

If this Transcript is to be reported or published, there is a requirement to ensure that no reporting restriction will be breached. This is particularly important in relation to any case involving a sexual offence, where the victim is guaranteed lifetime anonymity (Sexual Offences (Amendment) Act 1992), or where an order has been made in relation to a young person

This Transcript is Crown Copyright. It may not be reproduced in whole or in part other than in accordance with relevant licence or with the express consent of the Authority. All rights are reserved

IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION
MEDIA & COMMUNICATIONS LIST

No. QB-2022-000825

NCN: [2024] EWHC 857 (KB)

Royal Courts of Justice
Strand
London, WC2A 2LL

Friday, 9 February 2024

Before:

MASTER DAGNALL

BETWEEN :

QRT

Claimant

- and -

JBE

Defendant

REPORTING RESTRICTIONS AND ANONYMISATION APPLIES
Orders of 23 March 2022 (amended) and 26 October 2022 (revised – sealed)

MR A KATZ (instructed by Gunnercooke LLP) appeared on behalf of the Claimant.

THE DEFENDANT appeared in Person.

APPROVED JUDGMENT

MASTER DAGNALL:

- 1 In this matter I am invited to consider as to how the case could proceed in circumstances where in these proceedings the claimant contends that the defendant sent him emails threatening to disclose explicit sexual material in the form of a video to others. The defendant denies that he sent the relevant communications containing such messages and that he has anything to do with the video in circumstances; and the defendant suggests that it was a particular third party associated with the claimant who was responsible, albeit only in the circumstances of a general contention that all the defendant can say is that it was not him. There is presently an interim injunction in place preventing the defendant from publicising any of the relevant material.

- 2 The matter has come before me on a number of occasions where the claimant has sought specific disclosure and information regarding the defendant's electronic devices, effectively contending that if there was a full investigation of them and linked material the claimant's case would be substantially improved because the claimant would be able to demonstrate directly, or at least by strong inference, that the defendant was responsible for both the video and the relevant communications. The defendant identified that he had three particular electronic devices at the time that the various communications were sent.

- 3 On 2 February 2023 at a hearing attended both by the claimant by counsel (as has been generally the situation through this case) and the defendant acting in person, saying that he has insufficient resources to instruct legal representation, I considered the claimant's inspection application and made an order for there to be inspection of the three identified electronic devices by a single joint expert. I provided that the expert would then produce a report, which report would essentially be limited to searches in relation to the video and the images which comprised it, and that the report would simply be filed at court with undertakings from both the claimant's solicitor and the expert designed to ensure that the

expert's report was simply limited in the ways in which I have identified and that the expert did not communicate the expert's discoveries or other matters to the claimant. The aim of this was simply to ensure that the devices were preserved and inspected and an appropriate report was produced but so that the parties would not learn as to what was within it and that that question could be reviewed further at an appropriate time.

- 4 The matter was then complicated by the fact that the claimant brought a private prosecution against the defendant for alleged offences of harassment, in particular under the Protection from Harassment Act 1997. In that private prosecution the claimant has not, at least specifically, sought to rely on the events which are the specific subject matter of this claim. The claimant asserts that over a wider period commencing a year before the alleged communications regarding the video and going on for a substantial period after the timing of those communications, the defendant has engaged in harassing conduct of the claimant by harassing both the claimant and also other persons associated with the claimant, including the person whom the defendant identifies as a possible author of the video and communications which are the subject matter of this litigation. Although those proceedings were commenced in spring 2023, they are only due for a Crown Court trial in March 2025.
- 5 The fact of the initiation of those proceedings was considered by me at a hearing on 9 April 2023, at which hearing there were disputes between the parties as to the fact that the devices had not been provided to the single joint expert. At the hearing, and as recorded in the order made thereafter, the defendant then stated to me that he did not object to the electronic devices being examined by the single joint expert. Today he has said to me that that statement from him was something which he, as a litigant in person, felt driven to say as a result effectively of his being driven by the court process of the hearing rather than being some truly voluntary statement. No single joint expert had been appointed at that particular point in time and I made directions with regards to there being an appointment.

