and her Honour can understand, when you are talking about the evidence, the exculpatory evidence that Judge Conlon ordered that you have access to, those are nine drives that were seized by police that were in your possession, is that right?

25

A. Sir it's seven drives plus two drives, seven with the police and two that we supplied from the forensic so total nine drives, yes sir.

30

Q. And your forensic expert, you've engaged forensic experts to look at those drives?

A. Yes, that's correct sir.

35

Q. Your current grant of legal aid, just to help her Honour understand, you now have a grant of legal aid that covers the whole of the upcoming trial, is that right?

A. No. Currently I have a limited grant of legal aid. What happened originally is my grant was terminated and because they made recommendations to legal aid that I need assistance with these matters because I was made so many interlocutory proceedings on my own, and then both his Honour Justice Whitford and Justice Arnott and Justice Conlon saw the difficulty that I had in obtaining the evidence have written to legal aid and said that thing, and there was mention that at least to have the complainants cross-examined by counsel would be in my best interests which I agreed and accepted the terms of the grant.

40

45

Q. But the legal aid covers your counsel and your solicitor for the whole trial, doesn't it?

50 A. Yes, that's correct.

CNK:CAT

Q. Just coming back to your point about disbursements, am I right in understanding your legal aid covers some disbursements but you need to make an application for further disbursements?

5 A. That's correct.

Q. And legal aid considers each of those applications when they come in?

A. That's correct sir. Most of them have been declined.

AXC:CAT

EMMETT

Q. Am I right that you've been provide with a USB containing a VLC media player?

5 A. No sir, that's not true, and it's in the letter, I think it's the last page of the letter that I tendered in Fiorenza, it's the last page where it shows that I was provided with an MP player which shows that the files cannot be opened with such a document.

10 Q. All I was asking is whether you were provided with a USB containing a programme called a VLC media player?

15 A. I have never been supplied with a VLC. What I have been supplied is that media player which is not a VLC, it's an MP player which is a very old programme which is the screen shot of the last page of the letter of 31 December. So no, I've never been supplied a VLC by the police or the DPP.

Q. Or anyone?

20 A. No I haven't.

Q. Sure?

A. The only one that I have received is the player that is on that page which clearly said that in the letter of the 31st. That screen print is from 6 November 2017, if you look at the right hand--

25 Q. Just to help, I see the bottom right-hand corner?

A. Yes, sir.

30 Q. The prosecution brief you refer to the index, you remember her Honour asked you a couple of questions about the index to the prosecution brief?

A. Yes.

Q. That's annexed to Mr Fiorenza's affidavit?

35 A. Yes, sir.

Q. Do you have that in front of you, could I ask you to open that?

A. Most certainly, thank you very much, which page would you like?

40 Q. Unfortunately it's not numbered. It's the beginning of the brief, it says brief index?

A. Yes, sir. I've got that.

Q. Am I right that - where it says volume 1, volume 2, volume 2A, volume 3 and so forth, are they folders that you've been provided with?

45 A. Yes, sir. That's correct, sir.

Q. Down the right-hand column, those are the page numbers of each of the documents; is that right?

50 A. Yes, that's correct sir.

AXC:CAT

Q. So her Honour should assume before we come to electronic material that the prosecution brief is nine folders long because there's volume 2A and then volumes 1 to 8?

5 A. Yes and no, sir, I'll explain why. What you said is 100% correct, there's nine folders, but there's some additional six to eight folders which are not in the brief of evidence which were consistent with some orders that were made which have not been in the table of contents. That's been my contention from the day I received them. There's, I think, I believe a total of 18 folders in total which don't have page numbers, and are not in this brief of index.

10

Q. Is that because those are folders that you want to tender rather than forming part of the prosecution brief?

15

A. No sir, they are documents that were ordered by the Court for the prosecution to supply the defence. They had yet to supply all the evidence - sorry, the orders that were made by Judge Tupman on 17 January 2017. His Honour Judge Whitford asked on 5 May for an affidavit to be supplied by the Crown to state what documents have been served. Until today, some 9 months or 8 months later we still don't have the affidavit to tell us what has been supplied and what has not been supplied.

20

Q. Do you understand the difference between on the one hand the prosecution brief which is the material that the prosecution is putting forward as part of its case against you, and on the other hand, additional documents that in the pre-trial period, the prosecution may have been directed to provide you with to assist you in your preparation of your defence?

25

A. Sorry, I don't understand the question.

Q. Do you understand the prosecution brief sets out all the material that the prosecution is putting forward in the trial?

30

A. Yes, sir.

Q. And do you appreciate there's a difference between, on the one hand, those documents which contain at least those volumes 1 to 8 and other documents which do not form part of the prosecution brief, but which, over the course of the last couple of years, there might have been a direction or recommendation that it be supplied to you to assist you in preparing your defence?

35

A. Yes sir, that's correct.

40

Q. Are the documents you've just referred to in the latter class, that is, documents that have been ordered to be provided to you to assist you in preparing your defence?

A. Yes, sir.

45

Q. In relation to the prosecution brief, the discs and multimedia, and correct me if I am wrong, on my review they are all in volume 5 of the prosecution brief; is that correct?

A. No sir, that's not correct.

50

Q. If I'm missing some, tell me where else--

AXC:CAT

A. In volume 5, is that what you're saying?

Q. Yes?

5 A. No, it's not in volume 5. After volume 5 there's what's called a paragraph "discs and multimedia".

Q. You and I are at cross purposes. I was thinking it's in volume 5, but you're saying that's separate?

10 A. Yes, that's correct.

Q. I think you and I understand each other. In relation to the electronic material, the prosecution brief is those ten electronic files?

A. Yes, sir. That's correct.

15 HER HONOUR: Just one moment. Where are you at now in this index? There are numbers there, I've got volume 5.

EMMETT: After 99, it starts again with 1 to 10.

20 HER HONOUR: I see, yes thank you.

EMMETT

25 Q. We'll come to number 5 of that list in a moment. Have you reviewed each of numbers 1 to 4 and 6 to 10?

A. Yes I have, sir.

Q. Number 5 is a USB drive containing material obtained from the accused's Samsung device. It says, "Sensitive evidence not served on defence"?

30 A. Yes, that's correct sir.

Q. Is that the material that was the subject of the exchange that you've quoted in your reply affidavit where the judge said that document should be supplied to you?

35 A. No sir, that's completely different. That refers to number 5, sir. There are some photographs, inappropriate photographs that are sent from the complainants to me, and they obviously can't be given to me whilst I'm in custody, which I accept and I've got no problem with. That's what that refers to.

40

Q. So you make no complaint at the moment about item 5?

A. No sir, not at all.

Q. Thank you?

45 A. You're welcome, sir.

Q. You've got what's called a red computer in your room; is that right?

A. Yes, sir. That's correct sir.

50 Q. Do you know anyone else who has a red computer in their room?

AXC:CAT

A. I don't get to see much of anyone, sir, so I don't know what is outside because I'm in my cell 24 hours a day.

5 Q. In the general areas of the gaol, am I right, there's also what's called blue computers?

A. Sir, to be honest with you, and I shouldn't say that because I've been honest with you sir, I've never known a blue computer until I read Mr Sharp's affidavit. The only two computers I was aware of was a green computer and a red computer.

10

Q. Have you made enquiries about blue computers since receiving Mr Sharp's affidavit?

A. Yes I have, sir.

15

Q. Are you aware now that those computers are available to inmates?

A. Yes I am. I've been made aware that they are available to inmates, yes sir.

20

Q. In relation to the printing of Mr Aboud's evidence which I understand you don't cavil with, Mr Aboud says at the moment printing is being arranged for you free of charge; is that right?

A. Most certainly correct, sir. And I thank Mr Aboud and the staff for that sir.

25

Q. You've referred in your latest affidavit to 36 storage tubs?

A. Yes, sir.

30

Q. Could you help her Honour understand, so far we've identified the nine folders of the prosecution brief and the additional ten folders of material that the prosecution provided you on a court order, that doesn't sound like 36 tubs worth. Can you help her Honour with what's the balance of the 36 tubs?

A. I can most certainly answer that question sir and assist her Honour to understand. Sir, what it is, is I was originally charged for charges relating to rebirthing of motor vehicles in Bankstown in my workshop. Those charges were strenuously defended whilst I was in custody. I was successful in those charges in making an application to his Honour that there was no case to answer and I was successful on that.

35

40

I don't want to prejudice my case in the District Court but what it is is, the police have obtained a crime scene warrant and they've abused the Court's kindness in obtaining a crime scene warrant for a sexual assault on 20 October 2013 which involved that case that was before the Court, and they searched the vehicles to see if the engine numbers and chassis numbers were altered in any way.

45

Q. I'm going to cut you off here Mr Liristis. Only because you should give as much of the answer as you're comfortable giving, but I just want to make sure - you made a comment about not wanting to prejudice your defence, that's a right you have. Don't--

A. I'm sorry.

50

Q. Provide her Honour with as much information as you would like to but--

AXC:CAT

A. Yes.

Q. I don't want you to feel that you need to go into the detail?

A. I appreciate that.

5

Q. What I'm asking about is to understand the volume of material, why it's 36 tubs. So you don't need to go into the detail of things that might come up in your trial. Don't apologise. You're welcome to go into that, don't feel you need to from my question because I don't want to cut across the trial?

10 A. Thank you very much. I have proceedings that I was successful and I was acquitted on which form part of these proceedings and those proceedings have something like eight or ten tubs, originally for those that will be needed in this case. That's that.

15 Then I have proceedings in the Parramatta Local Court which also involve these complainants. Then I have Supreme Court proceedings which I was successful on with the police regarding these proceedings, so it's about four proceedings that all form - there's affidavits that have been filed by the police in those proceedings that we're relying on in these proceedings, and they were  
20 quite voluminous documents as well. And also just to help her Honour and yourself to understand, I've been given - I've asked, and Mr Norrie would agree with this, as he is aware of this point, I've asked for certain documentation from the New South Wales Police in a subpoena and in a Notice of Motion and interlocutory proceedings and the police have failed to provide me with specific  
25 documents.

Instead, they supplied me an additional six volumes consisting of approximately 6 inches, I've never seen white folders that thick of documents that are irrelevant. I've never asked for any of those documents. So they are  
30 documents that I have now, and if you could understand those white folders are 6 inches thick, they don't fit in the Corrective Services tubs easy. So you can only fit two of those folders which weigh approximately 6 kilos each, and mind you, the limit now has been reduced for storage tub of 12 kilos. So I've been given documents that I'm not relying on, but I just can't throw them away  
35 because they are documents that have been given to me that they say answers to the orders of Judge Tupman on the 17th, and his Honour Judge Conlon and Judge Whitford have agreed, they are not the documents, and we're still waiting for those documents.

40 I'm sorry to confuse the issue, they are documents that have been given to me by the police which are voluminous and unnecessary.

Q. Could you help her Honour understand why you need to bring all of those tubs to and from the Court every day of the trial?

45 A. Sir, the only reason that I would need to bring a majority of those is exactly the same reason as today, and I thank the Court and her Honour for allowing me to go back to my cell to pick up these documents. I don't know what's going to be called on, I don't know what's going to be relied on and those documents would need to be, and that's why I wrote to the solicitor for the  
50 Crown Solicitor's office explaining that that will be eliminated if I was to obtain

AXC:CAT

a laptop, I would only need to take four or five tubs instead of 25 tubs, if I had it converted to a digital form, and that's why the reason for the printer is because I need to make them in digital. Legal Aid won't pay Ross Hill or Mr Norrie to convert them to a digital format.

5

Q. You've referred to the District Court proceedings against the Corrective Services and the State, I think you referred to that at the beginning of this hearing?

10 A. Yes, sir. That's correct sir. Sorry I should say the State of New South Wales because Corrective Services is not a legal entity.

Q. Yes, that includes complaints about access to computers; is that right?

A. It did at one stage.

15 Q. But you say it doesn't anymore?

A. No, and I explained that, I put it in writing to the Crown Solicitor's office which I received no reply to explain to them that I'm not seeking any of that because I don't have the issue now since I've been at Long Bay Correctional Centre. The officers have been fantastic, the staff have been fantastic, I'm not  
20 pressing that issue at all in the Local Court.

HER HONOUR: Mr Liristis, you've been cross-examined about that. You do have the opportunity in re-examination if there's anything that you've answered that you think needs to be added to, to say something further. Is there  
25 anything you want to add in re-examination to any of that?

PLAINTIFF: No, not really your Honour. Thank you very much for that.

<THE WITNESS WITHDREW

30

HER HONOUR: That brings us to Mr Sharp?

EMMETT: Yes, your Honour, he is outside.

AXC:CAT

<PETER JAMES SHARP, SWORN(12.18PM)

<EXAMINATION-IN-CHIEF BY MR EMMETT

5

Q. Would you state your full name?

A. Peter James Sharp.

Q. Your business address?

10 A. Number 20 Lee Street, Sydney 2000.

Q. Your occupation?

A. The manager of video conferencing under Strategic Policy and Planning Corrective Services New South Wales.

15

Q. You've made an affidavit in these proceedings dated 25 January 2018?

A. That's correct.

Q. Are the contents of that affidavit true and correct in every particular?

20 A. Yes they are.

HER HONOUR: Yes Mr Liristis, do you have some questions?

<CROSS-EXAMINATION BY THE PLAINTIFF

25

Q. Mr Sharp, do you know the digital formats .alb .pwl .au and .3GP?

A. I am aware of those software formats, yes.

Q. Can you advise me if any of the computers in any Correctional Centre in New South Wales can gain access to any of those files?

30 A. I can advise you that the new upgraded blue computers can access some of those files. I'm not quite sure of all of them.

Q. Do you know which ones can access those ones?

35 A. Not off hand, no, I would have to look that up.

Q. Which computers are they, Mr Sharp?

A. They are a blue computer that are generally in our common areas within correctional centres.

40

Q. Mr Sharp, was there a letter recently published in the Justice Action website of a letter from the Commissioner stating that all inmates will be given a computer in their cells; are you familiar with that?

A. I'm not familiar with that letter at all, sorry.

45

Q. Are you aware of that letter from the Commissioner of Corrective Services regarding access to computers to inmates in their cells, Mr Sharp?

A. I'm not aware of a letter, however, as a strategic plan, I am aware of a pilot that I will be looking after with a lot of other people that is called "In-cell access for inmates". That is about inmates having some sort of computer access in

50

AXC:CAT

their cells which might consist of a tablet or a laptop or some device that can be used to read files.

