

FHI:CAT

IN THE SUPREME COURT
OF NEW SOUTH WALES
COMMON LAW DIVISION

5 SCHMIDT J

SECOND DAY: WEDNESDAY 31 JANUARY 2018

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

10

Mr A Miller appeared amicus curiae for the Plaintiff

15 VIDEO LINK TO LONG BAY MSPC COMMENCED AT 10.08AM

HER HONOUR: Just before we commence, and I note the continuing appearances, Mr Liristis, you can hear and see us, can you?

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

HER HONOUR: This morning I have received or my associate has received a fax from Mr Liristis which doesn't seem to have been sent to the Crown, Mr Emmett, but I asked my associate to forward it. Have you received that?

25

EMMETT: I have received an email with four attachments; is that the one?

HER HONOUR: Yes. The attachments are a letter of 29 September, a copy of some submissions of eight pages, then further submissions of five pages and a copy of a brief index which I think is already in evidence. Now, is there
30 any objection to that material being received?EMMETT: There is not. I have only just reviewed it, but I think I have already dealt with it. We have joined issue broadly. I should address a small number
35 of matters that are raised in it with your Honour.

HER HONOUR: I think this letter of 29 September is not yet in evidence.

EMMETT: I don't think so. I have not seen it before. The material in it is
40 material that appears in other letters that I have seen.

HER HONOUR: Mr Liristis, you want to rely on that letter?

45 PLAINTIFF: Yes, please, your Honour.

HER HONOUR: Mr Emmett has no objection, so I will mark that as exhibit 11.

EXHIBIT #11 LETTER OF 29 SEPTEMBER TENDERED, ADMITTED
50 WITHOUT OBJECTION

FHI:CAT

PLAINTIFF: I appreciate that, ma'am, thank you.

HER HONOUR: The two submissions documents I will mark as MFI 2 and 3.

5 MFI #2 SUBMISSIONS DOCUMENT

MFI #3 SUBMISSIONS DOCUMENT

10 And I don't think it is necessary to mark the brief index because that is already in evidence; I think we went to it yesterday, unless that adds something that is not already there, Mr Liristis?

15 PLAINTIFF: Your Honour, my understanding, and I could be wrong, is the affidavit was withdrawn.

HER HONOUR: Was it an annexure to--

20 PLAINTIFF: To Antonio Fiorenza's affidavit and your Honour pointed me yesterday where you said, your Honour, that it would be helpful because it gives you an idea of the voluminous documents.

EMMETT: That is a very good point and I agree it ought to be tendered separately.

25 HER HONOUR: Thank you. I will mark that brief index then as exhibit 12. Thank you.

PLAINTIFF: Thank you, ma'am, and thank you, sir.

30 EXHIBIT #12 BRIEF INDEX TENDERED, ADMITTED WITHOUT OBJECTION

HER HONOUR: Mr Emmett, the matter was adjourned on your application. Do you have any further instructions?

35 EMMETT: I do. My instructions are these, and I accept that this is me stating instructions rather than sworn evidence, but my instructions are these. Of the four file types that Mr Liristis identified, at least one of them can already be read on a blue computer and two others can be put on a blue computer with a free download; one of them can be put on with a download, the cost of which
40 my client is willing to cover.

45 It will be necessary to do that, as it were, a fresh blue computer, which means that it would take until Tuesday of next week to commission the computer, sanitise it, do all the appropriate things, but what I am able to say and I will read an undertaking onto the transcript in a moment but then I will explain it further afterwards, the Commissioner undertakes to use best endeavours to have a blue computer, as that expression is described in the evidence, in a part of the gaol accessible to Mr Liristis.

50 Let me start again, but hopefully I will read in the same terms that I started,

FHI:CAT

that is, that, by close of business on Tuesday of next week, the Commissioner undertakes to make a blue computer accessible in that part of the prison where Mr Liristis is being kept. And undertakes to use best endeavours to ensure that, by close of business on Tuesday, there is a blue computer available in a part of the prison to which Mr Liristis has access, which is able to read the following file types: .alb, .pwl, .au and .3pg.

By way of further explanation, I should indicate, as I've said, the reason it is necessary to have until then is because the software needs to be installed and the blue computer needs to be sanitised.

One thing that Mr Sharp is happy to do is to have Corrective Services staff present to ensure that those files can be read and to have representatives from Mr Liristis, in particular Mr Alex Miller of Ross Hill & Associates, who Mr Liristis may wish to attend.

That, in my submission, would address the file type concern. I accept that that doesn't deal with the other matter your Honour has before you, that is, the Dell laptop.

HER HONOUR: Well, it addresses the file type concern, as you put it, by which you mean would give Mr Liristis access to documents contained in files of those types on Tuesday of next week after the commencement of the trial, in circumstances where, if he were given access to his own laptop, he would have access to that material today so that he could prepare for the trial. And it doesn't address the problem with accessing the hard drives which require software which is installed on the laptop, that necessity having arisen, as I understand the evidence, because of steps taken by the police following the seizure of the drives and the copies of the drives which have been provided to Mr Liristis not being informed by which he can access them without the software.

EMMETT: Two things about that. The first is the proposition that it is the software; it is not my recollection of the evidence. It is that he needs a Dell computer where he can access the BIOS, not the software on that computer.

HER HONOUR: Well, I understood the evidence to be that it is not just the laptop, but the software which he has purchased which is installed on the laptop which permits that to occur.

EMMETT: I understood that the software that has been purchased was referable to the file types--

HER HONOUR: We can clarify that.

EMMETT: --not the hard drive problem and in relation to the proposition that it is because of something the police did, that in my submission is speculative. The Court couldn't draw that conclusion on the evidence.

HER HONOUR: Well, the evidence is that that is Mr Liristis's understanding.

FHI:CAT

EMMETT: That's right.

5 HER HONOUR: You didn't challenge him in cross-examination; you have led
no evidence to suggest that the understanding is incorrect, but what is
common ground is that in custody at present he doesn't have access to any
computer equipment which would allow him to access that material, those
drives, unless he gains further access somehow to the laptop. That's correct,
isn't it?

10 EMMETT: It is not correct that he can't access it without further access to the
laptop and I will come to that in a moment, but your Honour would bear in mind
in relation to the evidence about the police and Mr Liristis's understanding that
I got that evidence ten minutes before the trial and I did say I had concerns
15 about being able to meet it.

HER HONOUR: I understand all the difficulties, Mr Emmett. I am not being
critical. I am just outlining the position, so far as the Court is concerned, on the
evidence.

20 EMMETT: In those circumstances, the Court could not safely conclude, that is,
make a finding on the balance of probabilities, that it is because of something
the police did. That is the first point, that is, it is not a matter of what the police
did and it would be unfair to my client, bearing in mind my client is not even the
25 police, to draw an inference adverse to my client's position based on that.

HER HONOUR: Well, you appear for the State and for the Commissioner.

30 EMMETT: Yes.

HER HONOUR: Let us move along. I understand your position.

EMMETT: The evidence is that the arrangements that are currently in place
and are available would enable Mr Liristis to do what he did before, that is,
35 meet with his solicitor and access the laptop together and that no application
for Legal Aid has been made for the purpose of doing that, so it is not the
evidence that the only way to do it is to give him personal access in the cell to
the Dell computer, but your Honour is right - well, it is common ground that
Mr Liristis can't do it himself in the cell with the material he currently has
40 available.

HER HONOUR: So, just let me understand; he could have access in custody
to the laptop if his solicitor was present, you say?