- 6 An expert having been identified and appointed, difficulties then arose with the specific expert in the light of it becoming apparent that that expert had done other work for the claimant's solicitor's firm; and as a result it became common ground that the identity of the single joint expert needed to be changed.
- 7 I, therefore, held a further review hearing on 11 October 2023; at which I also considered the position with regards to the criminal proceedings and concerns that I had that the material and matters which arose in the civil proceedings could in some way or other prejudice the defendant in his defence of the criminal proceedings; and where there might be relevant both the privilege against self-incrimination might be relevant and also general considerations of whether the civil proceedings should effectively await the determination of the criminal proceedings in order to avoid unfair potential unfairness and tainting. I did, however, while stating that I required further information and assistance with regards to those matters, make a further order setting out what the single joint expert should do, and as to how the new single joint expert should be identified on the basis of: the claimant supplying a number of names; the defendant having a ability to select one; and, in the absence of agreement the matter being dealt with by the court. The parties have since been unable to agree with regards to either the principle of the single joint expert being supplied with the defendant's electronic devices and producing a report or the identity of such a single joint expert.
- 8 As part of my order of 11 October 2023, I provided for the parties each to have the ability to adduce evidence and material with regards to the ongoing criminal proceedings and their relationship or non-relationship with civil proceeding. The defendant has legal aid for the criminal proceedings but his solicitors instructed in relation to them (and as they make very clear) are only instructed and only able to act and be paid for their acting in relation to the criminal proceedings. Those solicitors, Louis Nedas Law, have supplied the court with a letter of 9 January 2024 in which they say that the civil and criminal proceedings are

inextricably linked together and extensively overlap, and that it is not possible to separate them apart from one another, particularly where this is a private prosecution and the claimant's solicitor is both the claimant's solicitor in relation to the civil proceedings and the criminal proceedings. They state that it must be fairer for, in effect, the criminal proceedings to be determined before the civil proceedings are progressed.

9 The claimant has adduced a skeleton argument document of Mr Walker, counsel, who is instructed for the claimant as prosecutor in the criminal proceedings. He has also attended the hearing today and answered various questions from me, including questions raised by the parties which they have desired me to canvass with Mr Walker. Mr Walker's position in terms of the general question of the interrelationship between the civil proceedings and the criminal proceedings is that: the specific matters which are raised in the civil proceeding are not to be raised by the prosecution in the criminal proceedings; and he would at least hope that the civil proceedings and their subject matter was simply not raised in the criminal trial at all; but he conceded that the defendant either is raising, or may raise, the matters arising in the civil proceedings, including by way of potential explanation and justification of the defendant's alleged criminal conduct, in circumstances where, as I have said, the defendant blames a third party for what the claimant says has happened with regards to the video and associated communications. Mr Walker that he could not rule out the possibility that material from the civil proceedings could in one way or another impact on the criminal trial; especially in circumstances where it was impossible to speculate with confidence what course or courses the criminal trial would take, and where the defendant's existing defence statement in the criminal proceedings seems to assert at least some sort of justification argument.

10 The claimant in all these circumstances accepts (at least now) that the civil proceedings cannot presently fairly proceed to an exchange of witness statements. It seems to me at first sight that that is right for no other reason than that in the criminal proceedings an order has been

made which prevents the defendant from contacting, otherwise than through lawyers, various persons who may give material evidence. Since the defendant is a litigant in person who says that he cannot afford lawyers; at first sight for the civil proceedings to proceed generally to the exchange of witness statements would render the defendant into a position where he might very well be unable to deploy his full desired case because he could not contact material witnesses, and which at first sight would seem to generate potential unfairness.