Q. Mr Sharp, are you a computer expert yourself?

5 A. No.

Q. Mr Sharp, can you advise the honourable court and her Honour, can a one terabyte drive be accessed by a red computer or your laptops on the pilot programme?

10 A. A one terabyte drive can be accessed by a blue computer on my programme, yes.

Q. If you could listen to the question, Mr Sharp. Can a red computer or the laptop that is in your pilot programme, can that access one terabyte hard drives?

15 A. No.

Q. What is the maximum capacity that the laptops on the pilot programme can access?

20 A. They can access 60 gig worth of data.

Q. Can USBs be accessible on the laptop pilot programmes?

A. No they can't be. The laptops are locked down so the information is pre-loaded on to the laptop.

25

Q. If one was ordered by a court to obtain access to 9 terabytes of digital material, that can't be accessed by the laptops on the pilot programme; is that correct?

A. That's correct.

30

Q. So Mr Sharp, how would you - since you're the person that's running that programme, how do you expect a person to obtain crucial exculpatory evidence that was ordered by a District Court to obtain access to that material?

35 EMMETT: I object to that. Firstly, the way it's framed.

HER HONOUR: There's a problem with the question, Mr Liristis. What I'm understanding you to be asking, wanting to ask Mr Sharp is how, if the Court ordered that someone be given access to 9 terabytes of information, that order would be given effect. That's what you're really asking isn't it or wanting to ask?

40

PLAINTIFF: Yes, how can I obtain it if it's been ordered by the Court?

45 HER HONOUR

Q. Can you answer that question, Mr Sharp?

A. Yes certainly. That can be obtained by using a blue computer.

50 PLAINTIFF

AXC:CAT

Q. So what you're saying is a blue computer can access 9 terabytes of external hard drives?

5 A. A blue computer can access any sort of USB device that's plugged into it. So if a 9 terabyte hard drive is plugged into a blue computer, the blue computer can then access the data on that drive.

Q. Mr Sharp, the blue computers, do they have a USB 2 or USB 3 output?

10 A. I wouldn't be able to tell you that, sorry.

Q. Can I put it to you Mr Sharp, that the blue computers that are available have a USB 2; would you agree or disagree?

A. I wouldn't be able to agree or disagree on that. I do not know, sorry.

15 Q. May I put it to you that the blue computer that you say can access those drives is not correct because they come with a USB 2, and the USB 2 cannot access any USB 3 of one terabyte or higher; do you agree or disagree?

20 A. I don't know the answer to that, I'm sorry. I do know that inmates in other correctional centres access drives that are more than one terabyte using a blue computer.

Q. So you're aware of that, are you?

A. Yes.

25 Q. If I put it to you I was advised as late as yesterday afternoon that the blue computers that are brought out into Corrective Services only have the capacity of a USB 2 which cannot access over one terabyte, would you agree or disagree with that?

30 EMMETT: I have to leap to my feet here, perhaps it is best be done in the absence of Mr Sharp.

35 HER HONOUR: The problem is the form of the question isn't it? Mr Liristis, you're asking Mr Sharp to agree that you were told something yesterday. He can't possibly answer that question because he can't know what you were told. So maybe you want to put it a different way.

PLAINTIFF: Yes, your Honour. I apologise and I'm sorry about that.

40 Q. Mr Sharp, I put to you that I was advised yesterday that the blue computers only have a USB 2 outlet, and therefore, I cannot access over one terabyte; would you agree with that statement or disagree?

45 EMMETT: That does suffer from the same problem.

HER HONOUR: It's the same problem. Why don't you ask, Mr Liristis, if he knows whether or not a blue computer can do a certain thing?

50 PLAINTIFF: Yes, your Honour.

AXC:CAT

Q. Mr Sharp, what is the highest capacity storage device that you're aware of that can be accessed on a blue computer?

A. The highest I'm aware of is 3 terabyte.

5 Q. And are you saying that there is currently inmates in custody that have access to 3 terabytes of digital material?

A. There are inmates in custody that have a one terabyte drive that are used on a blue computer. I have been advised that it will take up to 3 terabytes.

10 Q. But Mr Sharp, you can't confirm or deny whether it's a USB 2 or USB 3; is that correct?

A. That's correct.

15 Q. I put it to you Mr Sharp that a USB 2's maximum capacity is one terabyte. What do you say?

A. I couldn't confirm that.

20 Q. Mr Sharp, would you agree or disagree with the following statement that was made by Basten JA in a recent judgment in the New South Wales Supreme Court of Appeal in the case of Vassalos v State of New South Wales aka Corrective Services where Basten JA stated at 53 as follows--

25 HER HONOUR: Mr Liristis, I don't allow that question, it's completely irrelevant to anything I've got to decide whether or not Mr Sharp agrees with what his Honour said. That's a judgment of the Court which takes its own force irrespective of what views Mr Sharp might have. You might ask him a question about what was said.

30 PLAINTIFF: Yes, your Honour.

HER HONOUR: Whether or not he agrees with it is completely irrelevant.

PLAINTIFF

35 Q. Mr Sharp, would you agree or disagree that if anyone obstructs or interferes with a person's access to the Courts, will constitute contempt; would you agree or disagree?

40 EMMETT: I object.

HER HONOUR: Mr Liristis, same problem. Whether he agrees or disagrees is irrelevant to anything I've got to decide. You might ask Mr Sharp about matters that he can give evidence about. His opinions about these things don't matter.

45 PLAINTIFF

Q. Mr Sharp, are you aware of what BIOS is?

A. Yes I am.

50

AXC:CAT

Q. Do you know if there's any ability for inmates to access either on the blue computer, red computer or laptop on the pilot programme, any computer supplied by Corrective Services, do inmates have access to access the BIOS?

5 EMMETT: Can I leap to my feet for your Honour's benefit and mine. I don't understand what a BIOS is.

10 HER HONOUR: I don't know what a BIOS is either, Mr Liristis. Perhaps you might ask Mr Sharp to explain what he understands the BIOS to be and then pose the question.

PLAINTIFF

15 Q. Mr Sharp, would you be kind enough to explain to the honourable court what BIOS is?

A. BIOS is an acronym. It's the name of the way in which you access the operating system. So for you to have, for example, access to the BIOS, that means that you go in and change any part of the computer you like. You can change the colour of the screens. You can change if it has internet access or not, and you can change if a disc drive would work or not. Access to a BIOS password gives you access to the whole computer, not just the use of that computer.

20 Q. Inmates obviously don't have access to that, do they?

25 A. That's correct, they don't.

Q. For obvious reasons?

A. Yes, that's correct.

30 Q. Mr Sharp, if there was in my circumstances, are you aware that the State Evidence Electronic Branch of the New South Wales Police services have stated that for me to gain access to four of the drives of the nine drives, I need to get access to the BIOS of the Dell XPS 13, are you aware of that?

35 A. I have never been aware of anybody needing access to the BIOS to access an external hard drive. No, I'm not aware.

40 Q. I asked you are you aware that the State Evidence Electronic Branch and the DPP have sent an email stating that for me to gain access to the drives, the four drives out of the nine drives, I need access to the BIOS and in particular, to a Dell laptop XPS 13; are you aware of that?

A. I'm not aware of that email, sorry.

Q. You weren't shown an affidavit of Tony Liristis of 25 January, Mr Sharp?

45 EMMETT: I'm going to leap to my feet. There's a minor matter, strictly that requires disclosure of privileged communication. He can ask if he was aware of that and take it from there.

50 HER HONOUR: Not if it's already been disclosed in the affidavit which - you're referring to the affidavit of 25 January exhibit 2?

AXC:CAT

PLAINTIFF: Point 17, page 3.

5 HER HONOUR: You want to ask Mr Sharp if he has seen your affidavit of 25 January?

PLAINTIFF: Yes, that's correct.

10 HER HONOUR

Q. Please continue Mr Sharp, have you seen that affidavit?

A. No I haven't, sorry.

15 PLAINTIFF

Q. So Mr Sharp, were you asked by the Crown Solicitor's or anybody in Corrective Services regarding the need for me for that specific laptop so I can gain access to the four drives?

20 EMMETT: To the extent it is asking about the preparation to give evidence, if he wants to ask questions about whether this issue has been raised with Mr Sharp in the course that's fine, but this appears to be questions about communications that did or did not occur with Mr Sharp in the course of his preparing to give evidence.

25 HER HONOUR: Mr Liristis, what's being raised, although it hasn't been said directly, is an objection which goes to legal professional privilege. You can't ask questions about things which are privileged. That can include the way in which a matter has been prepared for hearing. Perhaps the better way to  
30 approach the matter that you want to raise with Mr Sharp is perhaps to ask for him to be shown paragraph 17 of your affidavit and to ask a question about it. If that's what you want to do, exhibit 2 can be shown to him. Is that what you would like to do?

35 PLAINTIFF: Yes please, your Honour. Thank you very much, your Honour.

HER HONOUR: I'll have the witness shown paragraph 17 of exhibit 2.

40 PLAINTIFF

Q. Mr Sharp, would you be kind enough, you can read it to yourself if you like, point 17 on page 3 of that affidavit, please?

A. Yes I've read that, thank you.

45 Q. In fairness to you Mr Sharp, because it says "refer to the above" would you be kind enough to go back to page 2 and read point (g) in 16(g) so you can understand why it said the above point?

A. Yes, I've read that thank you.

50 Q. Mr Sharp, would you agree or disagree with the State Evidence Electronic

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Branch stating words to the effect:

5 "I'm not surprised they are having problems, as Liristis enabled encryption on some drives and other drives were set up as dynamic discs which also prevents you being able to read. They will need to find a computer that they can change the BIOS to enable them to boot up the computer from an external USB. If they have trouble with either of these drives, they may need to obtain a Dell XPS laptop to be able to boot up from the external drive."

10

Do you agree or disagree with that statement?

A. I couldn't do either sorry, agree or disagree.

Q. You're not aware of that, is that correct, in your experience?

15

A. I'm not aware of changing a BIOS password having any effect on a disc that has - as it states here, a disc that has encryption. I don't understand why you would change a BIOS password when the disc has encryption on it.

Q. You've read it wrong, you've misunderstood it. There's nowhere where it says you need to change the BIOS password. It doesn't say anything like that, you've misread it?

20

A. Sorry.

Q. What it says, and I'll read it again--

25

HER HONOUR: No, you don't need to read it again. Just draw attention please to the words which are used, "they can change the BIOS". There's no reference to the password.

30

PLAINTIFF: Yes, that's correct.

Q. Mr Sharp, can you see it says, "They can change the BIOS to enable them to boot from the computer from an external drive", it doesn't say to change the password from the BIOS. Do you agree with that?

35

A. Yes, I agree with that.

Q. You would agree that the BIOS is also used to boot up from instead of the hard drive on the computer, you can change it to boot up from an external hard drive; do you agree with that?

40

A. Yes, I agree with that.

Q. In this case for example, Mr Sharp, where there's four hard drives totalling approximately 9 terabytes that need to be accessed by a Dell XPS laptop by changing the BIOS to boot up from the external drives, that can't be done on a blue, red or a laptop on your pilot programme, can it?

45

A. I couldn't answer that. We have not tested or done that.

Q. Mr Sharp, you'd agree that the BIOS of a Dell XPS laptop is not the same BIOS as either on the red, green, blue computer or your pilot programme, would you agree?

50

AXC:CAT

A. I wouldn't know. I couldn't disagree or agree, I'm sorry.

5 Q. Mr Sharp, you would know, if you're in charge of this department of computers, that every BIOS on every computer is different. Would you agree or disagree?

A. I'm not in charge of computers with the department. I think in my affidavit, in fact, I'm sure it states I do not have a computer background, I have an operational background.

10 Q. But you're in charge of the pilot programme; is that correct?

A. That's correct.

Q. You must have some sort of knowledge on computers to be in charge of such a serious or temperamental issue?

15 A. Yes, I do have some knowledge. We also have a department of people with IT security who look after the computers and software and hardware which operate within the programme.

20 Q. So what I'm putting to you Mr Sharp is, I put to you that I can't gain access to those four drives without connecting them to a Dell XPS laptop as stated in point 17; do you agree or disagree?

A. I can agree that somebody else has made that statement, but I can't agree with that statement because I do not know.

25 Q. Mr Sharp, you mentioned security before, that you've got concerns with laptops that are given to inmates regarding breaches of security; is that correct?

A. That's correct, yes.

30 Q. So you're saying that in your department, Corrective Services and the intelligence group of Corrective Services can't identify and rectify a security on a laptop; is that what you're saying to the Court?

EMMETT: I object.

35

PLAINTIFF: It's in his affidavit.

40 HER HONOUR: You just might want to refine the question. If you've got a question about a particular part of Mr Sharp's affidavit why don't you take him to it, identify what you're asking about and then pose the question.

45 EMMETT: I should also indicate if we're going down this route and this is no reason not to start, but the Court will need to be aware, some matters can't be answered for reasons of public interest immunity.

HER HONOUR: No doubt, we'll cross that bridge when we come to it. That's why I suggested that Mr Liristis might want to formulate his question by reference to a particular part of the affidavit.

50 PLAINTIFF: Yes, your Honour, thank you very much for that.

AXC:CAT

Q. In point 21 of your affidavit - do you need a copy of it?

A. Yes I do, thank you. (Affidavit shown to witness.)

5 HER HONOUR: This is exhibit 6.

WITNESS: I now have a copy of that, thank you.

PLAINTIFF

10

Q. Mr Sharp, are you ready?

A. Which section are you referring to, sorry?

15 Q. 21. Mr Sharp, you've said that there were 12 inmates in the pilot programme; is that correct?

A. That's correct, in the initial pilot programme, yes.

Q. So what, there was another one, was there? My understanding there was one pilot programme?

20 A. There is one current pilot programme, there was an initial programme prior to that.

Q. Mr Sharp, can you tell me how many inmates in custody have laptops currently?

25

EMMETT: I should say, I don't have instructions. Mr Sharp may. I don't know whether that sort of thing creates difficulties. I'm content either for Mr Sharp to deal with this or to take an adjournment and get instructions.

30 HER HONOUR: I'm wondering about the relevance of it. What's the relevance, Mr Liristis, of how many people there might be of who have laptops? I'm not sure that that's relevant to anything that I've got to decide.