45 EMMETT: Well, that is what he said in cross-examination.

HER HONOUR: I am asking you, from the point of view of your client, so the
concern about access to the laptop is supervision, so that the security risks
that Mr Sharp spoke of couldn't materialise; is that what I'm understanding?
50

FHI:CAT

EMMETT: Yes, your Honour. I thought Mr Liristis confirmed his understanding that that was available to him.

5 HER HONOUR: I am not asking you about Mr Liristis; I am asking you about your client's concern. Your client's concern about the security risks which Mr Sharp identified could be addressed, you say, if that access was obtained in the presence of a solicitor?

10 EMMETT: Well, in the manner in which it was conducted to date, I am told it was the solicitor who operated the machine on Mr Liristis's direction, but--

15 HER HONOUR: Well, you didn't ask anything about that, I don't know. But getting back to my question, is the position - and you may not be able to answer this, and I have a follow-up question - is the position that Mr Liristis can have access to his laptop while in custody to access these drives if that occurs in the presence of his solicitor?

EMMETT: I will need to make a phone call to check that.

20 HER HONOUR: And the follow-up question is why couldn't he have that access to the laptop under the supervision of someone from Corrective Services who one might have thought would be a preferable person from your client's perspective?

25 EMMETT: That's certainly a question I can't answer. As I stand here, if the one is acceptable, the other may be as well. I am now just thinking aloud. One reason might be that Mr Liristis or his solicitor want to preserve privilege in anything that's discovered and so they don't want somebody other than somebody with the protection of client legal privilege supervising the process,
30 but that is a matter for Mr Liristis, not for me.

35 HER HONOUR: Well, it depends on what the process is, doesn't it, because you might have someone present in a room to make sure you don't have a mobile phone or a modem that you are plugging in and accessing the internet. That doesn't mean that that person needs to be reading over your shoulder whatever documents you might be able to access.

40 EMMETT: Your Honour is right about that, so I need to make an inquiry about that. The other thing, of course, is the other questions of resourcing that I just can't speak to as I stand here, but I can certainly make a phone call to find out.

HER HONOUR: Mr Liristis, you have heard those submissions and those questions. Was that the end, Mr Emmett, of your instructions?

45 EMMETT: That is the end of my instructions. I have a small number of things - I won't take up very much time in relation to it, but two matters that Mr Liristis refers to in his later submissions are what he describes as the "logistical nightmare of his tubs" and the desire for a printer. I repeat my submissions in relation to that. That doesn't rise to the level, in my
50 submission, or come close to the level of being inhibited in a way which

FHI:CAT

prevents a fair trial.

5 HER HONOUR: Let us think about it for a moment. If you have got 36 tubs of documents which have got to be dragged back and forth to court every day, that is a significant undertaking even if you're not in custody and more onerous, one would have to think, if you are in custody. It's clearly more efficient to be transporting documents electronically.

10 There are available laptops in custody which have been modified so that they can be used as e-readers. As I've understood Mr Sharp's evidence, no laptop has been made available to Mr Liristis and the modified e-readers wouldn't have sufficient capacity to have loaded onto them all of the documents which Mr Liristis might wish to transport electronically. That seems to be the evidence, doesn't it?

15 EMMETT: There are several other important pieces of evidence including, number one, the fact that Mr Liristis hasn't applied for one of those laptops. It appears that the laptop is not one that he wants.

20 He hasn't explained - the proposition that I need all 36 to come to and from court every day in case I need to go and get a document, we all know in long trials that that can be managed and that logistical difficulties are things that trial judges are more than familiar with managing. The fact that it might be perceived as more efficient, (a), is something for the trial judge to assess and; 25 (b), doesn't rise to the level of a trial being unfair.

HER HONOUR: Was there anything else?

30 EMMETT: In relation to printing, again, Mr Liristis says he wants a printer in his room because he thinks it would be more efficient. The evidence is that printing is being arranged for him at the prison.

35 HER HONOUR: I don't understand the need for the printer to be in order to print; I understand the intention was in order to scan documents so that they could be put into the laptop and taken to court electronically. That is what I understood the evidence to be.

40 EMMETT: In that case, it falls to be dealt with, in my submission, in the same way as the tubs and in that case the application should be for a scanner, not a printer, but your Honour has my submission.

HER HONOUR: Thank you.

45 Yes, Mr Liristis do you want to respond?

50 PLAINTIFF: Yes, your Honour. Your Honour, first of all, the files, the .alp, .pwl, .au, .3pg, they are examples of files. I put in 16 files throughout my affidavits, especially the two files that Judge Conlon had given strict directions for us to get access to, which are .flk folders which are in my submissions, are both in my affidavits and in my later submissions at point 26 where it says the

FHI:CAT

two folders that his Honour Conlon J discussing that we need to obtain access to, that Mr Emmett was discussing are - sorry, which Mr Emmett was discussing yesterday, are the .flk file formats that are mentioned in point 11 of the letter to Antonio Fiorenza of 31 December 2018 which has been tendered.

5

HER HONOUR: Just one moment. You have referred to paragraph 26 of your affidavit. Which affidavit?

10 PLAINTIFF: Your Honour, it was in my submissions of the 31st of January 2018 at point 26, which is on page 3.

HER HONOUR: I'm sorry, I'm not sure which--

15 PLAINTIFF: It says "submissions for 31 January"--

HER HONOUR: Yes, I have got that one. Just one moment. That is MFI 3.

PLAINTIFF: Yes, your Honour. 26, your Honour.

20 HER HONOUR: This letter of 31 December, is that still in evidence?

PLAINTIFF: Yes, your Honour, it's been tendered with no objection.

25 HER HONOUR: This is one of the ones you tendered?

PLAINTIFF: Yes, your Honour, not today; I think it was tendered yesterday.

30 HER HONOUR: Just one moment. That is exhibit 9, I think. Point 11 of that letter refers to a number of flk, flka and flkb folders. Yes, thank you.

35 PLAINTIFF: Now those particular files, your Honour, what they are is they're an encrypted software. You have to purchase them and then obtain a licence, which takes about a week to ten days, and the program costs \$875. Under no circumstances Corrective Services said that they would pay for that.

40 Now, they are the two folders that we still need access to but, having said that, there are 16 folders that we now have obtained access to that I've gained access to and we use that program when I use the laptop when Mr Miller comes in to custody and I download the documents on a USB and then take them back to my cell and work on.

45 So, the Corrective Services or the defendants have failed to go through the affidavits and through the letters to see all the file formats that I have said right through my whole proceedings. Yesterday I only gave a few examples to Mr Sharp. So there's a number of software that are needed, especially when Mr Emmett and with the greatest of respect to Mr Emmett, he is working on instructions; I am not saying he is purposely misleading the Court - far from that--

50 HER HONOUR: Mr Liristis, you keep repeating that; there is no need to keep

5 saying that. What you are really drifting into is the question I raised with Mr Emmett who says you had access in the past to the laptop and that is still available in the presence of your solicitor, although he needs to get some instructions about that and I raised, well, perhaps if there is a problem with that because of funding, why can't you have that access under the supervision of someone from Corrective Services who can be present to make sure you're not accessing the internet. Now, do you want to say anything about that?

10 PLAINTIFF: Yes, your Honour. That is a fair comment. Your Honour, when I'm in trial, I leave 4am from Long Bay, then I go to Silverwater and then 8.30 we leave from Silverwater, then we go to the city and then I come back at Long Bay at approximately 11 o'clock at night. There is no officer at night or in the morning that's going to be able - and, you know, logistically it's impossible for me to gain access to the laptop at those times. That is not going to happen.