- 11 The claimant, however, at least at the start of this hearing, maintained that two sets of matters should take place. The first is the process I have already directed, that the defendant supply his three identified electronic devices to a single joint expert and the single joint expert should provide a report to be filed at court and not provided to the parties. The second is that the defendant should provide a number of specific documents or pieces of information designed to enable the claimant to identify whether the defendant was present in certain particular locations at the time of the sending of the communications which are the subject matter of this case; so that the claimant can seek to match up those locations with location data which the claimant has obtained with regards to the sending of those communications, and so that the claimant can then seek to argue the defendant was in the relevant place at the relevant time and, therefore, must be the person who sent the relevant communications. Similarly, the claimant seeks disclosure with regards to internet information, regarding, in particular, an IP address and a broadband provider with regards to a property which the claimant asserts that the defendant lived in at the relevant time, so that enquiries can then be made as to where certain communications were sourced from and, also, as to whether particular devices, which might be what are known as burner phones, had or might have been used to make the communications which are the subject matter of this case, and which might then be linked to the defendant.

- 12 The defendant's position¹ is that the court should effectively simply halt the civil proceedings at this point in time without making any of these orders or further orders that the claimant seeks. The defendant submits that the criminal proceedings have been brought as a tactical step to put pressure on him; and that the claimant is using the civil proceedings and the criminal proceedings in combination both to effectively persecute him generally and, he would say, also to seek to persuade him not to pursue various other claims which he states that he wishes to make in the United States of America against the claimant. The defendant says that this is such an abuse of process that all proceedings, both civil and criminal, should simply be halted. He, however, does not make any application based on abuse of process; and it seems to me that the situation here is simply that a criminal proceeding has been brought which the criminal courts have allowed to proceed - indeed, the magistrates allowed the relevant summons to be issued and sent the matter to the Crown Court.
- 13 It seems to me as to whether the criminal proceedings should proceed is just simply a matter for the criminal court and is not a matter for me. As far as the civil claim is concerned, there is presently an interim injunction in place. There is no suggestion that the claimant's claim lacks real prospects of success, certainly there is no application to that effect. It seems to me that the civil proceedings at least at present simply stand. What is a more difficult question though, is the defendant's argument that the civil proceedings, and their progression, should simply await the determination of the criminal proceedings.
- 14 The defendant is a litigant in person and I have to bear that in mind in relation to case management under Civil Procedure Rule 3.1A; although I also bear in mind it was held in

¹ At the end of the hearing the defendant sought to resile from this and say that he really wished for the civil proceedings to continue but without there being any inspection of his electronic devices. That was not his position prior to this judgment being delivered and, in any event, my view is that my previous order regarding inspection and a SJE report should be carried into effect but with the safeguards set out in this judgment. That is for the reasons set out in this judgment and in order to carry my previous orders into effect and because that will enable these proceedings to be dealt with fairly and justly in accordance with the overriding objective in CPR1.1. On that basis, I am maintaining my conclusions set out in this judgment as to what should happen regarding the civil proceedings and inspection etc.

Barton v Wright Hassall 2018 UKSC 12 that, notwithstanding that a person is a litigant in person, nonetheless, they have to conduct their own case and they have to do it properly in accordance with the rules and law. I also have to bear in mind and apply, as I do, the overriding objective in CPR1.1 generally.

- 15 It seems to me that the defendant's case for effectively staying or making an order equivalent to a stay of these proceedings is based on two matters. Firstly, that there is a potential that, if the disclosures of whichever form are provided, the defendant may incriminate himself where he has the benefit of the common law privilege against self-incrimination, a matter which has been held to be part also of Article 6 of the Human Rights Convention and to be an aspect of basic fairness in relation to the operation of legal process operate fairly. Secondly, as a matter of general principle, the existence of the civil proceedings should not be allowed to prejudice him or his defence in criminal proceedings, and all the more so where the criminal proceedings are not brought by an independent third party, that is to say, the Crown Prosecution Service, but are actually brought by the claimant (in the civil proceedings) by way of a private prosecution.
- 16 Mr Katz, counsel for the claimant, submits, firstly, that the privilege against self-incrimination cannot arise in relation to existing documents; and, secondly, that there is no real risk of prejudice in the criminal proceedings to the defendant, at least in terms of my previous order with regards to the expert being supplied with and reporting upon the electronic devices, and all the more so if certain further matters are added into that order which were canvassed during this hearing. Mr Katz, however, did eventually and helpfully state that he accepted, in the light of the various permutations and possibilities that might exist with regards to the course of the criminal proceedings, that he would simply seek to persuade the court to make and continue the existing orders with regards to the expert and the electronic devices and not at this point press upon the court his application for disclosure