PLAINTIFF: Your Honour, my issue is why am I being discriminated.

35

HER HONOUR: That's not something I've got to decide. You're asking for very specific orders in the context of criminal proceedings due to commence next week. There may be all sorts of people who have access to laptops for all sorts of reasons, I'm not conducting an inquiry into that. Let's just stick to what I've got to decide.

40

PLAINTIFF: Yes, your Honour.

Q. Mr Sharp, you said in point 20 of your affidavit that these are read-laptops; is that correct?

45

A. That's correct, yes.

Q. So they are read-only?

A. That's correct, in the current pilot, that is correct.

50

AXC:CAT

Q. Mr Sharp, can you explain in point 21 where you have 12 inmates who are participating in the pilot programme, laptops that were supplied to them by their families or solicitors, have they been returned?

5 A. We're in the process of having them returned, yes. So we currently have three in the centres that we're still retrieving. Nine have been returned.

Q. Mr Sharp, are you aware that the New South Wales Police has given 160 laptops to Corrective Services for them to be given to inmates?

10 A. Absolutely not.

Q. So you're not aware of an email on 19 February 2015 that was sent from the New South Wales Police to Mr Peter Severin stating there's 160 laptops that have been given to Corrective Services?

15 A. No, I'm not aware of that. I do know that Corrective Services do have laptops for this pilot, and I am aware that those laptops were ex fleet.

Q. But would you agree or disagree Mr Sharp, that the laptops that are supplied by the pilot programme, can't assist my needs?

20 EMMETT: I object. The needs need to be explained, and if it's going over ground we've been over, then we don't need to.

HER HONOUR: I allow the question.

25 Q. As I followed the evidence, there are in use at the moment, as part of the ongoing pilot project, laptops which are being used by inmates. Mr Liristis doesn't have access to one of those and his question was, as I follow, whether Mr Sharp agreed that those laptops weren't suitable for his needs. Can you answer that question?

30 A. I would have to answer that by saying the laptops would have the data pre-loaded and the data can be read and we have pre-loaded several laptops with several different types of data so they can continuously read more data than 60 gig bites.

35 Q. As I followed the evidence, implicit in the question is that Mr Liristis, needs to access 9 terabytes of data. So really, as I'm following, the question is can those laptops access the 9 terabytes of data which the District Court apparently has ordered that he be given access to?

40 A. Not all at once, no.

HER HONOUR: Please continue, Mr Liristis.

PLAINTIFF

45 Q. Mr Sharp, the programmes that are CCTV footage, that are files as I read out before, they can't be accessed with the pilot programme laptop can they?

A. That's not correct. We have many laptops that have CCTV footage from several types of cameras.

50 Q. So you're saying now that a file of .pwl, are you familiar with that file?

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A. No I'm not.

Q. So you can't say to her Honour and to the honourable court that I can access CCTV footage with that file format; is that correct?

5 A. I would have to get a list of file formats that you have and compare those to the file formats that can be read by the software on the laptops to answer that question.

Q. But Mr Sharp, when were you aware of my issues regarding obtaining a laptop?

10 A. When I completed the affidavit.

Q. So before 25 January, you didn't know I existed; is that correct?

15 A. No, I did know you existed because I knew you had a red computer in your cell, but I did not know that there was an application for a laptop prior to the affidavit.

Q. Mr Sharp, you're giving evidence under oath--

A. That's correct.

20

Q. --false evidence under oath knowing that the evidence you're giving is false; isn't that true?

A. No.

25 Q. Mr Sharp, were you contacted by Dave Cahill, the manager of security at Long Bay Correctional Centre and given a letter that I forwarded on to him back in October 2017?

A. I'm not aware of that, sorry.

30 Q. So you've had no discussions with Mr Dave Cahill, the manager of security of Long Bay Correctional Centre regarding a laptop that I've requested; is that what you're telling the Court?

A. I don't remember that, no.

35 Q. So you don't remember having any conversation with Mr Cahill; is that what you're telling the Court?

A. There was a conversation had where I was informed that you have a red computer in your cell, so I have had a conversation with the manager of security there. It could have been Mr David Cahill at the time, yes, I can't

40 recall their name.

Q. Please listen to my question Mr Sharp. I'm not referring to the red computer. I'm asking you did you have a conversation with Mr Cahill and he forwarded you an email on 17 October 2017 with a letter that I wrote to him regarding a laptop and he contacted you regarding that email; do you recall that?

45

A. No I don't recall that, I'm sorry.

Q. Mr Sharp, you also had a conversation with Mr Ross Hill; do you recall that?

50

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A. Ross Hill, solicitor?

Q. Yes, sir that's correct?

A. I have had a few conversations with Mr Hill.

5

Q. And they were regarding me obtaining a laptop; is that correct?

A. I can't remember each conversation I've had with Mr Hill. I do apologise.

10 Q. Mr Sharp, you're telling the honourable court and her Honour that you can't recall having a discussion with Mr Hill in October 2017 regarding the reasons why I need a laptop, and in particular, a Dell laptop. Is that what you're telling the Court, you can't remember a conversation with Mr Ross Hill and Associates?

A. That's correct, I can't remember that conversation, I am sorry.

15

Q. Mr Sharp, I put to you that you are giving false evidence to the Court knowing that the evidence you are giving is false; what do you say?

A. I don't believe that to be the fact, I'm sorry.

20 Q. Mr Sharp, I also put to you that you had a discussion with Mr Dave Cahill, manager of security of the Long Bay Correctional Centre after I supplied Mr Cahill a 10 page letter with detailed request on the reasons why I need a laptop, and part of those reasons were these formats that I can't obtain access either by a red, or a green computer. What do you say?

25 A. I don't remember the conversation, however, if you're asking me if you can obtain that format on a green computer I can absolutely say no because you can't use an external device on a green computer.

30 Q. Mr Sharp, I also put to you that you had a discussion with Mr Ross Hill in October 2017 regarding the reasons why I need a laptop. He also mentioned the 32 tubs, he also mentioned the formats of .alb .pwl .au and .3GP; do you recall that?

A. No I don't recall it, I'm sorry.

35 Q. And Mr Sharp, did you also tell him that you would be attending the Correctional Centre on a Thursday in December to see if you can have a look at my needs; do you recall that?

A. No I don't recall telling him that, however, I did attend the Correctional Centre.

40

Q. You attended my cell without me being in there and viewed my cell; is that correct?

A. Yes.

45 Q. You saw - I don't suspect you would have counted, but around 30 odd plastic tubs, Corrective Services storage tubs in my cell?

A. There are a lot of storage tubs. I didn't count them, that's correct.

50 Q. Would you agree there's approximately, I don't expect you to know the exact figure, would you agree there was approximately 36 to 38 lever arch

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folders, J Burroughs black lever arch folders; do you recall seeing them?

A. Yes, I recall seeing folders, yes.

5 Q. And Mr Sharp, I'd like to put to you that you were aware back in October 2017, of the problems that I've had and the reasons why I need a laptop and you took no steps to either assist me or to provide evidence to the honourable court as to the reasons why you can or can't assist me. What do you say to that?

10 A. I don't understand the question, I'm sorry.

15 Q. I'll say it again. Mr Sharp, I put to you that you were aware in October 2017, both by the manager of security, Mr Dave Cahill of the Long Bay Correctional Centre and Mr Ross Hill of Ross Hill and Associates, who both sent you an email attaching a document of 10 pages detailing the reasons why I need a laptop. I put to you that that's what happened. What do you say?

A. I can't recall that, I'm sorry, as I've previously said I just cannot recall that.

20 Q. Mr Sharp, how many requests have you had since October 2017 for inmates to obtain a laptop?

EMMETT: I object to that. We're again drifting from this inmate. I don't want to take up too much time on it.

25 HER HONOUR: Mr Liristis, it's 1 o'clock. Can you just help me for the moment, how much longer do you think you will be with Mr Sharp?

PLAINTIFF: Five minutes, your Honour.

30 HER HONOUR: We'll go for 5 minutes so that you can finish his cross-examination.

PLAINTIFF: Thank you very much, I appreciate it.

35 HER HONOUR: Can we stick with your position rather than the position of others.

40 PLAINTIFF: I apologise your Honour. The reason I said that your Honour is I wanted to know if Mr Sharp can't recall, is it because he has had so many, because if he has had no requests your Honour, I find it hard to believe that a person who is in the position of laptops of a pilot programme would not remember having such a conversation and receiving such lengthy submissions of 10 pages.

45 HER HONOUR

Q. We've got 5 minutes, can you answer that question, Mr Sharp?

50 A. I receive many applications, I can't give you an exact number but I can tell you that we have approximately over 25 laptops out in correctional centres, so far it's part of a pilot, but we have received a lot more applications as part of

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that pilot in regards to people wanting laptops, and I don't remember every request, I'm sorry.

PLAINTIFF

5

Q. Mr Sharp, I appreciate that you've had a lot, but I'm saying since October 2017 would you know how many? Five, ten, 500, three, one? Would you know?

10 A. It would have been in the vicinity of about 20. That comes from inmates as well as solicitors.

Q. So Mr Sharp, you said that before her Honour asked that which her Honour was kind enough to assist me in formulating the question properly, easily, that the pilot laptops can't possibly cater 9 terabytes; is that correct?

15 A. That's correct.

Q. And you said all at once; is that correct?

A. That's correct, yes.

20 Q. But that's a misleading statement to her Honour, isn't it, Mr Sharp?

EMMETT: I object. If he wants to put to him it's false, he can do that.

PLAINTIFF: I apologise.

25

Q. Mr Sharp, I put to you that that's false. What do you say?

A. I don't agree with that. I believe what I said was true.

30 Q. Mr Sharp, none of that 9 terabytes can be put on that laptop in excess of 64 gig; is that correct?

A. That's correct, unless it is reduced.

Q. So anything above 64 gig can't be used on that laptop, correct?

35 A. It can't be pre-loaded onto that laptop, that's correct.

Q. You can't pre-load digital evidence which is on a different format than what's on the laptop agreed or disagreed?

A. No I'd have to disagree with that. From my knowledge.

40 Q. Mr Sharp, how can you disagree when I've just explained to you that a CCTV footage of a .alb or a .pwl file can be loaded on the laptop when it cannot play it unless it has that specific programme on there? How can you disagree with that statement?

45 A. If the information is loaded on there, and I don't know which files can be read without a list of them, that I would pass through security, but if that information is loaded on there it can be read on the laptop and other information can be loaded on as well. We do that several times.

50 Q. Mr Sharp, but you've got to agree, you must agree that you need specific programmes and software for certain programmes and software to be operated

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on a particular operating system. Do you agree or disagree?

A. I agree with that statement, yes.

5 Q. So how can your laptop play a file which is a .pwl which is not compatible with any of the software that's supplied by Corrective Services?

A. You're making that statement, I'm not. I'm sorry, I can't tell you that. I don't have that knowledge.

10 HER HONOUR: Mr Liristis, I think perhaps you're at cross purposes. Mr Sharp is, as I'm following the evidence, has agreed that you need specific programmes and software to play particular CCTV footage as an example.

PLAINTIFF: Yes, your Honour.

15 HER HONOUR: That would have to be loaded on to the laptop.

PLAINTIFF: Yes, your Honour.

20 HER HONOUR: I think, as I'm following, he says if it's loaded on it can be played. Your point is it's not loaded on to the laptop, the programmes that you need, and therefore, the material that you need to access can't be accessed on the laptops used in the pilot programme. Am I following you correctly?

PLAINTIFF: Yes 100%.

25

HER HONOUR: I don't think you're disagreeing with each other.

PLAINTIFF: I appreciate you clearing that up, your Honour, thank you.

30 Q. Finally, Mr Sharp, you'd agree that Corrective Services would not pay for software that is needed to open files that someone would need to extract crucial evidence for his criminal trial. Would you agree?

35 A. No I wouldn't agree with that. We load the laptops with several software packages and we've had an upgrade to load with more software packages as different files come in, if they can't be read, and Corrective Services funded those upgrades.

40 Q. So what I'm saying Mr Sharp, that if inmates make a request for certain programmes and software, Corrective Services would pay for them to be installed on those pilot laptops so they can gain access to their digital files; is that what you're saying to the Court?

A. If files can't be read on those digital laptops, we would have to find what sort of software needs to go on to that laptop to read those files.

45 Q. If I provide you a document which says from Corrective Services that it's not their responsibility to supply software or programmes, would you say that letter is incorrect or it is correct?

A. Well I can only comment on the pilot that I'm running at the moment, and the recommendations that I would make.

50

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HER HONOUR: We've run out of time and you've got some concessions which I think are of use to you. Was there any re-examination?

5 EMMETT: No re-examination.

HER HONOUR: Was there any final thing that you needed to ask?

10 PLAINTIFF: No your Honour, thank you very much for the time. I'm sorry for taking more time.

HER HONOUR: That's all right.

<THE WITNESS WITHDREW

15 HER HONOUR: We're going to resume at 2 o'clock, but again I might ask at 5 to 2 if the parties have a discussion, and Mr Emmett, you might give some thought to what I just said about the concessions which seem to be of use to Mr Liristis, given what's just fallen from Mr Sharp because as I followed, the evidence so far seems to be that the District Court made an order that  
20 Mr Liristis have access to some material. He has no laptop in custody. He has a particular type of computer. That computer does not seem to have loaded on to it the formats or software that he requires if he is to be given the access that the District Court has ordered, and if that be correct, it has some consequences, you might want to take some instructions and have a  
25 discussion with Mr Liristis before you resume.

EMMETT: I will. Your Honour would bear in mind that the evidence also indicates that forensic experts have been retained. Your Honour doesn't have the terms of that District Court order.

30 HER HONOUR: I don't. I'm just making an observation about the evidence as it has unfolded. I'm always looking for ways that people might be able to agree with each other. Resume at 2 o'clock.

35 LUNCHEON ADJOURNMENT

FHI:CAT

HER HONOUR: Where are we at? Is it the cross-examination of Mr Fiorenza?

5 EMMETT: Your Honour, in light of what Mr Liristis has agreed with and in light of his concerns about other aspects of the affidavit, I don't propose to read that affidavit or call Mr Fiorenza.

10 HER HONOUR: So I have already marked that as exhibit 7, so that tender is withdrawn?

EMMETT: That tender is withdrawn.