15 HER HONOUR: Well, there's two steps here. First, on your case, you need access to this material this week so that you can prepare for your hearing?

20 PLAINTIFF: Correct, your Honour.

25 HER HONOUR: Let's stick with that for the moment. As I followed Mr Emmett, he says, well, you can have that access, perhaps subject to him obtaining instructions, in the presence of a solicitor and I raised in the presence of a Corrective Services officer. What do you say about the position in relation to this preparation stage?

30 PLAINTIFF: Well, your Honour, you can't do that. The logistics here at Long Bay can't accommodate that because we are only - see, I am locked in my cell 24 hours seven days a week. The other inmates are out at 9 o'clock and they are locked in at 2, so the only time that I could possibly even get access to is between 9 and 2. Then I have to then go out of my cell, go to another area, because there is no area in 10 wing where you can sit down and actually work, so you got to go to another building, similar building where I meet Mr Miller and Mr Norrie and then I have to carry - and Mr Miller will confirm that - I carry two or three tubs of documents when I have my conferences; that is the difficulty.

35 In obtaining, like your Honour has kindly suggested, to have an officer present, this is going to be the same step and, your Honour, I have to carry legal documents, I have to then take all the hard drives, nine hard drives with me, with the cables, and it is just humanly impossible to do because, as I said, I've got to try and gain access to the drives through the BIOS, through the BitLocker system, and I can't do that in a manner of hours; that's why I work till 4, 5 o'clock every morning. I work 20 hours a day on the computer in my cell because that's the way I do it.

45 The other very important part which everybody has failed to acknowledge and no criticism on anyone is the system - all the drives are bitlocked. It is mentioned in my affidavits right through. The police have mentioned it and Data Recovery Centre has mentioned it. BitLocker is not an encryption program; it is an operating system.

5 So, you have to have Windows 7, Windows 7 Ultimate. Corrective Services now only works on Windows 10. No-one works on a Windows 7 format because it is 2015 and the new format now is Windows 10. So, to gain access to those drives, because those drives are from 2013, I need the operating system which the green computer does not have, the blue computer does not have, and you need to get the old operating system with the new software. That's the difficulty. And that hasn't been addressed and it's not going to be addressed.

10 I can't gain any access to the drives with that and the reason why it wasn't brought up yesterday with Mr Sharp, he - as you saw, your Honour, his answers were very evasive, his answer - his answers were, "I don't know, I can't confirm or deny"--

15 HER HONOUR: Well, Mr Liristis, I have to interrupt you. I don't regard his answers to have been evasive. They were honest. He was honest when he said he didn't know because he didn't have the technical capacity to answer your questions.

20 PLAINTIFF: Your Honour, with respect--

25 HER HONOUR: That has impact, obviously, on the evidence I have received. If evidence had been called from someone else, those matters could perhaps have been explored, but they weren't, understandably, from your point of view, given his evidence as to the limit of his technical knowledge.

30 PLAINTIFF: Your Honour, with respect, this is what I'm saying and this is my submissions. This morning, when I got up, a lot of people knew about the proceedings in court, which upset me a little because I don't want people, Corrective Services officers, to know, but the point is this is why I sent the letter this morning. Mr Cahill, who is the manager of security, he is the appropriate person that security issues of concern should be raised. Mr Cahill has put no evidence on for the defendant, he has got no objections to me obtaining a laptop and he has no security issues whatsoever.

40 This security issue was just a - I don't know what the correct word would be - but a fusion of fire - smoke, sorry, of smoke. There is no wifi in Long Bay Correctional Centre, so you can't gain access, as I said yesterday, without an RJ45 cable and I'm in a gaol where the building is over a hundred years old. The walls are like 12 inches thick of sandstone. Even if wifi was available right next to the cell, you still couldn't penetrate it because wifi is only accessible to 20 metres. And we don't have wifi at Long Bay Correctional Centre. The only two gaols that do have wifi is the MRRC at Silverwater and South Coast
45 Correctional Centre, so this issue about security is baloney, your Honour.

50 There is no evidence before the Court to say there is a security issue for the thing, except the evidence of Mr Sharp which I respect your Honour saying that today, now, about his evidence, but my submission would be, your Honour, it was dishonest evidence because when I questioned him about he was aware

FHI:CAT

back in September about Mr Cahill, Mr Cahill has admitted to me that and short of issuing a subpoena for him to attend to give evidence, he would confirm that he's forwarded the letter that I tendered today to Mr Sharp. Mr Cahill left it to Mr Sharp's attention and in actual fact Mr Cahill said to me
5 three weeks ago that he was disgusted in not getting a reply back to that letter and we have to go to Supreme Court proceedings for this simple issue. So--

HER HONOUR: Mr Liristis, I will stop you there. You are repeating things that you've already said. I understand your point about the failure to call evidence
10 from Mr Cahill or anyone else concerned with security and the limitations that you perceive in Mr Sharp's evidence; I understand the point.

PLAINTIFF: Okay, thank you, your Honour. I will just answer the gentleman - I will answer Mr Emmett's concerns. Your Honour, it doesn't - a
15 blue computer doesn't assist me for my trial because I can't take a blue computer to court and tender documents digitally.

What I have sent a fax to the Court, I have asked for us to have - there is one court in the Downing Centre, District Court, which has computer screens for
20 the jurors and then what I do is Mr Miller, who is sitting in the courtroom today, had purchased a USB connection which plugs into the VGA cable to the court monitor. So, from my laptop, I then put the exhibit on, so when the questions to the witnesses are asked, then the jurors and his or her Honour, and the courtroom can see, on a digital form, how the questions - so there is no
25 confusion. Now we've taken steps to do that. I can't do that because I'm the one that's got to access that because I'm the one that's prepared all the documents in a digital form. So I can't do that.

The second thing is Mr Emmett keeps saying that things could be put in place
30 by access to the laptop during the week. I can't do that during the week. I'm in a trial for ten weeks. I won't be able to see or brief anybody.

I asked Mr Norrie yesterday if there's access to sitting down and having a conference at court at the district centre, he says no, the only way is the court
35 cells, which has the glass in the middle, and the cell is less than by 2 by 2 - sorry, in a closed area. So, again, that can't happen.

The nine terabytes of the hard drive cannot, and Mr Emmett has brought no evidence today to court to say that those drives can be accessed by the blue
40 computer. I know that come next Tuesday, things aren't going to happen - well, they can't happen and, as Mr Emmett said, that, you know, to have an officer there or Mr Miller there so we can go through the files, that can't happen because we have to then adjourn the proceedings in a criminal trial so I can get someone to come because I'm in court during the day. So, it
45 is not going to happen at 4 in the morning and it is certainly not going to happen at 11 o'clock at night. So that cannot happen.

The other thing about the logistical nightmare with the tubs, that is the most difficult part because Corrective Services, your Honour - and you can check
50 with Justice Health - I have destroyed my back, because they get me to carry

the tubs. Even though Justice Health has advised me, "It is not your job; it's transport's job", they've got to have special trolleys where they lift up and they load them. That doesn't happen. I load them. I went to the Downing Centre last time, I took 16 tubs and I had to load them and unload them and I'm on the
5 second floor, so I have to carry them up and down the stairs. It's just a logistical nightmare and it's not going to happen, your Honour. They say that it's going to be all right, but it's not going to happen because they were even complaining about the 16 tubs that I took last time.