of the other documents and information, rather having that left until after the conclusion of the criminal proceedings.

17 As far as the question of privilege against self-incrimination is concerned and Mr Katz's argument that it should not apply to existing documents (and data), and in the light of my other conclusions as to how to deal with the matter, it seems to me that I should not actually be determining it at this point in time but that I should be preserving the defendant's rights whatever they may be with regards to it.

18 Mr Katz took me to various passages in **Matthews and Malek on Disclosure** including para.13-03 which reads as follows:

“It should be noted that the rule is a rule against *self-incrimination* not against incrimination itself. There is a distinction between evidence provided by the statement of the party required to speak and evidence existing independently of the order that he speak. Only the former prejudices privilege, thus privilege is no objection to an order that the defendant permit the plaintiff to enter the former's premises and list infringing articles to be seen there, nor is it an objection to a court appointed computer expert examining a computer under a search and seizure order on which he finds child pornography and reporting the finding to the police.”

That final sentence has a footnote which refers to the decision of *C Plc v P (Attorney General Intervening)* [2007] 3 WLR 437. That was a breach of confidence claim where a search and seizure order had been made in respect of premises occupied by the respondent containing the usual penal notice. The respondent had claimed and asserted a right to privilege against self-incrimination but had permitted the search in accordance with the order. Computers had been seized and supplied to an expert; and on them the expert had found highly objectionable images of children, the possession of which the police regarded as being a criminal offence. Although the police had actually thereafter conducted their own search and found the images independently and separately, the question did arise (and which the Court of Appeal regarded as appropriate to determine) as to whether the privilege against self-incrimination applied in relation to what the computer expert had found where

the expert had inspected material obtained under the search order and in accordance with the provisions of the search order.

19 The Court of Appeal considered privilege against self-incrimination but also noted that the only issue (in para.38 of the judgment) that they had to consider was whether the computer expert should have the leave of the court to disclose the offending material to the police.

Lord Justice Longmore in that paragraph went on to hold that:

“It is in this context that I would hold that no privilege exists in the material itself which is itself ‘real’ and ‘independent’ evidence and is not itself ‘compelled testimony’ from [the respondent].”

In para.35 of the judgment Longmore LJ stated that it was perfectly permissible for somebody who was legitimately on premises to inform the police about offending material which they had observed there. He appears to have treated the situation before him (where a person had obtained material under a search order) as almost *a fortiori* and following from that proposition.

Lord Justice Collins had a somewhat different view as to the role and extent of the privilege against self-incrimination at common law but assented in the result.

20 Mr Katz submitted to me that the material which is on the electronic devices, whatever that material is, is simply independent material; and if I make an order for the electronic devices to be inspected there is no potential contravention of the privilege against self-incrimination because the defendant is not being invited to create anything in the form of a document or statement but simply to supply what already exists.

21 I do not, however, regard Mr Katz’s points as being at all clear. It seems to me that there is substantial material which indicates, or may indicate, that the privilege against self-incrimination can extend to someone being able to refuse to produce documents where they

say that the contents of those documents may incriminate them either directly or because it may lead someone to a train of enquiry which would have that effect.