15 The next thing, I have just been obtaining instructions over the lunch break, in light of the cross-examination of Mr Sharp, there are a couple of additional matters I will be coming to in closing but, in fairness to Mr Liristis, the matters perhaps ought to be exposed by an application by me to cross-examine him further on some of the matters that were the subject of cross-examination of Mr Sharp.

20 HER HONOUR: What matters do you want to cross-examine him about?

25 EMMETT: There are two matters. Your Honour has heard that the forensic experts have been engaged specifically in relation to the hard drives that are said to be the problem. What is not at all clear is what Mr Liristis could do that those experts can't do. That is the first point. And the second is - and, again, this is one of the difficulties where Mr Liristis, who has forensic experts, hasn't put them before the Court - those experts might be able to explain, for instance, the extent to which files could be converted - video recording files can be converted from one type to another. Your Honour appeared concerned because Mr Liristis personally can't access those - in relation to file types, the evidence is ambivalent, that is, the .PWL and .ALV, but in relation to the hard drives, the point is that there is the concern about giving an inmate access to the BIOS of a particular computer.

35 It will be my submission in any event that this Court has evidence that forensic experts have been retained for the purpose of analysing that material and that would probably be enough but, in fairness to Mr Liristis, he should probably have an opportunity to answer that.

40 HER HONOUR: Well, Mr Liristis, you have heard that Mr Emmett has now withdrawn the tender of Mr Fiorenza's affidavit. Do you want to be heard about that?

45 PLAINTIFF: No, your Honour, I thank the Court for that. Thank you very much, your Honour.

50 HER HONOUR: And he seeks the opportunity to ask you some further questions by way of cross-examination because of what has arisen through the cross-examination of Mr Sharp, as you have heard him explain. Do you have any objection to that?

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PLAINTIFF: I have no objection to the gentleman to ask me further questions, your Honour, for the forensic expert, no objections, thank you, your Honour.

5 HER HONOUR: All right, thank you. We will swear you again then, Mr Liristis.

<PLAINTIFF, RE-AFFIRMED(2.06PM)

<FURTHER CROSS-EXAMINATION BY MR EMMETT

10

Q. Mr Liristis, to confirm the background, "I write that Judge Whitford ordered" - I will just get the date; I am taking this from your affidavit - on 25 August 2017 - Judge Whitford ordered that you have access to the hard drives that you have been talking about?

15

A. Yes, sir, that's correct.

Q. The way Judge Whitford ordered it was access to your representatives and your forensic expert, that is, that the hard drives remain in the custody or control of your defence representatives or your expert?

20

A. No, that's not correct. I can read you the paragraph, if you like, of his Honour Judge Whitford what he said.

Q. If you are not sure, we are having the orders of the Court obtained, so that's not consistent with your understanding of what Judge Whitford ordered; is that right?

25

A. No, it's not, I've got the transcript here in front of me.

Q. In any event, can I indicate what my instructions are. That's what Judge Whitford ordered and then Judge Conlon said that the restriction to your representatives and your experts wasn't appropriate; in other words, that you should be allowed to have access yourself?

30

A. Judge Conlon did say that, yes, correct.

Q. On 29 September, and I think you confirmed this before, the trial date of 9 October was vacated?

35

A. Correct.

Q. And at that stage you foreshadowed wanting to engage a forensic expert to analyse the computer drives; is that right?

40

A. Yes, sir, that's correct, sir.

Q. Then, again, on 6 November 2017, the trial was vacated and, again, am I right that that was in part to do with computer forensic expert analysis?

45

A. No, that was for me to get access to the drives, to have the time to be able to get access to the drives.

Q. And, again, we will get the orders. You didn't understand that it was to give the forensic expert time to analyse the drives?

50

A. Yes, it was as well, to give the forensic - that's why there was copies made and given to the forensic experts as well.

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Q. Had the forensic experts - your report, I think, was due in the court timetable on 18 January, a report from your forensic experts?

A. That's correct, sir.

5

Q. That's not come on yet - I am not being critical of you because that is a matter for the District Court, but that has not come on yet; is that right?

A. No, because the forensic experts have not obtained access to the drives.

10 Q. Are you able to say why not?

A. Yes, I can say why not. The reason why the forensic experts could not obtain access to the drives was the State Evidence Electronic Branch cleverly has decrypted the drives and then recompressed the drives and the only person that can get access to the drives was the State Evidence Electronic Branch and they claim they complied with the order of Judge Whitford, his Honour Judge Whitford, but Judge Conlon said how can that be complied when the drives can't be accessed by either Mr Liristis, his legal team or the forensic expert. I--

15

20 Q. I just want to say--

HER HONOUR: Please don't interrupt. I don't think the witness has finished.

EMMETT

25

Q. I'm sorry, Mr Liristis, I mistakenly thought you'd finished, but I'm sorry if I spoke over you.

A. That's all right, sir.

30 HER HONOUR

Q. Please continue. You were saying that Justice Conlon said that they couldn't be accessed by anyone?

35

A. That's correct, your Honour. And then his Honour Justice Conlon was very upset by the fact that, as her Honour - 'cause I lost my train of thought, I'm sorry - that we couldn't get access and then his Honour ordered that the drives be uncompressed and given to us in separate drives. That happened. The drives were given to the forensic experts. The forensic experts had spent four weeks trying to gain access to the drives but, because the police have deleted the BitLocker folders from my drives, the drives could not be accessed by the forensic experts.

40

The report now, which is in those two emails which were marked as MFI, states where the forensic expert are asking me for the password for them to access the two additional drives and I have explained to the forensic experts that the date of the modification of those documents is May - 7 May 2014 and I haven't had access to those drives since 20 October 2013.

45

So, what his Honour was very concerned that the police have now deleted crucial documents from the drives that the forensic experts cannot access.

50

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5 The only person that can access those drives is me; that was advised to Judge Conlon and his Honour was very, very concerned that the DPP have taken and the Crown have taken this approach and the Crown has stated on the record that they were unaware of this type of activity and, as late as last week, I have now been told that the DPP have supplied the forensic experts with a USB drive that was ordered by the Court to contain 11,000 documents and when the forensic experts obtained that USB from the Court - sorry, from the DPP, the USB is empty, there is no documents on that USB.

10 So that is in an email which is MFI 1 which I'd like to, in due course, make that as an exhibit because it is very crucial for her Honour and the Honourable Court to understand why people can't get access to the drives that the police have had in their possessions for over four years, being 20 October 2013.

15 HER HONOUR: Just one moment. Just to clarify from you, Mr Liristis, MFI 1 has now been marked exhibit 4, so it is in evidence.

PLAINTIFF: Thank you very much, your Honour.

20 EMMETT

Q. To pick up on that last point and I want to come back to something else you just said there, Mr Liristis.

A. Yes, sir.

25

Q. I understood you to say that this email recorded that the USB that was provided is empty?

A. Yes, that's correct.

30

Q. Can you help me with where it says that?

A. I don't have the emails. If Mr Norrie would be kind enough to direct you where the email says that the USB is empty. I don't have the documents in front of me. I was only advised this by AVL on the last occasion; last week, I assume.

35

Q. Mr Liristis, is it possible - just so your Honour knows, I am reading from the email of 16 January 2018 from DRC to Mr Shumer and there it says: "Our team has attempted but were not able to crack the password or break the encryption with brut force as well as with other forensic techniques for the following two document files", and then it says, "BitLocker drive details 8 August 2013" and "BitLocker password". "Our understanding these files may contain the BitLocker key for one of the drives that is still encrypted out of six drives." Is that right? Is that consistent with your understanding, that is, that DRC was saying that, not that one of the drives was empty but that one of the drives was encrypted and they needed the BitLocker key for it?

45

A. No, that's - what you're reading is correct. What I am saying is there was a USB that was supplied by the DPP which was supposed to have contained 11,000 emails and that USB that was supplied by the DPP, as per Court order, to be given to Data Recovery Centre. Data Recovery Centre have given an email, I understand, to Ross Hill & Associates to state that that USB drive has

50

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no documents on there; it is empty. That is what I am referring to.

Q. I follow. Mr Norrie has just indicated that he thinks he may know which email you are referring to and it is not part of exhibit 4.

5 A. I apologise for misleading you. I am sorry, I didn't know that, I thought it was the same email. Sorry, I apologise.

Q. No need to apologise. We were just at cross-purposes. We will see if we can get that email and I won't have any difficulty--

10

NORRIE: Your Honour, I have that email. I can forward it to your Honour's associate if that's appropriate?

HER HONOUR: Yes, please forward it to my associate, we will print it and show it to Mr Emmett.

15

EMMETT: Thank you, your Honour.

Q. Mr Liristis, you said that DRC - did I understand rightly that one of the reasons you understand why DRC can't access one of the drives is because it's password protected?

20

A. Yes, sir, it's BitLocker-protected, sir, not password. It's a BitLocker.

Q. May we take it you've given DRC all passwords that you're able to give them in relation to the drives?

25

A. Yes, sir, and if I may explain it to understand for the Court and to your kind self, what has happened, sir, is the police have obtained access to my encrypted drives on 7 February 2014. So they have had the evidence unencrypted; they have broken into the drives in February 2014. I only got the drives in December 2017.

30

Now, when we have given the balance of the drives to Data Recovery Centre, they have said, "We can't access the drives. Can you give us the password on this document?", which I think you read was sometime in August or whatever, but if you look at the time that it was modified, it says "May 2014". So what has happened is the police have put on - the police or the State Evidence Electronic Branch, we don't know, but I can't speculate, but all we know is the drives were in the care, custody and control of the police from October 2013 up until now and they still have the originals.

35

So, Data Recovery Centre asked me thinking that I have the password for that BitLocker which is mentioned in that email, but I don't have the access to that - that folder because I never put the password on there. It was the police who have locked the drive. Just - sorry.

40

Q. So if - sorry, I didn't realise. Keep speaking.

A. No, it's all right. Sorry about that.

45

Q. My only question - I think you have answered it - is did you give DRC all the passwords that you have?

50

5 A. Every password that I have had and even passwords that I have gained after obtaining other drives from my father which were backup drives, I gave Data Recovery Centre all the drives and they have gone through each and every password, but they are not password that we are concerned about now; we are after a BitLocker key which is 128 character, which is impossible to crack.

Q. Could you help her Honour to understand, if that's the case, why did you say that the only person who can access the drives is you?

10 A. Yes, I can explain that crystal clearly. I have gained access to four drives myself by finding in the backup folders that my father had and when the laptop was brought into - we got permission from Corrective Services at Long Bay from Mr David Cahill, the manager of security, Mr Shumer and Mr Norrie and Mr Miller had come in with the laptop and then once, when I was with  
15 Mr Shumer and Mr Miller, I had gained access to the laptop, the Dell laptop, and it took me nearly four hours to crack one. I managed to end up cracking one and then - which led me to another drive and then I took that file back to my cell and then worked on it for another nine days and then cracked the other two drives.

20 The reason for that is because I could only gain access to those drives when Mr Miller or Mr Shumer, who has that Dell laptop in their possession, would bring it into custody, but we can only spend between 8.30 and 2.30, which we're again very appreciative of Corrective Services, because legal visits are  
25 only one hour at Long Bay, but we had sought special permission from Mr Cahill which we sincerely appreciate, and Mr Norrie or Mr Miller or Mr Shumer were coming in from 8.30 in the morning to 2.30/3 o'clock in the afternoon.

30 So that's why it's crucial for the Court, your Honour, and yourself to understand, the only way I gained access to those four drives was gaining access to the - the Dell laptop and I would not have gained the recording which exonerates me in three out of the five charges would be dismissed; I would  
35 never have obtained that evidence which would be a serious crucial injustice to the judicial system if an innocent person cannot provide the evidence because it has been withheld by the police.

Q. Can I understand a couple of things that flow from that. First, have you explained to DRC what you did to get that access?

40 A. I have put in writing to them, as best as I can, to give them a step by step. They can't access the drives. They haven't accessed one drive. The reason why they can't access that drive is because the algorithm that is associated with the drives forms part of my data of my business. Now they can't obtain  
45 access to my business records and, therefore, they can't obtain access to the algorithm that we use. Everybody has different algorithms. As I said, it's not a password where I can contact Data Recovery and say, "Oh, yes, it's 'John Peters 1'". This is an algorithm of 128-bit, which is bitlocked. The drives are bitlocked; they are not password-protected.

50 Q. Have you taken steps to give DRC access to your business records with

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the algorithm?

5 A. Legal Aid have paid something - I think it was \$1,600 for Data Recovery Service to come out to Long Bay Correctional Centre with Mr Greg Shumer and Mr Miller to come out and we spent all day and it was difficult for them to even bypass one of the algorithms.

10 The process is not just a matter of gaining the algorithms; the process - they have to gain access to my laptop and to gain access to my laptop, there's a number of encryptions that we use for our business, in other words, for my company Mercedes McLaren Racing, that is not publicly made available and Data Recovery can't access the drives because there are a number of algorithms before you access the drives.

15 Q. Have you taken steps to make those algorithms available to DRC?

15 A. Yes, I have taken steps - yes, even Data Recovery Centre has come into custody with me and tried to work with me to try and gain access. They haven't obtained access. I'm the one who's obtained access to the drives and the only reason I obtained access is because of connecting it, as the State Evidence Electronic Branch states, the only way you can do that is by entering the BIOS, BIOS, bypassing the hard drive and accessing the hard drives, the external hard drives directly. That is the only way that you can do that.

20 Q. Can you help her Honour understand why DRC is not able to do that?

25 A. Certain experts can't - certain - how can I put it - there's certain people that can and can't obtain access to digital media. Everybody's got different ways of obtaining. I've been an investigator for 32 years; I know my system. I can't explain to someone over the telephone or in a one-hour conversation how to express data. That's why we pay these people a lot of money, but they haven't complied with what their - the instructions were.

30

HER HONOUR: Just one moment. We will interrupt you to make available the document, Mr Emmett.

EMMETT: Thank you, your Honour.

35

PLAINTIFF: Thank you, your Honour.

HER HONOUR: Is there any objection to me seeing that document?

40

EMMETT: No objection.

HER HONOUR: Should it form part of exhibit 4? Is there any objection to that?

45

EMMETT: No objection to that, your Honour. Exhibit 10, did you say?

HER HONOUR: Exhibit 4. Mr Liristis, I will add the email of 22 January 2018 from DRC to Mr Shumer to exhibit 4.