10 The other issue, your Honour, is your Honour was quite correct, and I'm very thankful that your Honour picked up on this, Mr Emmett, with respect, was wrong where it's the Dell laptop that has the software and programs. It is not a matter of just loading that because, in the blue computer, they have to
15 purchase a DVR, digital video recorder program for particular CCTV footage to be played. You can't just download a free program like Mr Emmett said and have a look at the .alp or .pwc files. You have to purchase the program to actually pick up the cameras because if there's 16 cameras, you need to have a screen to do that, so that's incorrect.

20 There is evidence, your Honour, about the police where Mr Emmett says that there is no evidence. There is evidence, it's been tendered, it wasn't objected to, from the Data Recovery Centre, that the drives - that the USB that the judge has ordered has been sent to data recovery and they're empty. So the 11,000
25 documents I still don't have. I may get them tomorrow; I may get them on Friday, but I still need time to go through them and that's 11,000 documents.

And the other thing is, your Honour, which Mr Emmett hasn't addressed, which was brought up yesterday and it's in my affidavit, is the 4,792 audio and video recordings. They can't be accessed. I put that in the back page of my letter of
30 the 31st of October - 31st of December to Mr Fiorenza which shows a screen print of the same software that is on the computers at Corrective Services which is on the red, green and blue computer, which is the standard program that comes with Microsoft.

35 Mr Emmett was asking me yesterday about the VLC. The VLC is not a Microsoft program. So the program that is on the back of the last page of Mr Fiorenza's letter, which shows a screen shot of the 4,792 recordings, the error message that comes up and the metadata as to why it can't be read is there; no-one has questioned that, no-one is saying that that's not true and
40 correct. That is why his Honour was concerned with - in - Judge Conlon was concerned and asked Corrective Services - sorry, asked the DPP to work with Corrective Services to provide the software. That was in September, 22 September before Justice Conlon.

45 That still hasn't happened and Antonio Fiorenza advised his Honour Justice Conlon that he has spoken to Corrective Services and they are putting something in in motion. That was in September. We now have the end of January, the start of my trial and Mr Emmett says that they need till Tuesday to put things in place and, come Tuesday, it's not going to happen. Where, your
50 Honour, if I get the laptop, as you quite correctly say, I can work on my trial for

the next five days and get prepared as best as possible.

5 Yeah, I can't get any access to any of the computers. Now, Mr Emmett has
now said that they will give me access to a blue computer somewhere
in - where I am. That can't happen and if Mr Emmett's been advised that, he's
been misled. What - there is no area in 10 wing, because it is an old, 100-year
10 building and it's all cells, there is no room in there for a computer. What they're
saying, I assume, is they're going to put a computer in another building where I
have to walk a hundred metres and be taken by escort, because I'm on LA, on
limited association because I've been bashed in custody, so I'm in limited
association, so I have to be escorted by two officers to another building, as I do
when Mr Miller and Mr Norrie comes in, and then they give me access there.

15 How do I - when I come back from court at 11 o'clock at night, how do I do my
work if it's in another building and I have to be escorted? So the computer
that's in my cell now, according to Mr Emmett's evidence today from the Bar
table, is going to be removed and then I'm going to have no computer in my
cell and then I'm going to have a blue computer in some other building which I
may or may not be able to get access to the things.

20 As to the trial being unfair, it is the most unfair case that I am - and I have put
many cases of case law where judges have said that an accused person must
be - words to the effect - must be allowed to see his evidence that he needs to
put. I can't humanly possibly cross-examine 50 witnesses of police and
25 witnesses and prepare, after court, documents for the next day and then have
them done. That's the issue for the laptop.

30 As for the printer, there is no security issues whatsoever and, again, I would
submit, with respect, your Honour, that Mr Sharp's evidence was misleading,
because I'm not after a network printer. I'm after a standalone printer, so, yes,
your Honour was quite correct, to scan the documents in, but also to print the
documents. Because today, from 7am till 8.05 or when the email was
sent - 8.02, I'm sorry, your Honour, I went through hell to try and get that email
35 to your Honour because the normal - the regular officer, Mr Cooper, was not
on, but because Mr Cooper was called in on an urgency and he had to go to
another building, he was actually walking past, and I said, "Mr Cooper, please,
can you help me? I need to get this to the judge's associate because I am
before her Honour at the Supreme Court" and Mr Cooper was kind enough to
do it quickly and that happened.

40 Mr Cooper is not on today - for the rest of the week, Mr Cooper, Mr Cahill,
Mr Hopkins and Mr Aboud are not on. I will not be able to get nothing printed
nothing emailed, nothing from anyone, because no-one does anything unless
it's these three officers and they are not on normally during the day shift.

45 So the difficulty of that is an impossible task especially when I'm in court and I
come back at 11.

50 The second issue is, your Honour, yes, the scanning was the most important
thing and the reason why I offered to buy the printer because you can buy now

printer scanners combined and it's \$89 combined, so I scan the documents in and I only take what is needed; that is why I said I can minimise the tubs down to maybe six, four to six tubs, rather than taking all my tubs and I've got PDF documents that are in evidence that I can't print without a printer. I just can't
5 do that. So there's no security issues whatsoever about the printer and to say that they haven't done that, my evidence is in there, your Honour. Inmates have printers, they have Sony PlayStations, they have barbecues in their cells. Your Honour, that has never been contested.

10 Mr Emmett never put to me that I wasn't telling the truth. Mr Emmett never said in my affidavit, which says that there's Sony PlayStations and things like that that are given to inmates for rewards, nothing like that, and there are inmates that have laptops and there are inmates that have printers and especially, the printers, your Honour, are not a security issue because they are
15 not networked; they are only plugged in to the device it's printing from, which is the laptop, so you plug it into the laptop and you print. It is not on wireless, you know. They are my submissions, your Honour.

Sorry, just on closing, your Honour, the issue of my evidence, Mr Emmett
20 never put to me that I wasn't telling the truth. Mr Emmett never said that, you know, my evidence should not be accepted because - he said that, I'm sorry. Mr Emmett did say that, you know - I can't recall yesterday if Mr Emmett put to me that I wasn't telling the truth, but in my evidence, Mr Emmett never contested my evidence against me and put it to me and to say that Mr Sharp's
25 evidence was - I put no less than five times to Mr Sharp that he wasn't telling the truth, so I did put it to Mr Sharp that he wasn't telling the truth and the transcript will show that because, in one particular instance, finally that I want to say, is the communications between the manager of security to Mr Sharp, where the manager of security stated that he has no security issues with
30 Liristis having a laptop, specifically. And Mr Sharp then says in the witness box he can't recall ever speaking to Mr Sharp(as said) or Mr Ross Hill from Ross Hill & Associates regarding my laptop issue. They are my submissions, your Honour, and I thank you for listening to them, your Honour. I appreciate it.

35 HER HONOUR: Mr Emmett, do you need the opportunity to take those further instructions?

EMMETT: I will take those further instructions. I would just say a couple of
40 things, first, both in relation to these flk files. There was the clearest discussion about four files. I got urgent instructions in relation to those; these flk ones were not taken up with the Court. The fact that there is references to them in correspondence that was tendered, in my submission, is not a reason to expect my client to have guessed to look for them as well.

45 Similarly, the resistance in relation to the laptop arrangement your Honour suggested reinforces the concern I have that every time we get close to accommodating Mr Liristis some other problem comes up. Your Honour has had a raft of new evidence now about new alleged problems that haven't been
50 the subject of evidence yet and that I certainly can't respond to on my feet.