22 I bear in mind that **Matthews and Malek** go on in para.13-05 to state:

“Where the rule applies the person need not answer questions and can object to answering requests for information under Civil Procedure Rules Part 18 which have now replaced interrogatories and letters rogatory and to producing documents for inspection.”

There is a footnote reference to *Spokes v Grosvenor Hotel* [1897] 2 QB 124 and to certain other authorities. It seems to me, having looked briefly at the *Spokes* decision and where it does not seem to me to have been necessary for the purposes of this judgment to have invited submissions on it, that that decision may well indicate that a person can refuse to disclose documents on the basis that the contents of those documents may incriminate them. I refer in particular to the judgment of Lord Esher, Master of the Rolls, at 131 to 133 and Chitty LJ at page 134.

23 It also seems to me that the *C Plc v P* may well be distinguishable on the basis there that the relevant incriminatory material: firstly, had nothing to do with the (search) order which the court was making or the reasons for that order, which is or may not be the case here; and, secondly, that that was not a situation of material which incriminated the respondent about something which was separate from the material itself but where the mere possession of the relevant material was itself potentially a criminal offence, it being generally illegal to possess pornographic pictures of children.

24 It, therefore, seems to me that Mr Katz’s contention that the privilege against self-incrimination has no role in these particular circumstances is one which is unclear and itself subject to question.

25 However, I also bear in mind that, as set out in para.13-11 of **Matthews and Malek**, the privilege is only against a risk of self-incrimination and that, while the court does not seek to

assess the probability of risk, there must be some grounds to apprehend danger and which grounds must be reasonable rather than merely fanciful.

26 While I accept that there is an existing criminal prosecution, I do have to ask myself whether an order along the lines that presently exists; being that the documents be supplied to an expert and inspected by that expert and reported on by that expert without any further order or permission that the documents and the relevant expert report be disclosed to any of the parties, and where a further application would be required for that to take place; as to whether in those circumstances merely carrying into effect my existing order would give rise to any real and appreciable risk of self-incrimination on the defendant's part.

27 However, in addition to that, although it also raises similar questions, it seems to me that I also need to consider whether carrying into effect the order which I have made could carry any real risk as opposed to a merely fanciful one of prejudicing or tainting the criminal proceedings or at least the defendant's defence of them. It does seem to me that there is a general principle that the civil court is very concerned to avoid any such prejudice taking place; and, in this regard, I have borne in mind what I have already said about the future course of the criminal proceedings being necessarily unclear and incapable of being assessed with precision or certainty, and which, therefore, causes me to be all the more cautious in terms of requiring the defendant to take disclosure steps which could result in material being obtained which would be contrary to defences which it is conceivable he may wish to advance in the criminal proceedings. For example, as I have already said, the defendant may seek to say that the communications and video came from someone else, and which contentions may be affected if the claimant was able to point to an expert's report saying that the defendant had been in the relevant locations at the relevant times that the communications were made.

28 I have considered this all as a matter of general discretion and also applied the overriding objective in the Civil Procedure Rules 1.1:

“1.1 (1) These Rules are a procedural code with the overriding objective of enabling the court to deal with cases justly and at proportionate cost.

(2) Dealing with a case justly and at proportionate cost includes, so far as is practicable –

(a) ensuring that the parties are on an equal footing and can participate fully in proceedings, and that parties and witnesses can give their best evidence;

(b) saving expense;

(c) dealing with the case in ways which are proportionate –

(i) to the amount of money involved;

(ii) to the importance of the case;

(iii) to the complexity of the issues; and

(iv) to the financial position of each party;

(d) ensuring that it is dealt with expeditiously and fairly;

(e) allotting to it an appropriate share of the court’s resources, while taking into account the need to allot resources to other cases; and

(f) enforcing compliance with rules, practice directions and orders.”

which I have taken fully into account, and which includes such matters as: enabling a party to advance their whole case; treating the matter fairly; dealing with the matter expeditiously, which itself would suggest progressing the case; and the importance of compliance with rules, practice directions and orders where I have made previous orders with regards to the

electronic devices, at least one or two of which were in the context of my knowing of the criminal proceedings.