50

EXHIBIT #4 SUPPLEMENTED BY THE EMAIL OF 22/01/2018 FROM DRC

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TO MR SHUMER TENDERED ADMITTED WITHOUT OBJECTION

PLAINTIFF: Thank you, your Honour.

5 EMMETT

Q. Mr Liristis, you said that, by arrangement with the gaol, you were able to get - I think you said, although I can't recall, from about 8.30 to 2.30 sitting with Mr Shumer and the computer trying to access the files?

10 A. Yes, sir, that's correct.

Q. That ability is still open to you, isn't it?

A. Yes, it is available, but who's going to pay for it? I can't afford it. Legal Aid is not going to pay for it.

15

Q. Well, that ability is still open to you, isn't it?

A. Financially it's not. I can't afford to get data expert to come out again. I just can't do it. I--

20 Q. Have you made - sorry?

A. Sorry, to answer your question, yes, I have made - I contacted Legal Aid and asked them if they would consider a number of - well, actually four applications that I made for them for costs and they refused all four. One of the four was to get Data Recovery Centre to come out again to go through one of the drives that I needed desperately access. They denied that request 'cause, as I said, my grant is a limited grant; it's not a free grant of free reign.

25

EMMETT: I am in a slightly difficult position because, ordinarily, I would call for that, but that is a difficult thing to do now. Can I just put that on hold for a moment.

30

Q. Just moving on from the drives for a moment. You also asked Mr Sharp about a number of particular file types, being file types that you mentioned in advance as file types you wanted to ask him about; do you remember that?

35 A. Yes, I did, sir.

Q. In relation to file types that you say you can't read, have you made inquiries about having the video or sound recordings in those files converted to a different file type that you can read?

40 A. Yes, I have, sir.

Q. What was the outcome of those inquiries?

A. The cost is \$2,650 that I have been quoted to re-change the format because when you have a compressed document, as the State Evidence Electronic Branch did with the drives, when you compress a document, you have to uncompress it and then re-change the format. Now, that - when you are talking, and this hasn't been placed before, but it was in the letter - thing that I have been given 4,792 audio and video recordings that I am expected to go through because Legal Aid will not pay Mr Norrie or Mr Ross Hill or the forensic expert to go through each and every one of those recordings to see

50

what I'm going to use for my defence.

5 So, someone has to go through each and every recording, uncompress it and then change it to a format that is acceptable, which may or may not be. For example, you can't change a 3GP file to a standard MP3 file; you can't do that because the compression would make a 2 megabyte file into 300 megabytes of a file. So, from nine terabytes we could be talking 27 terabytes. So, uncompressing a file is not a solution to getting access to the file.

10 What is a solution, as I explained to Corrective Services and to Mr Severin in the affidavit of Mr Sharp, I have paid for software and programs in excess of \$10,000 which I don't expect Corrective Services to pay, but I have already paid them, I have the licence for them, but I can't transfer the software or the program from my laptop on another computer because then I have to pay  
15 another licence fee.

20 So, on that particular laptop, that is, the XP Dell that the State Evidence Electronic Branch has all the software, all the programs to access all the files and that's where I have been accessing - every time Mr Shumer comes in and Mr Miller comes in or Mr Norrie, I access the programs, I download them, I put them on a USB, then I can change the format and read it on there. And that's why I found 27 recordings which Mr Norrie can confirm that we have now given to transcription services to transcribe because they will not only exonerate me, but I am sure that charges will be placed on the persons who have lied in their  
25 evidence, in their statements.

30 So, I am just trying to bring exculpatory evidence, evidence that - to court to exonerate me for charges I'm innocent of. That's what I'm trying to do. I'm not trying to create anything for anybody.

Q. I understand that and, as I hope I've made clear, it's no part of my case to say that you're guilty or anything like that.

A. I appreciate that, sir. I appreciate that, thank you.

35 Q. In relation to converting files then--

A. Yes, sir.

Q. --am I right that there is a means to do it, but it is a means that you tell her Honour is too expensive?

40 A. Well, sir, to convert a file you feed a program. Who's going to pay for the program? I don't have a program to convert files in custody. So someone has to pay someone to convert - even on the police's brief of evidence, there's 4,792 recordings that have now been given to me and to the solicitors and there is 9,000 recordings, but the police have only given us 4,700 and now I  
45 have asked a question: Why has the police not giving us the balance of the 5,000 recordings? There must be a reason. But even at best there is 4,792 audio and video recordings that you're asking someone can convert, so I can get access. The answer is yes, but who is going to do this a week before my trial and who's going to pay for it? Why do we need conversions when the  
50 simple method is I obtain my laptop, I obtain the recordings that I require, I

tender them in evidence to the Court and give a copy to the DPP? That's a simple method.

Q. Have you explored this conversion with DRC?

5 A. Yes, I have explored it. They quoted me verbally "in excess of \$12,000". They charge \$375 an hour and each recording, as Mr Norrie can agree, there's recordings on there that are 360 gig - sorry, 360 megabytes, which equates to neither 900 pages of one recording. How do you transcribe that and how do you convert that - that's one file - economically? It's just feasibly impossible.

10

Q. I just want to understand. So DRC has said that to convert the files that you want converted would cost \$12,000?

A. They haven't given me a quote. They said "in excess of \$12,000".

15 Q. May I take it then, if you didn't get a quote, this hasn't been the subject of an application for specific Legal Aid disbursement?

A. I asked Legal Aid for \$600 and they declined it, so I don't think they're going to be too happy with an "in excess of 12,000".

20 Q. Is the answer to my question no you haven't?

A. No, I haven't, sir, I'm sorry.

Q. Can I just understand, DRC are presently retained by you; is that right?

A. Yes, they are.

25

Q. Is there any reason why you haven't asked them to give evidence in these proceedings to help her Honour understand what you can and can't access and what can and can't be done by them?

30 A. One is cost and I don't want to disrespect the Court or her Honour by saying costs is an issue, but costs is an issue. Who is going to pay for them to come out and give evidence? They have to put on affidavit; that's going to cost money because the defendant rightfully needs to know what evidence the expert's going to give.

35 We're hoping to retain them in the criminal proceedings which still Legal Aid has not approved, so we've got troubles there in my criminal proceedings. I don't know if they're going to be too happy to consent to civil proceedings.

40 Q. Mr Liristis, the last thing I want to do, Mr Liristis, and I appreciate you don't have these documents, I have just been provided with a copy of the orders that were made on 8 December 2017, 4 December 2017, 14 November 2017, 31 October 2017, and 22 September 2017. What I want to indicate to you is I am reading from the orders on 22 September 2017 where it says: "There are issues getting relevant information decrypted from two of the accused's hard drive." Is that consistent with your recollection of a notation that may have  
45 been made on that day?

A. I don't know if I was present on that day, I'm sorry. I've had so many interlocutory proceedings I can't recall.

50 Q. Do you recall being present on a day where it was noted by the Court that

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"the issue of your hard drives is starting to resolve and you now have access to them, but will take up to four to six weeks to get relevant information off the hard drives as it is encrypted"?

A. Yes, that's correct, I recall that.

5

Q. Then do you recall before Judge Conlon the judge said that the matter was adjourned until 14 November and that on that day "the defence must be able to tell the Court which expert in respect of the decompressed files had been obtained"?

10 A. Yes, that's correct, I remember that.

Q. And can you remember Judge Conlon noting that "the Crown has done all it possibly can to assist the accused and has provided all necessary material to the accused"?

15 A. No, that's a lie. That's not true.

Q. You don't agree that Judge Conlon made that note?

20 A. I don't know if he made that note, I haven't seen the judge's note, but I am telling you the truth that the DPP and the Crown have done nothing but try to assist the defence. Mr Norrie can agree to that.

Q. So you deny that his Honour noted that in open court? I want to be clear--

25 HER HONOUR: Mr Emmett, that is not a fair question.

EMMETT: I know it's not. I realise that.

HER HONOUR: Withdraw it.

30 EMMETT: I withdraw it.

Q. Do you recall in open court, on 31 October 2017, the judge noting that "the Crown has done all it possibly can to assist the accused and has provided all necessary material to the accused"?

35 A. Was I there that day because if I was there I would have lost my head if someone said that, because that's not true. I've got comments here from judges - I've got the transcripts here in front of me that I'm more than happy to read where the judges have agreed that the Crown has done nothing less than not supported. They still haven't supplied documents from 17 January that  
40 Mr Norrie has been trying to obtain and he still hasn't got the documents from 17 January 2017, over a year ago, so who would make such a ludicrous statement? I can't believe that.

45 Q. Okay. Do you also recall, and again if you don't recall just say so, that Judge Conlon noting - and this is a couple of sentences; I am going to read it all to you at once - that "there is an urgent need for an expert to go with defence to Long Bay Correctional Complex to attempt to gain access to what is referred to as the decompressed files. Once this is done, if there is no  
50 possibility of the password becoming known and no possibility of decompressed files being accessed, then the matter must and will proceed

regardless"?

A. Yes, I recall that.

5 Q. Do you remember then the Court noting, and again I am going to read:  
"The defence application to allow the accused and his legal representatives to  
download and make copies of the decompressed files (if they are able to be  
accessed) is granted to allow them to appropriately prepare for trial"? Do you  
remember that?

10 A. I most certainly remember that.

15 Q. And do you remember the judge noting: "Accused said that Mr Dave  
Cahill, manager of security and Acting Governor of Long Bay Correctional  
Complex has been assisting the accused, is aware of the hard drives are  
coming and will continue assisting to assure the accused has the appropriate  
technology/facilities to access the hard drives." His Honour said he will also  
contact Mr Cahill "to inform him that the Court recommends and supports his  
assistance to the accused".

20 A. Yes, I do recall that. I also recall his Honour Judge Conlon contacting  
Mr Cahill and thanking him for his assistance, which I appreciate his Honour  
doing that and if Judge Conlon was still on the Bench and no disrespect to her  
Honour and the Supreme Court because it is a very senior court, we would not  
be here now, because if Judge Conlon found out that this was going on, he  
would lose his head, he would be so angry with the Crown and Corrective  
Services because they gave an undertaking, Mr Cahill gave an undertaking  
25 that they would do everything they can to assist me in obtaining - and Mr Cahill  
came that afternoon and delivered me, at 6 o'clock at night, personally, even  
after he was gone home, he came to my cell and handed me the drives which I  
sincerely appreciate the assistance of Mr Cahill.

30 So, Mr Cahill and Corrective Services at Long Bay have done everything they  
humanly possibly can and it was Mr Cahill who said that I should be able to  
obtain a laptop as every other inmate. So please let's not misconstrue the  
issue. Corrective Services at Long Bay have been exceptionally and I am  
forever indebted and grateful for their assistance. It's just the people in their  
35 glass houses in their offices in Lee Street in the central that don't see this  
problem and this is what upsets, this is what upsets me. That the people who  
make these decisions aren't before the Court so they can explain to her  
Honour why this is not happening; they're not here.

40 Q. Mr Liristis, moving to the next date, which is 14 November 2017, and I am  
only going through these slowly because they're all in writing, do you  
remember whether Judge Conlon was informed of the following: "Defence  
informed court that a data expert company that fit within budget has been  
sourced and is ready to go. His Honour encouraged the data analyst to attend  
45 Long Bay Correctional to assist the accused decrypt the hard dive" - it says  
"change of further adjournments" - I suspect that should read "chance of  
further adjournments". Do you recall that being noted?

50 A. I most certainly do and that's when I said to you that the DRC did come out  
to Corrective Services and spend it at Long Bay, yes, I agree with that, sir.

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Q. The others I don't need to take you through.

Your Honour, I do propose to tender these orders and notations.

5 HER HONOUR: Where does this document that you want to tender come from?

EMMETT: Your Honour, I can prove this formally, if need be by the person behind me, but the registrar has copied them from the Court file.

10

HER HONOUR: Is there any objection, Mr Liristis, to the tender of this extract from the Court file that you have just been cross-examined about?

15 PLAINTIFF: Your Honour, I do have an objection: One, I haven't seen it and; two, at their last desperate attempt this is wrong, you know, to give documents that I haven't seen.

HER HONOUR: All right, thank you.

20 PLAINTIFF: Everything I gave--

HER HONOUR: Just one moment. Please continue?

25 PLAINTIFF: Everything that I have tried to tender, and I appreciate her Honour accepting it, I gave Mr Emmett copies and I have allowed him to have a read of it. I can't see, your Honour, I don't know if I was present those times. I may or may not agree with them. I'm not saying that his Honour was wrong; I'm just saying it is very hard to allow tenders of documents that I haven't seen or where they've come from. I'm not saying that--

30

HER HONOUR: Just one moment. Mr Liristis, I understand your concern. I propose to receive the tender, though, because it is an extract from the Court's file.

35 PLAINTIFF: I accept that, your Honour.

HER HONOUR: It forms part of the record of those proceedings.

PLAINTIFF: Yes, your Honour, I accept that.

40

HER HONOUR: You have been cross-examined about it and, as I have listened to the cross-examination in part it supports your case, so I am going to receive it.

45 PLAINTIFF: Yes, your Honour, I accept that.

HER HONOUR: Exhibit 10.

50 EXHIBIT #10 ABOVE MENTIONED ORDERS AND NOTATIONS TENDERED, ADMITTED WITHOUT OBJECTION

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EMMETT: I was going to say part of the reason for that - I hope Mr Liristis doesn't perceive it as a desperate attempt to do anything, on one view, while I will still make submissions that the orders should not be made, significant parts of that do support his case and that is one of the reasons why I wanted to put it before the Court.

HER HONOUR: Thank you. That is the end of the cross-examination, is it?

EMMETT: Yes.

<THE WITNESS WITHDREW

HER HONOUR: That is the end of the cross-examination. Mr Liristis, I am going to call on Mr Emmett to make his submissions before I call on you. Given what's unfolded during the course of the day, including through the evidence of Mr Sharp and the document that has just been tendered, exhibit 10--

PLAINTIFF: Your Honour, can I just ask you if you would be kind enough, in your document, in the affidavit of Mr Sharp, there are - I think the word is "illegible", that I can't read - the copies I've got you can't read any words, but I'm hoping that--

HER HONOUR: Just one moment.

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HER HONOUR: I'm not sure that I've had returned to me the document I marked as exhibit 6, Mr Sharp's affidavit, but there's another copy of it here. Which documents are you telling me are illegible Mr Liristis?

5 PLAINTIFF: Your Honour from page 13 to page 24. I know it's very difficult for you to see through the video but as you can see, I don't know if you can see.