In relation to the printer - I don't have the transcript, but my best recollection is I specifically asked Mr Liristis whether he knew of anyone else with a printer in his or her cell and he said no.

5

And, finally, just to make sure that your Honour gets the authorities correct, Mr Liristis referred to authorities that say that someone must have access to evidence they want to rely on. What the authorities say is that somebody must have access to the evidence against him, that is, the prosecution evidence.

10

We are in slightly different territory. It doesn't cut across the concerns your Honour has identified yesterday but, just to be clear, we are in slightly different territory where - because the District Court has said Mr Liristis should have access to this material that this material is in the territory where the Court's concern about Mr Liristis's access to it is enlivened.

15

So it is not the same territory as you must be able to read the prosecution brief because he confirmed, as your Honour may recall, that he can read and has read all of the prosecution brief.

20

HER HONOUR: Yes, but the District Court has ordered that he be given access to identified materials, voluminous materials. The order isn't given effect if he's provided the materials, but he simply can't access them.

25

EMMETT: Your Honour, I just wanted to make sure that the basis upon which your Honour was proceeding was the correct one.

HER HONOUR: So I am struggling to see how that is not a distinction about a different--

30

EMMETT: Your Honour, the point is only, as I say, it doesn't take us out of the territory that your Honour was concerned about yesterday, but it is important that the basis be clear. Because, for instance, the proposition that somebody is entitled to additional facilities to get at evidence that he or she says will exonerate him is a materially different proposition.

35

HER HONOUR: Well, I'm not sure. Not if the District Court has ordered that he be given access to it.

40

EMMETT: Well, that's what I say.

HER HONOUR: Well, I will just take a short adjournment.

EMMETT: Thank you, your Honour.

45

SHORT ADJOURNMENT

AXC:CAT

EMMETT: The short answer is I am waiting to hear back from my client, but I haven't heard anything since your Honour went off the Bench.

5 HER HONOUR: While you're waiting for that information, the concerns that have been expressed is about access to the laptop in custody. There would be nothing, would there, preventing Mr Liristis from using the laptop while he is in court?

10 EMMETT: I suppose, again speaking without instructions, from my perspective the only two things that leap to mind are, I don't know whether that would be difficult for Mr Liristis if he wanted to follow what was going on at the same time, but he would have representation--

15 HER HONOUR: That's a matter for him. I'm asking from your client's perspective.

EMMETT: I don't have any instructions, but on the evidence, I can't presently see why there would be one.

20 HER HONOUR: You said there were two things; was there a second thing?

EMMETT: The second thing was I didn't have instructions.

25 HER HONOUR: What should I do?

EMMETT: The first thing that needs to be done is to seek further instructions in relation to that.

30 HER HONOUR: You're still waiting on the other instructions? We've been waiting for a while now. What's the problem?

35 EMMETT: The problem, and this is why the further request be put in the meantime, is without going into - the person within the Department of Justice who gives my instructor and me direct instructions, is available and is seeking the instructions from the person within the services.

HER HONOUR: Do we know how much longer?

40 EMMETT: We asked within 10 minutes when your Honour went off the Bench. They haven't come back, we will call and chase them up.

HER HONOUR: Let's chase them up.

SHORT ADJOURNMENT

45 HER HONOUR: Yes?

50 EMMETT: My instructor is on the phone at the moment to confirm instructions in relation to one of two things; access to the computer. If Mr Miller brought the computer to court each day, there will be no issue from anybody's

AXC:CAT

perspective other than the Court's, to Mr Liristis having access to - it's a matter for the court, as well.

5 HER HONOUR: People appear in court all day, every day with computers, it's unlikely to be a problem, but that's a matter for the District Court.

10 EMMETT: So speaking for the Commissioner for Corrective Services and the State, there's no difficulty with that. Mr Miller retains possession of it until it comes to court. Mr Liristis has identified concerns about power points and access to power in those circumstances. I can't believe that that can't be addressed one way or the other.

15 HER HONOUR: I'm sure firing up a computer is a practical problem which can be solved. To answer my question, there's no issue about him having access to his laptop computer in court while the trial is running. The issue is his access before the commencement of the trial while he is in custody, and during the running of the trial outside of court hours, that's what we're really concerned about.

20 EMMETT: That's right. I think I have further instructions, pardon me. Your Honour, can I say at the very least this, and without formal instructions, I can't put it higher than this, I don't say anything against an order that the access that has been provided to date, outside on non-sitting days, continue. That is, with Mr Miller or another - I think it wasn't Mr Miller in the past, it was
25 Mr Schumer, whoever Mr Liristis' solicitor is from time to time attending with him, and the operation of the computer be the same as it has been in the past.

30 I understand that's been solicitor-operated rather than Mr Liristis operating it, but it's difficult to see - I can understand why from a security perspective, that's preferable. That may slow things down slightly. It's Mr Miller following instructions rather than Mr Liristis actually running it. I can't formally give that undertaking.

35 HER HONOUR: Mr Liristis, we've clarified two things; one, that there's no objection by the defendants to you accessing your laptop in court during the running of the trial, and beforehand, to you accessing your laptop as you have in the past in the presence of a solicitor, but I understand your case is that you want access in your cell to your laptop and the printer scanner because you say that's necessary for you to reasonably prepare and run your case which is
40 due to commence next week. Do you want to say anything further about what's proposed in relation to accessing the computer in the presence of your solicitor?

45 PLAINTIFF: Yes, your Honour, quickly, and I won't drag this out any longer. During the day at court, I've always, thankfully in the District Court, Local Courts and the last 3 years I've been in custody, I've had no issues in using the laptop in court, that's been fantastic. The issue I have is I can't take the hard drives to court to access them because you need power points, and I understand your Honour said surely that can be accommodated. It can't. It's
50 never been accommodated in the past, even though the District Court judges

AXC:CAT

have tried. There are no power points in the cells. Therefore, I can't gain access to the hard drives and I can't take the hard drives to court every day when I can't get access to them during the day.

5 The only time I can get access to them is when it's been approved by Mr Aboud, the general manager. The previous solicitor, Mr Kent Parkes, had purchased a large power board and they are all plugged into - it's in my cell, it's been approved, and they are plugged in and it's set up where all the drives are connected and I can get access to the ones that I need to.

10

The issue about accessing it, as it's been in the past with the solicitor, yes, that has worked one day a week - sorry, coming three times in 4 months, it's worked, but it can't work during a trial because I can't suspend a jury and a District Court proceedings to go and have a solicitor come to the gaol so we can go through the documents. Logistically, that just can't happen, your Honour.

15

One final note, your Honour, Mr Emmett says it may slow things down slightly. It won't slow them down, it will destroy it in total because I need to prepare for my case before trial and during the trial. I can't do that without accessing. The evidence is quite clear there, from the State Evidence Electronic Branch, without the Dell XP 13 laptop, I can't access the drives which I have accessed while the solicitor has been there. I only download documents, I put them on the USB which has been approved, I take them back to my cell and I can do some work.

20

25

We're now talking about accessing 4,792 recordings. We're talking about accessing an enormous amount of terabytes, not megabytes. I can't do that. It's not that I want to be difficult with the Court, it's humanly impossible to do, and on top of that your Honour, we're still waiting, which Mr Miller has just informed me, that they still haven't served - the DPP has given a blank USB which is in evidence now, to the data recovery centre that's supposed to contain 11,000 documents and emails. That has still not been forthcoming, but they said it will happen soon. I don't anticipate how long that's going to take to go through.