29 I have come to the conclusion that I should continue to carry into effect my electronic devices order, that is to say my order regarding the devices being provided to the expert and the expert producing a report which is not disclosed to the parties, with appropriate modifications to my previous orders, for the following reasons.

30 Firstly, what that order is primarily designed to do is to, at least at this point in time, ensure that material is preserved where the court, quite apart from its powers under Civil Procedure Rule Part 31 with regards to requiring disclosure, has power to preserve “relevant property” under Civil Procedure Rule 25.1(c), and where “relevant property” (see sub-rule CPR25(2)) includes any property as to which any question may arise on a claim, and which, at first sight, includes the defendant’s electronic devices. It seems to me that it is important that the devices and whatever material is on them is preserved; and that the convenient way of doing that is to have them provided to and inspected by an expert now who can image the devices so that their electronic data is simply preserved. Secondly, that it is simply convenient for that expert at the same time to simply review that data insofar as to whether it contains any of the video material or images. Thirdly, it seems to me that the present orders, particularly if slightly expanded, can ensure that all that is done is such a preservation and convenient inspection process, and that that aim can be achieved by way of ensuring that the expert’s report and expert’s investigation is not at this point disclosed to either of the parties.

31 The claimant’s solicitor has already given undertakings to the effect that he will communicate with the expert only by email copied to the defendant. The provisions of the order are to the effect that in order for the expert to act they will have to have given a series of undertakings which provide that their report is simply to be provided to the court and nothing is to be communicated to the parties without a further order of this court.

- 32 As far as the question of privilege against self-incrimination is concerned, it seems to me that I can deal with that by making an order to the effect that any privilege against self-incrimination in relation to the devices or the material on them shall be preserved as if the order had not been made and the inspection by the expert and subsequent report had not taken place; the aim being simply to ensure that the position is held so that the question of privilege against self-incrimination can be argued later should it be desired to be raised.
- 33 As far as the privilege against self-incrimination is concerned, I have borne in mind the fact that the defendant has at previous hearings, as I have already said, stated that he did not object to the inspection of the devices; and that Mr Katz would wish to raise a counter argument to the effect that, if the defendant seeks to rely on the events which are the subject matter of these proceedings in the criminal proceedings, the defendant should not be allowed to take a contradictory position of both relying on the events and refusing to allow the material to be produced which might show that his reliance was unfounded. However, again, all those matters, it seems to me, should be for another day.
- 34 With regards to the question as to whether making such orders will result in a potential taint of the criminal proceedings or prejudice of the defendant's defence in relation to them, it seems to me that at this point the possibility of that occurring lacks any reasonable grounds. Firstly, there are already a set of undertakings in place designed to ensure that the expert's inspection and report will not be disclosed to the claimant. Secondly, the claimant has accepted that there should be a further undertaking provided by both the claimant and the claimant's solicitor not to use any information, communication or material disclosed or communicated to them by the expert (and which disclosures and communications should not in any event take place) in or for the purposes of the criminal proceedings, and it should be "in the or any other criminal proceedings". It seems to me that that will make it all the more clear that such material is not to be used, and that such use would potentially give rise to this court imposing penalties if such occurred. Thirdly, Mr Walker, counsel instructed by the

claimant in the criminal proceedings, has drawn my attention both to the power of the criminal court to exclude material which has been unfairly obtained from criminal proceedings where that is appropriate under Section 78 of the Police and Criminal Evidence Act, and also the power of the criminal courts to dismiss prosecutions for abuse of process where they are found on improperly obtained material. However, it simply seems to me that the prospect of anything material leaking to the claimant in these particular circumstances is a remote one.