HER HONOUR: Just one moment Mr Liristis. The reproduction is not good but the document I've got on the file is legible so you don't need to be  
10 concerned about it.

PLAINTIFF: Thank you, your Honour. I appreciate that.

EMMETT: Can I indicate my instructing solicitor anticipated this as well  
15 because some copies aren't very good. I do have better copies here. Both letters, so that is annexures C and D, they are both letters written by Mr Liristis, one to Mr Brett Collins and the other to Ms Mariam Nachabi, the former being of 3 January 2017 and the latter being of 17 January 2017. Now I'm not saying  
20 therefore Mr Liristis should have it in the AVL where he is because he may not have been able to identify it but hopefully he does have access to copies of them if he needs them.

PLAINTIFF: I've got proper copies. I'm just hoping if her Honour can read her  
25 one. I'm happy, that's fine.

HER HONOUR: Thank you. I can read it now. Mr Emmett, I've read your  
written submissions which include the obvious, that if Mr Liristis can't receive a fair trial without access to the laptop and printer that he seeks the appropriate  
30 remedy is either a further adjournment or stay the proceedings. That's a matter for the trial judge. But you've also acknowledged the approach of the Court of Appeal in Clark, namely that administrative or managerial decisions that frustrate an inmate's right to access, the Court might be amenable to review under section 69 and that's how this application comes here.

35 The essence of the case is, as I follow, that if Mr Liristis was not in custody bail refused and these problems had arisen he will have access to the laptop which has the necessary software which would enable him to take the steps to access the documents which the District Court has said he should have access to, and that's been impeded because of the difficulty he's explained, and that in  
40 the circumstances the Court should take some steps to ensure that he has access to a computer which contains the necessary software so that he can access those documents. And I leave to one side the USB which is said to be empty and other problems because that's something that the District Court may well have to deal with.

45  
But on Mr Sharp's evidence it would seem that if it's necessary for Mr Liristis to have access to a computer which contains the required software it's possible it would seem for the Department or the Commissioner to have such a computer and software made available to him. Why should the Court not make an  
50 order?

EMMETT: The reason your Honour is that - and this is where Mr Sharp's evidence is important and where there's a material difference between this case and Clark - the evidence is that making laptops available to inmates, that is their own laptops, was explored in one pilot, this is from paragraph 21 onwards, and there were serious security concerns with doing so.

HER HONOUR: That might be so and I accept that entirely. There's been no challenge to that evidence and that's understandable. But that's not the end of the matter. Mr Liristis has said he's purchased a licence for the software and he's installed it on his own computer. If he's given access to it he can do what's necessary to gain access to, I'll call them documents, that the District Court says he should have access to. The commissioner has laptops and other computer equipment which is made available to people in custody. It would seem from at least from the evidence of Mr Sharp at least that the blue computers would have the capacity to have this software loaded onto them. If that's necessary, if that's the only way that Mr Liristis can gain access to this material while he's in custody, why should that not happen?

EMMETT: I'm sorry your Honour I was focusing on wanting a Dell computer and access to the BIOS, that's where the computer concerns come up.

HER HONOUR: I can understand that but at the end of the day we're talking about the question of whether administrative or managerial decisions are frustrating Mr Liristis' access to the District Court in a fair trial there and I must say I've got concerns.

EMMETT: I understand that your Honour and can I deal with it in a number of steps. The first is the desire for the Dell computer.

HER HONOUR: As to that it seems on the evidence that steps have been taken to this point which have enabled Mr Liristis to have access to that computer while he's in custody. I just don't understand I must say why further steps can't be taken to give him that access.

EMMETT: Mr Liristis confirmed that that's still available. What he wants is not access with his solicitor or with DRC but to have the laptop in his computer. Now that obviously raises--

HER HONOUR: In his cell.

EMMETT: In his cell.

HER HONOUR: You say that the Court would not make that order because of the security risks that Mr Sharp has discussed in his evidence?

EMMETT: That's right.

HER HONOUR: I understand that. Why nevertheless wouldn't other steps be taken that seem to be available if that's not possible so that he can have the

access that he seems to need in order to get what the District Court has ordered he should have?

5 EMMETT: That's where your Honour's and my recollection of the evidence is different. The difficulty is identifying what steps are available that don't create that security risk. Now your Honour's raised the blue computer. At the moment as your Honour will recall it emerged that Mr Liristis wasn't aware of the blue computer and hasn't tried them. We don't actually don't know what is and is not, can and cannot be played on the blue computer.

10

HER HONOUR: We are less than a week away from the commencement of this trial. One understands why Mr Liristis is here.

EMMETT: Yes.

15

HER HONOUR: Now you knew about the blue computer, he didn't, and I'm saying you referring to your client. He could have been told about the blue computer. A blue computer could have been given to him.

20

EMMETT: Mr Sharp in his affidavit - your Honour will recall of course how quickly all of this came on.

HER HONOUR: Of course.

25

EMMETT: Mr Sharp in his affidavit explained the availability of the blue computers. The particular files, and I don't say this critically of Mr Liristis, this has all come on very quickly and he's self-represented, but certainly in the evidence of the list of files has not been put forward to my knowledge in the way it has now. If it has been put forward then I say again all of this has come on urgently. The blue computer concerned - I guess in a sense without trying we can't say anything about what the blue computer can and can't do. It was raised with Mr Sharp and Mr Sharp said he can explore.

30

35

HER HONOUR: We need to be practical about this. In your written submissions you've referred to a number of Victorian cases, none in New South Wales, but a number of Victorian cases where the problems of this kind have arisen. In none of them were orders made. In Rich, the 2008 case to which reference is made in the later judgments, no order was made because ultimately the matter was resolved on the basis that the equivalent to the commissioner said that steps would be taken if that was necessary to have the computer that Mr Rich had access to in custody taken to court every day.

40

45

So it's the power of the State. There are steps available. There were in that case. I'm sure there are potential steps available here which could overcome the difficulty Mr Liristis has in accessing these documents. It seems on the evidence that there's a software problem, he's purchased it, that gives him access to it. You say well he can't have access on his own computer in his cell. Why can't other steps be taken to give him the access that he needs so that this trial can proceed? There's obviously very good reasons why the trial should proceed next week.

50

EMMETT: In relation to other steps I must say the one that your Honour raises, that is the blue computer, I'm not aware of the extent to which it's been explored to introduce new programs on to it. What Mr Sharp did say is when  
5 that happens, that is when they came across new files it is their practice to introduce them. I obviously right now can't take it further than that.

HER HONOUR: At the end of the day you are going to finish these submissions and I might take a view that the Court should make some orders.  
10 What orders it should make is something that you might wish to be heard about and we might need to take an adjournment sooner rather than later for you to take some instructions as to what the form of those orders should be. At the moment I'm struggling to see why I wouldn't make some orders.

EMMETT: In relation to your Honour's suggestion that the relevant software be put on the blue computers to enable particular files that can't presently be read, your Honour is quite right I have no instructions on that and I'm about to come to proposing either an adjournment to make those inquiries or even your Honour making a direction. Well I should get instructions before I volunteer  
20 things.

HER HONOUR: All sorts of miraculous things can be done. Somebody could pop out to the shop and buy another Dell computer and have the software loaded on to that.  
25

EMMETT: That's where the difficulty with the BIOS comes in that your Honour heard, that is you can have access to the BIOS of the computer, then you can make or do whatever you like.

HER HONOUR: I'd be astonished if steps couldn't be taken to make sure that that couldn't happen.  
30

EMMETT: Mr Sharp's evidence was that was the whole point of BIOS. BIOS is, as it were, the back door to the computer.  
35

HER HONOUR: But Mr Sharp's evidence was that laptops have been purchased. They are modified. Access is given to those laptops to inmates. That must mean that when they are given that access they don't have access to the BIOS.  
40

EMMETT: That's right. They read only without access to the BIOS. Now what Mr Liristis has indicated is that that's no good to him.

HER HONOUR: Well then some other steps might need to be taken. If the only way in which it's possible for someone in this position to gain access to material which has been in the hands of police in the way that's been described with the result that there's this difficulty created is not to be in custody, the Court has said in the past that perhaps somebody will have to be out of custody. I'd be astonished if we are at that stage but something needs  
50 to happen here.

EMMETT: In a sense your Honour is right. While I don't want to get into whether or not this case is there, the fact is that the primary relief is Dietrich or in extreme cases Jago style relief. Your Honour is quite right that is an  
5 extreme solution as is ordering that somebody not be in custody because the only way that they can actually have a fair trial is if they are not in custody. That is something that can be explored although this Court is not in a position to make an order like that today.

10 HER HONOUR: I don't have an application apart from anything else and I'm not wanting to encourage an application but it seems to me if on this application on the evidence some steps need to be taken to ensure that administrative and managerial decisions being made are not frustrating Mr Liristis' rights then some orders will have to be made.

15 EMMETT: That's right. In my submission that doesn't support ordering particular other administrative or managerial decisions to be made. It's one thing in Clark where what was being considered was something that was done from time to time. In Clark in fact the judicial review relief was refused but  
20 specific matters were sought, things like the number of tubs allowed in a cell and I think there it was only two or three tubs, whereas you've heard Mr Liristis has, I think it was 34 or 36 tubs, around that number. The second point, and this is a point that Basten J made very firmly in Clark, one of the reasons why the Court needs to be careful is concerns about perceived favouritism, about  
25 assisting inmates to different levels.

Now your Honour has already heard a number of respects in which Mr Liristis is receiving quite significant special treatment. I don't say that to complain about it. In those circumstances what the Court can do certainly is order my  
30 client to reconsider administrative and managerial decisions according to law. What the Court in my primary submission can't do is not can't then wouldn't is order that a particular decision be made, that is that the Dell laptop be provided in circumstances where the basis for not doing that is an expressed security concern that hasn't been cut across.

35 HER HONOUR: What it might do, however, is make an order requiring the commissioner to take steps which are necessary to ensure Mr Liristis can have access, buy a computer containing the necessary software to the material that the District Court has ordered he be given access to.

40 EMMETT: On the evidence before your Honour Mr Liristis has that, has experts looking at that material. He says he can do better than his experts at accessing that evidence. That evidence is surprising evidence and the Court does not have evidence from the experts about this but his experts have  
45 access to everything he has and have access to all of the relevant computers. He has indicated that with his help sitting in attendances they have between them managed to get into some four drives which suggest that more can be accessed.

50 Yes, that is a longer process but that's an inevitable consequence of being the

5 custody depriving Mr Liristis of certain freedoms, including before security concerns, the ability to have a Dell laptop in his cell with general access to the BIOS. Now that doesn't answer your Honour's point about the blue computer and I do want to come back to that. But in my submission the Court wouldn't order the provision of a computer, of a particular computer in particular circumstances. If that gets close to the point of what I described earlier as a sledgehammer, the extreme outcome, then that's not something that I'm here to meet at the moment.

10 But as my submissions acknowledge, that is I sort of don't want to overstate it. I don't want to bind the DPP but as Jago indicates there can come points where the practical solutions, and Jago is a good example of a comparable situation, that is the statement "I can't have a fair trial without legal representation". Dietrich says you should have an adjournment in order to  
15 have the opportunity for that representation and then Jago says if that can't be achieved then a permanent stay might, in the Court's discretion, be granted.

Now they specifically said we are not going to order the executive to provide legal representatives. The difficulty that a court in judicial review has and that  
20 my client has is that these are, and I want to acknowledge again I entirely understand Mr Liristis' frustration and Mr Liristis coming here. One could say all sorts of things in response to it in relation to procedural history but I'm not here to say whose fault it is that we are where we are. But the question is--

25 HER HONOUR: I come back to the example in Rich. It was resolved and orders weren't necessary to be made because the commissioner's equivalent said well the necessary steps can be taken in that case to have a computer brought to court every day. I think it was on the hard drive, whatever it was. It was 2008 and in 2018 it's 10 years ago and things are a lot more complicated  
30 now obviously. I raise that resolution for obvious reasons.

EMMETT: I understand that your Honour. One thing that does set this decision apart, and I know Mr Liristis doesn't agree with this, but in my submission and on my evidence the commissioner and the DPP have been  
35 doing everything they can. They have been providing - and I don't cavil with the proposition that they had to be ordered to in September, I don't know I haven't seen the transcript. Mr Liristis said that they had to be ordered to. That they resisted. I don't cavil with that. But certainly for as long as these proceedings have been on foot the evidence is that everything that can be  
40 done consistently with the security concerns has been done. We don't yet know because of Mr Liristis' ignorance about the blue computers, and again I'm not criticising for him for that, but because of that we don't yet know whether there is any problem with the blue computers in relation to accessing file types.

45 HER HONOUR: On the evidence at least the software that he's purchased or the licences that he's purchased and had installed on his laptop would have to be installed on a blue computer.

50 EMMETT: Or something to enable the reading of the file type. There may be

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different software that does the same thing. I don't know.

HER HONOUR: Either that or some other comparable software.

5 EMMETT: That's right. Your Honour does have evidence of a practice of taking that step so that is certainly worth exploring.

HER HONOUR: Of a practice which hasn't been implemented in his case despite it seems his pursuit of these things since last year.

10

EMMETT: In my submission that's not the evidence because it's important to keep in mind two separate issues. Number one, his particular file types that he says he can't read on his red computer and he wouldn't be able to read on a pilot laptop if he had one, that is the AVL, the PWL, the PG3. In relation to those file types the evidence is that Mr Sharp, because he was only asked in the box, was not able to say whether blue computer could read them or not but that the practice was if there were new file types to take steps to enable them to be read. So that was his evidence about the new file types. That's the first point. I do want to come back to that because your Honour has pointed out about making inquiries in relation to the blue computers is something I want to respond to further.

15

20

The separate one is Mr Liristis saying "I want access to my Dell computer, my Dell laptop or an equivalent Dell laptop with access to the BIOS so that I can try to unencrypt these additional hard drives that I say I can do and my experts can't do".

25

HER HONOUR: For reasons that he explained.

30

EMMETT: And on Mr Liristis' evidence it appears the only way he can do that is with access to something that your Honour has evidence, uncontested evidence, creates a real security risk. That's the difficulty with ordering the provision of such a computer.