30

35

It is impossible, your Honour, for me to do that without the laptop. It's humanly impossible to do. Also your Honour, whilst I'm at court, especially in the Court cells sitting around for 4, 5 hours waiting for jury selections or whatever the case, that's productive time that I can use to work. Again yesterday, no fault of your Honour, I'm not blaming the Court, but I get here at 7 o'clock. I left here yesterday from the Court cells at 6 o'clock. Today I came here again at 7. I'm probably going to leave around the same time. If I had the laptop, they put you in the room next door, and I can work on the matter while sitting, but sitting in a cage, it frustrates me because I'm not productive, your Honour. I relax more when I work. When I sit around and I've got a trial coming, and there's evidence that I need to present, I get frustrated. My post-traumatic stress disorder, my anxiety, goes through the roof because I'm not productive. That's all I want to be, is productive.

40

45

50

AXC:CAT

I can't believe that the State of New South Wales can't assist an inmate who wants to be productive. I don't want to sit around. Finally, I don't want to be a burden to these officers. I'm at one of the best - it's the oldest correctional centre with very limited facilities, but the officers here are fantastic: Mr Cahill, Mr Aboud, Mr Cooper, Mr Hopkins, all the senior management here are fantastic. They have assisted me wherever they can. I don't want to be a burden to them, your Honour. I want to sit in my cell and do my work. I'm not a burden to anybody. Thank you very much, your Honour, I appreciate it.

10 HER HONOUR: I propose to think about this. I'll announce the orders that I propose to make, I'll announce my decision at 3 o'clock. I'm not sure that I'll be in a position to publish the reasons, but if not, they will be coming in the not too distant future. Resume at 3 o'clock.

15 LUNCHEON ADJOURNMENT

(No appearance by Mr Miller at 3.00pm)

ORDERS

20

HER HONOUR: I've concluded that orders might be made, the effect of which will be that Mr Liristis forthwith be given access to his printer scanner and laptop in custody and that he be permitted to use that equipment in the preparation and conduct of his case, both in custody, prior to the commencement of the hearing and in the District Court during the course of the trial.

25

Mr Emmett, I'm going to hand you a copy of the reasons which have been marked with a "draft" stamp because we haven't yet proofed them, but they'll be published tomorrow, and Mr Liristis, I will have steps taken to have a copy of that document emailed to you.

30

PLAINTIFF: Sorry, your Honour, would you be kind enough just to read the first part, I missed it all, the sound went off.

35

HER HONOUR: I propose to order that you forthwith be given access to your printer scanner and laptop in custody and that you be permitted to use that equipment in the preparation and conduct of your case, both in custody prior to the commencement of the hearing and in the District Court during the course of the trial. I have explained in these reasons why I've come to that conclusion but the judgment will have to be edited and proofed and that hasn't happened yet, but I wanted you to have my thoughts which have brought me to that conclusion.

40

45 PLAINTIFF: Sorry, your Honour, did you say they were proved? The sound is very bad.

HER HONOUR: I'm saying that I'm going to email to you a copy of my draft reasons. They need to be proofed, so they need to be read and to make sure there are not typos and the reference to the cases are all correct. That will be

50

AXC:CAT

done and the final judgment will be published tomorrow and available on the internet. Before I make those orders, Mr Emmett, did you wish to say anything about the form of the orders?

5 EMMETT: One matter, that is the question of an undertaking that was offered - I don't know, I haven't seen your Honour's judgment.

HER HONOUR: I've dealt with the undertaking.

10 EMMETT: The undertaking by me and the undertaking offered by Mr Liristis.

HER HONOUR: The undertaking as to what offered by Mr Liristis?

15 EMMETT: As to his position in the event that there was any misuse. Your Honour may recall there was an undertaking that privileges be revoked if he was found using a phone or accessing the internet.

20 HER HONOUR: I'm not sure that I recollect an undertaking being given, but despite the orders being made, the Commissioner will have his usual powers in relation to ensuring security, and Mr Liristis, if he misuses his equipment, for example, to access the internet, that's not something which the order contemplates or permits, and if he does that, there will be consequences I am sure. I've not sought to effect that.

25 EMMETT: I understand that, your Honour. Perhaps just in relation to that, could I seek liberty to restore, because at the moment, and I don't say this critically, but quite properly, the order is a simple order to require my client to do something.

30 HER HONOUR: Yes, there is that liberty to restore if something arises. Otherwise what should I do with the matter, Mr Emmett?

PLAINTIFF: Your Honour, may I ask--

35 HER HONOUR: Just one moment, I'll come to you in a moment.

EMMETT: Your Honour, there is one step, and again the same point being the undertaking, that is consent to the sanitisation process. I don't know whether that is something that was offered.

40 HER HONOUR: You didn't take it up today and I haven't dealt with it in the judgment because you said nothing today about what might be involved in that process and it wasn't explored further.

45 EMMETT: Can I say that's because - and I don't have the transcript but I recall either an undertaking or an assurance in the clearest terms that he had no difficulty with such a sanitisation process being undertaken.

50 HER HONOUR: That was yesterday, I thought. Perhaps it was repeated today, I could be wrong about that, I don't remember it, but Mr Liristis, what

AXC:CAT

Mr Emmett is raising is what arose yesterday when you said that you had no issue about steps being taken to make sure that your laptop was not going to be used to access the internet. Does that position remain the same?

5 PLAINTIFF: Your Honour, I'm happy to give any undertaking the Court desires. I've got no intention of breaching any of the orders or any conditions set by Corrective Services. I've got no intentions and I'd give any undertaking that the Court sees fit or your Honour sees fit.

10 HER HONOUR: If you want me to take that further, Mr Emmett, you really need to formulate something don't you?

EMMETT: I do. Obviously, a misunderstanding as to what remained in place from yesterday, but I hear what your Honour says, and yes, I will consider
15 formulating something. I accept if your Honour has taken the view your Honour has taken, then I should read the judgment first.

HER HONOUR: We shouldn't just leave it there because this order
20 contemplates that steps be taken forthwith.

EMMETT: I understand.

HER HONOUR: Why don't I take a short adjournment and you can think about
25 what undertaking it is you ask Mr Liristis to give, and put it to him, he is here, and if there's then something to be put on the record, we'll do that and otherwise I'll hear you. Perhaps what you're referring to, my associate draws to my attention is what appears in the transcript at page 74 and we can give you access to this, where Mr Liristis said that he would give an undertaking to
30 the Court that he will not seek any access to a mobile phone or the internet and if he is caught with anything like that he expects his privileges to be removed forthwith. Perhaps that's what you're referring to?

EMMETT: That's part of it. If I could have access to that I'd be grateful and
35 also have a short adjournment to confirm instructions. I had a recollection and maybe it's wrong, of a discussion about sanitisation as well. If I could review the transcript very briefly.

HER HONOUR: I'll give you access to the transcript. You have a copy of the
40 draft. As I said Mr Liristis, I will take some steps to have the draft emailed to you so that you can be in possession of it. Was there something else you wanted to raise before I adjourn?

PLAINTIFF: Yes, your Honour, would you be kind enough to ask the Court
45 staff or your kind Associate if they can email the stuff to Mr Cooper who actually emailed the lady and a copy to be sent to Mr Alex Miller which is email is Alex@RHALAW.com or Mr Norrie.

HER HONOUR: My associate is informing me that we have some email
50 addresses on the chambers email, she thinks of Mr Hill and Mr Norrie.

AXC:CAT

PLAINTIFF: I appreciate that.

HER HONOUR: And she'll use that email to email a copy of the draft to Mr Cooper.

5

EMMETT: The email that was forwarded to me by your Honour's associate, I think came from Mr Cooper.

HER HONOUR: We'll use that email.

10

PLAINTIFF: Yes, your Honour.

SHORT ADJOURNMENT

15 EMMETT: Thank you, your Honour for that time. The transcript reference that I had in mind is in addition to the one at p 74, lines 47 to 49, also transcript page 66 lines 7 to 9. That was what I had in mind.

20 HER HONOUR: That's where, for your purposes Mr Liristis, you said, "I'm very happy to give the laptop to Corrective 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 unappropriate."

What undertaking is it that you're asking be given?

25

EMMETT: The application I have is rather than an undertaking be given, just a note that a requirement that Mr Liristis receive the laptop by a specific time and that the order to not prevent my client from accessing the computer and disabling such functions as my client considers appropriate before providing it to him.

30

HER HONOUR: I'm not going to make that notation. If it was thought to be appropriate to disable a function which enabled access to be obtained to the hard drives you'd be back here in a nanosecond. So if you're wanting me to note something or Mr Liristis to undertake something, it needs to be very specific and it needs to be appropriate.

35

EMMETT: Two things in relation to that, the first is as I stand here, and I'm still trying to get further instructions, I'm not able to indicate precisely what those steps are, although it must be possible to do that to make it quite clear what steps would or might be done.

40

The second point, and this is the point on which I have sought better instructions for a reason that will be obvious in a moment, the instructions given to me, it would take 3 business days to sanitise the laptop. I have said that's not an acceptable period of time. I'm sure your Honour takes that view.

45

HER HONOUR: For obvious reasons, yes.

50 EMMETT: I'm seeking instructions in relation to that. At the moment I can't

AXC:CAT

take it further. Can I request this, a stay of your Honour's judgment until midday tomorrow.

5 HER HONOUR: No. I think there's been more than sufficient accommodation of the defendant's position. If I make the orders which I have indicated I consider need to be made, given the District Court's orders the impending trial and all that I have discussed in the judgment, access needs to be given forthwith to the laptop. Taking yet a further half day to think about what might need to be done is, in the circumstances, just not appropriate. Mr Liristis, do
10 you want to say something?

15 PLAINTIFF: Your Honour, when the laptop is brought in by the solicitor, I'm more than happy for the manager of security to view the laptop as they have done. They've never questioned when I had the laptop before, but I'm more than happy for them to have a look at it, that there is no prohibited, again I'll give the undertaking to the Court, no prohibited items found on my computer. There is only matters pertaining to the District Court and that's it. I'm more than happy when the solicitor brings it in, and it's handed over, there's an officer there, they can open it, they can check it, I mean turn it on, check
20 there's no prohibited items on there, and that's as far as it goes. That's what was advised to me by Mr Cahill, the manager of security.

When we first came in months ago with the laptop, he asked me to open it, I turned it on, he had a look, it took him 30 seconds, he says, "I'm satisfied.
25 Enjoy your day." You can't get any better than that. To use the word "sanitised" with respect to Mr Emmett, means format. In other words, clean the whole drives, wipe everything off that's what "sanitise" means in the computer industry.

30 EMMETT: By reassurance, I certainly didn't mean that. I meant what Mr Liristis meant in that passage that your Honour described. In light of what your Honour said, and I hear your Honour's observations, in light of your Honour's view, I can't and shouldn't seek more time to get better instructions. Can I request the following:

35 1) An undertaking to allow, I think, Mr Cahill to inspect the laptop upon its arrival.
2) The Court notes the undertaking of the plaintiff that there is no prohibited goods - and I use that expression - there's an expression which I think
40 Mr Liristis was referring to in the Crimes (Sentence Administration) Act, it's either "prohibited material" or "prohibited goods". I think what Mr Liristis was offering is an undertaking that there is no prohibited material on the laptop within the meaning of the Crimes (Administration of Sentences) Regulation, and that if any such prohibited material is found or if the computer is used to
45 access the internet or a mobile phone, then the access to the laptop - effectively the orders lapse. The Commissioner is not obliged to continue to provide the laptop.

50 PLAINTIFF: I don't accept that, your Honour.

AXC:CAT

HER HONOUR: I'm sorry, you do accept that?

5 PLAINTIFF: I don't accept the last part because within the gaol system, they can stop that at any time, and then we're back in court again, and I'm through the trial. I gave an undertaking if I breach that undertaking, I've lost my privileges, but if, by making an order to that effect, they can say that I did something and for me to go to prove that I've got to go to court. It's giving them a loop hole, your Honour. That's a standard procedure that happens in custody.

10

EMMETT: It certainly wasn't intended that way. It was intended to invoke in appropriate language for court orders or court undertakings that which was offered yesterday.

15 PLAINTIFF: I gave the undertaking to the Court and to your Honour. I would not disrespect her Honour or the Supreme Court. An order is not going to--

20 HER HONOUR: Let's take it one step at a time. First, Mr Liristis, as I follow, you're happy to reiterate the undertaking that you gave yesterday that you will not seek any access to the mobile phone or the internet using the computer.

PLAINTIFF: 100%, your Honour.

25 HER HONOUR: And you're next happy to give an undertaking to allow Mr Cahill to inspect the laptop on its arrival at the centre.

30 PLAINTIFF: Your Honour, can we make it Mr Cahill or the Governor, which is Mr Aboud, who wrote that affidavit because Mr Cahill has been off ill, and he is in and out, I don't know if he is going to be in tomorrow. If he is not in, then I can't get the laptop and we're back to square one again. If we can put Mr Cahill or Mr Aboud.

EMMETT: There's nothing I can say against that.

35 HER HONOUR: That's not opposed by Mr Emmett. The second undertaking will therefore, refer to Mr Cahill or Mr Aboud. The third undertaking was that there is no prohibited material on the laptop. Are you happy to give that undertaking?

40 PLAINTIFF: Happy, your Honour.

45 EMMETT: Can I indicate, I've just checked the terms, the defined expression is "prohibited goods" rather than "prohibited material", but it includes electronic records. There is no material amounting to prohibited goods within the meaning of the Crimes (Administration of Sentences) Regulation.

PLAINTIFF: 2014.

50 HER HONOUR: Are you happy to give that undertaking?

AXC:CAT

5 PLAINTIFF: The only point that I want to make there is what about evidence that's pertaining to my District Court matters? There's evidence that someone may say it's prohibited, but if it's evidence, is that going to be a breach? That's what I'm scared of, your Honour. Meaning I have evidence on the computer--

EMMETT: I didn't mean to speak over you, that's a fair point because indecent material is an example and it may be that--

10 PLAINTIFF: Can we use the words "except material relevant to the proceedings currently before the District Court", would that be acceptable?

EMMETT: I'm content with that.

15 HER HONOUR: So that undertaking will have the addition "except material pertaining to the District Court proceedings".

EMMETT: I think "relevant to".

20 HER HONOUR: "Relevant to the District Court proceedings".

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

25 HER HONOUR: The final point is in the event that the Commissioner takes the view that any of these undertakings has been breached, isn't the appropriate course in that event for liberty to be given to have the matter restored to the list on short notice for an application for the orders to be revoked to be dealt with?