35

HER HONOUR: You say that can't be order on the evidence and may then bring this into the Jago territory as I followed you and so next week Mr Liristis will be making an application in the District Court if he doesn't succeed here that the hearing should be adjourned or stayed until he is able to do what's necessary to gain access to that material which he says will exonerate him on the charges that he faces and potentially I suppose that includes him being granted bail.

40

EMMETT: And in my submission that's a debate that can sensibly be had between the prosecution and the defence precisely because they are seized of the issues, they are seized of the nature of the evidence, and they are seized of all the other material that your Honour doesn't have because this has come on urgently and it's come on urgently to ask for this relief which you have.

45

Your Honour will recall the last paragraph of my submission where I said an application of that kind is one for the trial judge. Now Clark does stress that

50

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doesn't exclude judicial review but an application such this is this one, that is I can't do anything or at least I can't have a fair trial without access to the BIOS of a Dell laptop in my cell.

5 HER HONOUR: On your approach the BIOS of any computer.

EMMETT: Or of any other one but I focus on that. In my submission this Court can't order that. The trial court if persuaded of its truth, and of course that may be something that may be disputed further, and there of course they  
10 may have the expert evidence that we don't have from DRC, if the Court accepts the truth of what's been said then the Court can consider what steps are available to ensure a fair trial.

HER HONOUR: Insofar as the question of accepting the truth for what has  
15 been said is concerned Mr Liristis has been cross-examined about why hasn't he called evidence from DRC and various others things, it's not been suggested to him that he's been untruthful in his evidence.

EMMETT: No. Again these are judicial review proceedings. I'm not going to  
20 suggest that but the trial judge can explore what is really necessary and can look into the nature of the evidence. So in a sense - it is a difficult position and as I say the Court doesn't have that power but I don't you criticise Mr Liristis who is a self-represented litigant for coming along and asking for it because on  
25 what your Honour has heard one understands it but as I say where the step that Corrective Services is not taking is a step that (a) has not been taken for anyone else, an administrative decision that's been challenged because it could have been made differently and wasn't or it could have been made differently - it was made differently for somebody else but wasn't, what is being  
30 asked in relation to the laptop is something that the commissioner's representatives or delegates would not do for security reasons.

HER HONOUR: I understand that. I think we are repeating.

EMMETT: We are. That's Mr Sharp's evidence. About the blue computer,  
35 your Honour raises a good point and I would like to get some instructions about whether steps can be taken there and again it will be a matter for the trial judge whether they are necessary, how it impacts the trial if at all, all of those things.

40 HER HONOUR: Let's come back and hear from Mr Liristis. I will take an adjournment to allow you to get some instructions about the blue computer.

Mr Liristis, you've heard that. This is your opportunity to advance your case. Against you it's said that the Court wouldn't make the orders which you're  
45 seeking because of the security problems that Mr Sharp has spoken about in relation to access to the BIOS. Now you didn't cross-examine him about that. That evidence is not challenged. One can understand why it would be that the commissioner would have concerns about such access given the potential for access being gained by persons in custody to the internet. Now what's your  
50 case?

5 PLAINTIFF: Your Honour, can I just address that because there's a bit of total  
misunderstanding on that. The BIOS cannot gain access to the internet if it is  
has a wi-fi connected. Mr Sharp's concern was listed in point 25 on page 6, 25  
(a) and (b) of the laptop was used to charge mobile phones. That is a very  
unplausible reason to say there are security issue. He says in (a) , "At least  
some of those laptops have functioning USB ports which enable charging of  
devices such as mobile phones".

10 Your Honour every computer in Corrective Services New South Wales has an  
enabled USB port, so to use that, that is unplausible, and I would put it your  
Honour as misleading and deceiving the Court to say that, that phones can be  
charged by USB, therefore laptops shouldn't be used. Every computer in  
15 New South Wales Corrective Services including the computer I have has six  
USB ports. The laptop only has one. So to use that is unplausible.

Second your Honour in (b) it says, "One of these laptops had wi-fi enable".  
Your Honour, that is an unplausible, and that's why I asked if Mr Sharp had  
any computer knowledge and he said no, he's not a computer expert. I would  
20 invite to remove any wi-fier component hardware, whatever to gain access to  
that. You can't gain access your Honour in Corrective Services  
New South Wales on a USB unless you have it connected through a network.  
By obtaining a laptop I can't connect to the internet because I don't have an RJ  
45 which is the blue capable which every computer has in Corrective Services  
25 to plug into an RJ 45 socket in the wall.

Our cells only have a PowerPoint so it's impossible your Honour. I'm a  
licensed investigator in security. I've been doing this for 32 years. There is no  
possibility of anyone, any inmate obtaining access to a USB - sorry to an  
30 internet access if they have a wi-fi enabled. Even the Court today your  
Honour, you can't gain access to the wi-fi enabled to the Court because it's  
passworded. So for you to gain access to a wi-fier, if you have a wi-fier  
hardware, you have to gain access to that password. And today your Honour  
as you rightfully said, today things have changed dramatically.

35 The Supreme Court has a 26-bit encryption which would take any good hacker  
at least five years to crack into their wi-fier. Corrective Services have what's  
called a jammer to jam mobile phones and mobile reception. So your Honour  
this is false evidence that Mr Sharp is giving.

40 Also the issue about BIOS, the only thing that I can do with the BIOS your  
Honour is gain access to a drive. That's why I asked Mr Sharp, which he had  
no idea, what the BIOS does and his evidence was not - because I'll be  
obtaining a transcript and I'll be lodging somewhere to say the evidence that  
45 Mr Sharp gave was misleading, was false and he knew that because what he's  
given with respect to Mr Emmett and your Honour has misled Mr Emmett, and  
Mr Emmett has misled the Court unintentionally may I say with respect to  
Mr Emmett, because he's been thinking that the BIOS is some sort of security.

50 If I access my BIOS on my laptop I can only access my information. The

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reason why Corrective Services, and rightfully so your Honour, will not give me access to the BIOS is because then I obtain metadata and algorithms of Corrective Services. And I would never ask for it because it would be ludicrous for anybody to give anybody access to someone else's BIOS system. If for  
5 instance Corrective Services give me the laptop I can only deal with what's on the laptop. And I said it in writing to Mr Severin. I put it into the Crown solicitors. I put in my affidavit. I'm very happy to give the laptop to Corrective  
10 Services and they can run all the securities they want and disable whatever they like. I've got nothing on my laptop that is inappropriate or inappropriate or whatever.

So this issue about security, the only security issue your Honour that is pointed out in there is charging mobile phones which inmates charge their mobile phones from the power point that you plug your kettle in. That's ludicrous. So  
15 I'm locked in my cell your Honour 24 hours seven days week. I don't have access to anybody. So how do I get a mobile phone? Why would I jeopardise obtaining this computer access for a mobile phone?

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I am not in that business nor am I in that. So the issue of security, please, your Honour, it must be discounted to zero because the only security is to enable to the Internet.

5 And yes, I did ask the people Mr Severin, the commissioner, to gain access to the legal portal of Austlii, and he said to me in that, in that, that is an unapproved website. I thought Austlii was a government website that I just needed to research case study, and he said no.

10 So that was not obtaining it from my laptop, that was obtaining it from a green computer which it states in there we do have access to the legal portal. But we don't get access to a legal portal such as Austlii, we get access to the legal portal of corrective services which has no case law. It has nothing.

15 HER HONOUR: Mr Liristis.

PLAINTIFF: Liristis.

20 HER HONOUR: Can you just - you are drifting away with worrying about Austlii. But can you please address some of the things I have raised with Mr Emmett, namely, giving you access to some of these programs that you require through the blue computer.

25 PLAINTIFF: Yes, your Honour. I can address that. Your Honour, I have been, from the time I found out about the blue computer, I made enquiries with senior officers at Corrective Services at Long Bay, and they said to me words to the effect, the blue computer doesn't suit your application because you can't plug in your drives that you have been given from the Court in those blue computers. And none of those blue computers can load software externally  
30 from Corrective Services.

And it is under the crimes - sorry, it is under the Corrective Services operation procedures manual 8.1, which states no software can be installed by an inmate or Corrective Services excluding the following. And it gives you a list of  
35 software.

Now, the blue computers cannot access any of the files that I have mentioned today. I know that for a fact Mr Emmett has said he has got to do his enquiries, he is more than welcome to do it, but they don't.  
40

Second of all, to load software and programs, Corrective Services must purchase what is called a DVR program, which is a digital video recorder program, so that the files that I have, which are the files which are the PWL and the AW - AU, those files have to be then loaded on that program, and you  
45 can only view it from that program.

Now, that program cost me back in 2000, on July 2013 I purchased it, for \$2,600. Now, it's only for one licence, and if you - if that computer is formatted, for instance, say I lose the laptop, I can't get another licence, a  
50 licence for it, because then it defers the purpose of having one licence per

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computer.

5 So Corrective Services are not, or the defendant's representations are not true and correct that, by just loading software on to a blue computer, it is going to be eliminate my problem.

10 We then come down to the 4,792 audio recordings that I have to go in and view and listen to and transcribe. Now, I have transcribed nine out of those, and they consist of something of 400 pages that I have done by listening through a two watt speaker on a computer that is 20 years old. The red computer I am using is 20 years old, your Honour.

15 So the blue computer doesn't have a speaker. So then they have to get speakers brought in and then used on there. So that won't happen in a week.

20 I have put this request in back when - in 2016 - sorry, in November 2015, when McGirr Lawyers were representing me on an amicus basis because they didn't have a legal aid grant, where it is in part of the affidavit of Mr Sharp, where there was letters being sent - sorry, I don't want to mislead the Court. I think it was in my affidavit where I have put in a letter to - from McGirr, who sent it to Miss Sue Wilson, who was the governor of the MRRC back in - here it is. It is page 54 of my affidavit on 8 January 2016.

25 HER HONOUR: Just when you say your affidavit, which affidavit are you referring to?

PLAINTIFF: I apologise. I apologise, your Honour. It is 26 December 2017.

30 HER HONOUR: Yes.

35 PLAINTIFF: On page 54, there is a letter, a fax from mister - from mister - a Robert Candelori of McGirr Lawyers consisting of something like five pages explaining the procedures of the USB, explaining why I need access to the computer.

40 Now, Corrective Services advised me back then that there will be no chance that I could put any program on there to be used to access my evidence. That wouldn't happen. And to say, your Honour, that the defendant was - this is only brought on so quick, this is the second application that I made before the Supreme Court.

45 The first application was made on 1/12 which is the same, identical. But because it was listed for February, I then asked Mr Norrie if he would be kind enough to resubmit it and send it to her Honour or his Honour's associate, and tell him how urgent it is.

50 So Corrective Services have had this application or the defendant since 1 - sorry, since 22 November 2000, when my first application was made. Then it was filed on 1/12.

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5 So they have had this, your Honour, for over two months. It's not like that was just, you know, dropped on them last week, or as a duty judge would normally hear applications, urgent applications that are dealt with in a day or two. They have had notice for over two months. They have taken no steps to make no appropriate issues.

10 Now, that is that, your Honour. Your Honour, to ask a District Court to adjourn it, when I have been in custody for nearly four years for a crime that I did not commit. My mother and father, who my father is 79 years old fighting cancer, and my mother who has dementia, will lose their unit because my father had to borrow money to pay for my storage of the equipment that I had at my workshop, and now he is currently paying \$1,600 a month which is affidavit which is in the District Court where Miss Anastasia Kanatoova, which I can't see if Mr Tiva is in court today, but she would have the evidence where I have put in evidence that my father is paying for storage fees for this.

15 And then the Court advised me, his Honour Judge Conlon said that they are not looking at any dates in 2018 if you can't get me an early date. And the only reason his Honour adjourned it - sorry, vacated it on 6 November, is because we were lucky that a trial fell through and there was 5 February available.

20 So to say to go to the thing, I will spend another 12 months in custody making it five years. Once I am acquitted, and I am confident that I will, that is five years that an innocent man has spent in custody because of the system would not allow me to bring this evidence to court. So that is that issue, your Honour.

25 The blue computer, as I said, you cannot, and Mr Emmett can make his enquiries, it would cost them approximately - it cost me \$6,600 for software which I have put on affidavit evidence in the District Court back in 2013. I don't know what it would cost Corrective Services to put that software on there.

30 And to say that mister - for Mr Sharp to make, your Honour, to give evidence to mislead and disrespecting her Honour and the honourable court to say, oh, if inmates make applications, we would look at considering put in programs. That is a lie, your Honour. Because not only did I make the application, it was denied even to load.

35 I have got - I am working on Word 2010. I asked if they could put on Word 2016, which gives me access to dot DSX files, and they laughed at me, your Honour.

40 So I am still working on a program that is from 2010 on a 20 year old computer. And to say that inmates have access to a green computer, that is another lie, your Honour. There is no inmate that has access to a green computer at Long Bay Correctional Centre or any correctional centre in New South Wales as we speak right now, because I asked if I could access the blue computer yesterday, and they said they are only for education and not for legal purposes.

50

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5 And they are in a separate building which is a separate gaol. I am at MSBC, your Honour. I am in Long Bay, but Long Bay has eight correctional centres in one. So to get to that, they won't bring that to the cell. I have to make an application to be taken to another building to access that. So Mr Emmett can verify that, that what I am saying is the truth.

10 Then we have the issue of Clark. That is completely different to my case, your Honour, because in Clark, on point 89, his Honour said, "Mr Clark in the course of his preparation in particular" -this is in point 89 at the bottom - said, "In particular made no attempt has been made to draw the Court's attention to specific difficulties arising in relation to criminal proceedings. For example, there was no evidence about nature of legal documents kept by Mr Clark, and no attempt was made to explain why it is not practical."

15 Now, I have hopefully explained as best as possible. I am not a lawyer, and I apologise to your Honour and to the honourable court and to the bench. I am not a lawyer. So I hope I have explained the difficulties that I have.

20 And if one reads my affidavit in detail there, and I accept what the gentleman says, Mr Emmett says, that some of it is submissions. I accept that, and I accept her Honour may read it as only submissions. But I hope that I have explained that that is completely different case of Clark, that is not - is not correct. It is not the same case as my case. It is completely different.

25 Also, on the last page on - sorry, on the - on the case law of Mr Clark, which I just can't find. Sorry. On the - on the last page of Mr Emmett's submissions, at point 19, there is - hasn't been no order made. And having - read the second last line: "Having quoted this with approval the passage from R v Rigg extracted above, appear to accept that his Honour had the power to grant the relief sought."