30 PLAINTIFF: I'm happy with that, your Honour.

35 EMMETT: In my submission, particularly if supposed "prohibited goods" posing an immediate threat are identified, my request is rather that the orders - if any of those undertakings are breached, then these orders have no further effect, provided that my client bring the matter before the Court within say, 24 hours.

40 HER HONOUR: That would be a second order that I would make which would be in what terms? In the event that the undertakings given to the Court by Mr Liristis are breached, this order will lapse?

EMMETT: Perhaps not even lapse, but will be suspended.

HER HONOUR: "Will be suspended provided that"--

45 EMMETT: Just to reassure Mr Liristis, this is my suggestion.

50 HER HONOUR: --"provided that the Commissioner seeks to have the matter relisted before this Court within 24 hours" of what? Of the breach coming to his attention?

AXC:CAT

EMMETT: Yes.

HER HONOUR: What do you say about that, Mr Liristis?

5 PLAINTIFF: Your Honour, I'm happy, if I breach an order, to be brought back
to the Court for the orders to be reconsidered or whatever, but I don't want it to
be forthwith. In other words, they come, they say to me "you've breached it",
they take my computer away so I'm found guilty before I even had an
opportunity to defend myself.

10

If I've done something wrong, then the appropriate course would be for the
Commissioner to relist the matter within 24 hours. If the Court sees that I have
done something wrong and there's evidence, they'll take the appropriate steps,
but I shouldn't be penalised before I have the ability to defend myself. We're
15 putting the cart before the horse again. It's inappropriate, in my submission
with respect, that they automatically, the judge, jury and executioner, in other
words, they say I breached, bang, the orders of the Supreme Court are
discontinued based and someone's say so without a proper adjudication.

20

I can accept if I breach it, I'm going to be in trouble, I'm going to be brought
back before the Court and I may lose my privileges, but I shouldn't be dealt
with before a proper tribunal. Corrective Services are not a proper tribunal
even though they say they are, they pass their own laws in here, but still this is
a Supreme Court order, and it shouldn't be thrown out just because someone
25 says so, and someone may say so in here. Whilst I'm going through a
10 weeks trial, something could happen, how am I going to be brought back
within 24 hours? I've got to suspend the District Court proceedings and that's
unfair, your Honour. I gave my undertaking, I'm a man of my word, I'm not
going to go back on that and lose my privileges. I consider this as a privilege, I
30 don't consider it as a right.

HER HONOUR: One can understand the concern.

35

EMMETT: Can I say in relation to the concern, it's not a matter of being
penalised or somebody being a judge or a jury because the proposal is the
matter come before the Court within 24 hours.

40

HER HONOUR: Your concern could be addressed by an order which said that
"in the event that the Commissioner forms the view that the undertakings given
to the Court by Mr Liristis have been breached, the Commissioner may
exercise the liberty hereby granted to have the matter relisted on 24 hours'
notice to have the order suspended."

45

EMMETT: Your Honour, I understand. The difficulty is, if there's a breach that
involves a threat to security, it is important or it may be important in my
submission to be able to move promptly in relation to it rather than have to wait
24 hours before doing so. That could lead to a one day adjournment in the
trial. My client and his officers are tasked with upholding the security of the
prison. They are public officers rather than acting in their own self-interest.

50

The suggestion that it should be the other way around because the provision

AXC:CAT

might be exercised in bad faith, that, in my submission is putting the cart before the horse.

5 PLAINTIFF: Your Honour, can I answer that. That's not true, Mr Emmett. That has happened. You obviously watch the news, you watch the mobile phones being brought in by officers. Please do not say that to her Honour and disrespect her by saying that "officers don't do that, they are public officers they don't do that". I see it more times than anybody. I've seen more crime in here than I've seen on the street in 50 years of my life.

10

What I'm saying is, if I've done something wrong, I should be brought before the Court like every member of the Australian public. But you can't punish someone before a tribunal as high and respected as the Supreme Court, takes the view that yes, there is something wrong. Here, if that order is made there's no-one stopping an officer saying "yeah, we believe that happened", I get my trial aborted or whatever the case, I have to wait another 12 months in custody. Then I go to court and they say "there's no evidence that Mr Liristis has breached it". What happens then? Damages are not an equitable remedy in this case.

15

20

I've spent nearly 4 years in custody. What danger of security is it, for God's sake? I'm locked in my cell 24 hours a day, 7 days a week. I'm a one-out. It's very rare to have a one-out, you've got to be respected by the officers, and Mr Cahill gave strict instructions that I'm allowed one-out, while inmates are out in the yard, I'm allowed to stay inside. I'm not a threat to anybody. Mr Cahill can verify to that, and Mr Aboud can verify to that. I've got no reason to risk security at the Long Bay Correctional Centre or any Correctional Centre. I must be taken on my word.

25

30

EMMETT: Your Honour, we're talking about 24 hours. I can't put it more clearly than I have. The proposition that some corrections officers are dishonest, is one that I can't concede, obviously. That's why I propose a 24-hour period so that the matter comes before the Court in any event. Your Honour, has all the authorities about the volatility of prison situations and the difficulty of dealing with people who will not necessarily bow to discipline and cannot necessarily be trusted. They are a difficult managerial environment, and that's why the authorities are so strict about it. That's why in my submission, during that 24-hour period, the Court would say if the position is taken, then the privileges should be withheld for that limited period of time.

35

40

HER HONOUR: Well I'm inclined to make an order in these terms:

45

"In the event that the Commissioner forms the view that the undertakings given to the Court by Mr Liristis have been breached so as to give rise to an immediate security risk, the order will be suspended upon the Commissioner exercising the liberty hereby granted to have the matter restored to the list within 24 hours.

50

In the event of any other breach of the undertakings, the Commissioner may have the matter restored to the list in order to

AXC:CAT

have an application to have the order suspended.”

EMMETT: I don't seek to be heard against that.

5 HER HONOUR: Having then noted those undertakings earlier discussed, and
having heard the parties as to the further order which should be made, I make
the order which is specified at paragraph 60 of the draft judgment as well as
10 the order which I have just announced which will be added to the judgment
and I will also add a paragraph to the judgment to explain how that has come
about. The judgment will, as I have indicated, be published tomorrow. There'll
be no need to appear when that occurs and copies of the final judgment will be
emailed to the parties.

EMMETT: Thank you your Honour.

15

HER HONOUR: What else do I need to do with the matter so far as standing it
over to another date? At some point it is going to have to be brought to a
conclusion, probably at the end of the District Court trial would be the
appropriate time. It might be sensible to put it into the registrar's list to make
20 sure that it doesn't drift around. It's got an expected 10 weeks term. If we look
at 10 weeks ahead, that should provide us with a suitable date.

EMMETT: Yes, if anything happens and there's a vacation notwithstanding
everything then either party can exercise the liberty to restore.

25

HER HONOUR: 9.30 on 16 April before the registrar?

EMMETT: It is suitable to someone in my camp.

30 HER HONOUR: Is that convenient, Mr Liristis?

PLAINTIFF: Yes, your Honour.

HER HONOUR: It needs to have another date so at some point it can be
35 brought to a conclusion. If the trial is finished by then, that can simply be done
by the registrar.

PLAINTIFF: Could I ask for a copy of the transcripts, if you have them?

40 HER HONOUR: Mr Liristis, it is not in my power to give people copies of
transcripts. They need to be obtained in the usual way.

ADJOURNED

45 oOo