30

35 So I just wanted to draw your attention, and with respect, with respect to Mr Emmett, I don't want to disrespect him by any way, shape or form by what I am about to say, but Mr Emmett is incorrect by saying that the Court doesn't have the power. The Supreme Court is the highest court in New South Wales and the most respected court. They certainly have the power.

40 And in section 69 and sorry, 23 of the Supreme Court Act, it says, "The Court shall have jurisdiction which may be necessary for the administration of justice in New South Wales."

And also in support, in section 75, it says that declaratory relief:

45 "No proceedings shall be open to objection on the ground that merely a declaratory judgment or order is sought thereby and the Court may make binding declarations of right whether any consequential relief is or could be claimed or not."

50 What I am saying, your Honour, the - certainly an administration of justice is necessary here for me to obtain the Dell laptop. And again, with the greatest

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respect to Mr Emmett, it is incorrect saying there is no evidence.

5 There is in evidence that is now before the Court of an email from - which supports my affidavit from the State evidence electronic branch saying that I am not surprised they are having problems as Liristis enabled encryption on some drives, and others were not set up as dynamic, which also prevents you from being ability read. They will need to find a computer that can change the BIOS to enable them to boot the computer from an external USB drive. If they have trouble with either of these drives, they may need to obtain a Dell XPS  
10 laptop.

15 Now, I am not asking for access to the computers on Corrective Services' BIOS because that would be so wrong and so stupid to ask that, because then I could obtain information, metadata and algorithms of Corrective Services. So I wouldn't be asking that. I am asking to get access to my computer, my BIOS, so I can access that particular drive.

20 Now, your Honour, I will just to read so you can understand, your Honour, the difficulty that I had, and again with greatest respect to Mr Emmett, the DPP and the police have seriously have denied me natural justice, and there has been a gross miscarriage of justice, and I will read you one point where it's - where his Honour in the transcript of - where his Honour said, in--

25 HER HONOUR: I am sorry. Who are you referring to now, which judge?

PLAINTIFF: I will just - I will just find it, your Honour. His Honour Justice Whitford said, at page four line 34, of the District Court matter that was heard on 25 September 2017, his Honour said:

30 "The argument is put to me as to refusal to provide the material to Mr Liristis were just patently" - patently, I think it is right, P-A-T-E-N-T-L-Y - "nonsense. Sofar as I could apprehend them last Friday, I understand that reasons for the commissioner to retain custody of what was seized, I frankly see no basis in principle, policy practice, or  
35 anything else, not to give a copy of it to the person from whom it was seized when a copy can sensibly be made and given."

40 His Honour would not accept what another judicial officer said in the District Court, where his Honour further said, at page 34, line 36, his Honour continues on to say:

45 "At the moment, this argument about things being misused is entirely speculative," the Crown at that stage agreeing by saying - the Crown: "It is, your Honour, speculative." Then his Honour said, continued at page four, line 35: "Anybody except - and nobody, sorry, and nobody except Mr Liristis seems to know what is on these two encrypted files. It is his property; it's been seized from him. He says it is necessary to defend these proceedings. If that is the case, he should be entitled to a copy of it. If there is some speculative basis of thinking that there is  
50 some other offending reveal in these two files, well, so what, in a sense.

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5 You have got a copy of these files. If you can't - if you can get someone to crack it, good on you. And if it gives rise to further charges, fabulous. If not, too bad. But that - but that's not a reason, it seems to me, to deny a man access to what is his property that's been seized from him in the course of these proceedings in which he says, I need - he needs to defend these proceedings." The Crown then says: "I understand, your Honour. He is saying, and I will do everything I can to ensure that some resolution of this is reached."

10 Now, your Honour, just to clarify Mr Emmett's false statement, which again no disrespect to Mr Emmett, but he is working on instructions and his instructions are false, is Mr Norrie sitting on the bar table and he is more than happy to give this to your Honour, that till today I still don't have those 11,000 documents that the police say that they found on my computer which are very  
15 damaging to the prosecution's case.

As what the police have done and the DPP have is something that could be considered by a court as perverting the course of justice. In other words, Judge Conlon ordered a USB to be given with those documents. That USB  
20 has been given to the forensic experts with nothing on there.

So even till today, a week before my trial, I don't have those 11,000. The forensic expert doesn't have the 11,000, and neither do the solicitors or counsel have those 11,000 documents. So to suggest from the bar table that  
25 Corrective Services have done everything in their power with the DPP, that is the most misleading statement that anyone can make from the bar table again, with the greatest respect to Mr Emmett.

30 Now, your Honour, as your Honour has before her evidence from the State evidence electronic branch in that email, and I have read it. And that evidence has not contested, and it is not saying that it is false. Which says that I need that Dell laptop so I can access the BIOS so I can access the drives.

35 Also, the DPP is opposing any adjournment, and again, Mr Norrie can confirm that because they told him they are - they will be objecting to any adjournment of vacating the hearing date of next Monday.

Now, I am not - your Honour, just to give you an indication of what was found on the evidence that the police have had in their possession since 9 February  
40 2014, was a recorded conversation with one of the complainants who alleges that she did not consent in sexual intercourse a conversation has - is as follows:

45 "Antonio" - me. "Don't I deserve a hug. The complainant: Yes, you deserve a hug, laughing and saying ouch, I hit my fucking foot." Excuse the language, your Honour, to the ladies in the courtroom. Then I said: "Antonio, you what." The complainant says: "I just hit my foot on the F-ing desk. You hit your F-ing desk."

50 Now it continues on. But what it most certainly is, your Honour, is I have

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5 said - again apologies to the Court and to your Honour - she - I said, "Fuck, do you get wild, girl. Fucking dangerous girl, mate. You rape me." And she laughs and says, "Ha ha ha." She says, "Oh, my heart feels weird." I said, "The main thing is you feel good." And she says, "Mmm, that is what I am saying. I feel good."

Now, I said, "I told you, let's stop and have a rest." She said I said no.

10 Now, your Honour, that is part of a recording that I had given in the Local Court proceedings on an AVO which her Honour rightfully said, Mr Liristis, I am not going to - I can't dismiss this AVO when this person is seeking the protection on serious allegations.

15 When her Honour heard the recording and heard this and read the transcript when I was at my liberty, because I was not - I was arrested and then released, because I was at my liberty within these charges were still being investigated, her Honour dismissed the interim orders, saying to the prosecution words to the effect, you are not seriously going to run this application, are you. This person doesn't deserve the protection of the Court.

20 Now, this recording, your Honour, was denied to me. This recording was only found in December because the police would not give it to me. Now, this is one recording, and Mr Norrie can confirm, there are recordings where the person has said I have said--

25 HER HONOUR: Mr Liristis.

PLAINTIFF: Liristis.

30 HER HONOUR: You are drifting away. You are now quoting from things which aren't in evidence. I understand the point. Is there something that you wish to add?

35 PLAINTIFF: Just, your Honour, I would like to add that a lot of the information that Mr Emmett has said, and again with the greatest respect to Mr Emmett because he has been a gentleman and I don't want to disrespect him, he is working on instructions. The instructions as to the blue computer, instructions as to the BIOS, and the instructions to the security, that is all rubbish, your Honour. That can be eliminated by no access to the Internet.

40 I have - I am not seeking access to the Internet. I cannot get access to the Internet from my laptop from my cell because I don't have a plug in the wall to plug in. And anybody on the courtroom bench there, on the court bench, would see there is a blue cable behind the computer which is called an RJ 45,  
45 which you need access to that to plug into the Internet.

HER HONOUR: You have already made that submission.

50 PLAINTIFF: Yes, I am sorry, your Honour.

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HER HONOUR: Was there anything else?

PLAINTIFF: That's all. I apologise, your Honour.

5 HER HONOUR: No, no need to apologise.

PLAINTIFF: Thank you, thank you very much for allowing me, your Honour, to say that. I thank you.

10 HER HONOUR: Mr Emmett, I am going to take an adjournment while you seek those instructions. It seems to me that there are two things that you need to seek instructions about.

15 Firstly, whether steps can be taken so that Mr Liristis can have access to this material while he is in custody through use of the blue computer, which is one possibility. The second thing is what has fallen from him in relation to his own computer, and his desire to use it because the software is already there, and being willing in that regard to co-operate in having necessary steps taken to make sure he can't access the Internet.

20 Now, they seem to be two potentially practical ways in which the problem that has been brought to the Court can be dealt with.

25 EMMETT: I will certainly get those instructions. In relation to the former, I can't take it further right now.

30 In relation to the latter, Mr Sharp does go a little bit further in paragraphs 26 and 27, he does indicate that in paragraph 22 that the laptops were sanitised, as he puts it, 22(b) and 23. And he says there was - and in 26 and 27, there were still problems, especially because mobile phones and extremely small and extremely small modems.

35 HER HONOUR: One can understand those problems, but one can also understand Mr Liristis' submission, that he doesn't want to access the Internet or modems or mobile phones, and that he would co-operate in whatever steps were thought to be necessary to make sure that his laptop couldn't be used for such purposes. Now, I will take the adjournment so that you can obtain those instructions.

40 EMMETT: Thank you, your Honour.

PLAINTIFF: Your Honour, can I just say something. Just one second, your Honour.

45 HER HONOUR: Yes.

50 PLAINTIFF: Your Honour, I also would give an undertaking to the Court that I will not seek any access to a mobile phone or the Internet. And if I am caught with anything like that, I expect my privileges to be removed forthwith. I will not, and I swear to you on my children, your Honour, I would not do that. I

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would not jeopardise something like that.

HER HONOUR: All right. We will take the adjournment.

5 EMMETT: Thank you, your Honour.

PLAINTIFF: Thank you, your Honour.

SHORT ADJOURNMENT

10

HER HONOUR: Yes, Mr Emmett.

15 EMMETT: Thank you, your Honour. Your Honour, the enquiries I have made to date, well, I have sought instructions from those behind me, and we are not able to take it further. We have endeavoured to contact Mr Sharp to explore it further and have not been able to speak to him during the adjournment.

20 HER HONOUR: Mr Sharp doesn't seem to be a person who could give you instructions given his evidence.

20

EMMETT: Well, there are - what I wanted to know is what enquiries can be made. Your Honour will recall Mr Sharp said he would need to look at the file types to work out whether a blue computer can play them, and he also indicated that software could be updated. So what I wanted to explore was the scope, to see what can already be read on a blue computer, and what can be done to enable the other files.

25

30 Now, as your Honour has identified, there are two issues. Number one is the particular file types, where the Court doesn't know yet because whether they can be read on a blue computer or not. And then number two is the encrypted hard drives. The encrypted hard drives are more problematic. And again, there is no alternative solution that I can presently propose.

30

HER HONOUR: What are you asking me to do?

35

EMMETT: To stand the matter over to 2pm tomorrow, in the hope that I can get some better instructions between now and then.

HER HONOUR: 10am, I think.

40

EMMETT: Would your Honour pardon me. I understand that.

HER HONOUR: For obvious reasons.

45 EMMETT: Yes. No, I do understand that. I am before Justice Bellew then, but it is just there aren't - it may be that I can take steps.

50 I think in the circumstances, well, I won't say anything against it. Can I have liberty to approach your Honour's associate if there is difficulty with 10am, to ask for a time around then. But I anticipate that 10am will be okay. As I say, I

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have to be in this Court before another judge at the moment at 9.30.

5 HER HONOUR: Right. Yes, you have liberty to approach. I anticipate giving judgment tomorrow, if there is nothing that comes forward which I can reach resolve that has brought the parties before the Court.

So, Mr Liristis, you have heard that. What I propose to do is to stand the matter over to 10am tomorrow.

10 PLAINTIFF: Your Honour, would you be kind enough to make an order that I am brought to court - brought to the AVL at 9.30, because getting here at 6.30 is just a bit difficult for me, your Honour.

HER HONOUR: 6.30.

15

PLAINTIFF: 6.30 in the morning. Yeah. They bring me at 6.30, and I sit here till 10 am. So if you can make an order of 9.30, then they bring me here at 9.30. I am only 50 metres away.

20 EMMETT: I have no instructions on that. I don't know. I can't shed light on it.

HER HONOUR: Mr Liristis, what I am going to do is to make an order that you be in the AVL room at 10am.

25 PLAINTIFF: I appreciate that, your Honour.

HER HONOUR: To participate in the further hearing of the matter at that time.

PLAINTIFF: Thank you, your Honour.

30

HER HONOUR: And hopefully, something will come forward tomorrow which will enable the problems which have brought you to court to be resolved; and if not, some time later in the day I propose to give judgment on whatever it is that is outstanding.

35

EMMETT: Thank you, your Honour. In that case, can I suggest there are three matters I should - three further matters by way of closing submissions that I should make, if I may. And I apologise to take up time. Each of them is brief.

40

The first relates to Legal Aid and finance. Your Honour's heard that, in relation to the computer, the evidence is that the steps could be taken with Mr Liristis' solicitor having custody of the computer and bringing it out; that Mr Liristis has said, and it is only his word without detail, that he can't afford it, and that he  
45 hasn't applied to Legal Aid for that. And all he said is, he hasn't received it because other things have been knocked back.

Now, that again, your Honour, your Honour has no detail about whether that was - whether that is because of Mr Liristis' means, meaning that he wasn't,  
50 that Legal Aid took a view that he shouldn't have it. None of that has been

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canvassed. What the Court does have is his evidence that mister - that that course is available, albeit at a cost to Mr Liristis.

5 Second, your Honour has evidence, and your Honour will have the transcript, but that he, Mr Liristis, has not provided his business algorithms to the DRC to facilitate the DRC's enables. Now, that transcript will need to be reviewed because I don't - that, I asked that a couple of times, and my recollection is that Mr Liristis said that he hadn't done that, but he had done various other things.

10

And the last thing in relation to Mr Sharp, Mr Liristis challenges Mr Sharp's affidavit evidence. Of course to the extent that it wasn't challenged in cross-examination, and it came forward in closing submissions, your Honour wouldn't reject Mr Sharp's evidence. Mr Liristis is quite right. I am, of course, 15 relying on what Mr Sharp said when I make these submissions. And but that I make them, and say that Mr Sharp should be accepted in the circumstances.

HER HONOUR: All right. Thank you.

20 EMMETT: Thank you, your Honour.

HER HONOUR: 10am.

VIDEO LINK CONCLUDED AT 4.12PM

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ADJOURNED TO WEDNESDAY 31 JANUARY 2018

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