35 The defendant has, however, complained about other matters. Firstly, the defendant has contended that the claimant is in fact seeking to obtain material for the purposes of certain litigation and disputes in America and that I should not permit the expert to report, even by way of list, on what are the actual files and data contained on the computers except insofar as material which appears in the video is concerned. There is some limited force in that but it seems to me, though, that it can be dealt with by modifying the present order so as to amend the provision for the expert simply to provide a list of files and data to add a provision that insofar as the expert considers that such is necessary for them to create a proper report, the expert should create a self-contained schedule listing the files and data which they have inspected. Mr Katz was agreeable to that. It seems to me that that will then leave open to any subsequent occasion the question of whether or not the claimant should be permitted to see that schedule.

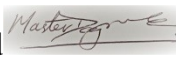
36 Secondly, the defendant complained that the result was unfair to him in circumstances where he is a litigant in person who cannot afford, he said, legal representation for the civil proceedings, including even to pay his criminal lawyers to seek to attend hearings. He submitted that since there will be an inevitable eventual attempt by the claimant to see the expert's report, he, as a litigant in person, would not be legally represented and would be disadvantaged. It seems to me, though, that that is simply an incident of ordinary civil proceedings. Parties are allowed to appear in person or by legal representatives. Generally,

one party cannot complain that they have to act in person whilst the other side has legal representation, even if that is simply because one side has assets and resources and the other one does not.

37 The court, as part of the overriding objective to maintain fairness (and will take account of the fact that a party is a litigant in person when making case management decisions – see CPR3.1A), but it is for the parties to attend hearings and to make their various contentions. The court is an independent arbiter which hears the evidence and the parties' contentions and concludes as to what should be the outcome as a matter of law in the circumstances of the case. That is a situation which my order will still allow to be secured since in effect the claimant will have to make an application. If the claimant wishes ever to see the report, the defendant will be given notice of that application and the judge, whether myself or another judge, will be able to deal with that at a hearing at which both sides will be able to attend and advance (within the rules) whatever contentions they consider to be appropriate and whereupon the court will then make its independent decision. I do not consider that the fact that the defendant may be unable to afford legal representation, but can still advance his own case, should dissuade the court from making this preservative order, including an inspection but with these various protections.

38 It does seem to me in all the circumstances, where I have already made orders for this disclosure and expert process to take place, that simply carrying that process into effect to the limited degree which I have identified will fulfil the important function of preserving the relevant material while at the same time, as far as I can see, not placing the defendant in any particular real risk of infringement of the privilege against self-incrimination or prejudice. What happens in the future is for another day, but I can see no good reason why, with those qualifications, the orders which I have already made, including the one in April when the criminal proceedings were known about, should not be carried into effect; and, therefore, I am going to continue to so direct.

- 39 Mr Katz has submitted that my present order should be in the form of an unless order in view of what has happened in the past. In circumstances, though, where the single joint expert has not been identified, it seems to me that it is not appropriate to make an unless order at this point but simply in effect to say in this judgment (rather than in the resultant order) to the defendant that I am going to require rather good reason for not doing something serious, whether an unless order or even a strikeout order, if my subsequent order is disregarded. However, that will depend on the circumstances of the case as they then ensue.
- 40 I should also say in relation to the effective stay, whether or not it is termed as that in the resultant order, which I am granting in relation to these proceedings, that I do not regard it as being of serious prejudice to the claimant where it is the claimant who has brought the criminal proceedings, and where the claimant asserts that his primary desire is simply to have injunctive relief to prevent further publication of the video and the material used in it, and where there is and will be left in place a subsisting interim injunction preventing precisely that from occurring.
- 41 Those are, therefore, my reasons for my making the various orders referred to above.

Approved  24.4.2024

CERTIFICATE

Opus 2 International Limited hereby certifies that the above is an accurate and complete record of the Judgment or part thereof.

*Transcribed by **Opus 2 International Limited**
Official Court Reporters and Audio Transcribers
5 New Street Square, London, EC4A 3BF
Tel: 020 7831 5627 Fax: 020 7831 7737
civil@opus2.digital*

This transcript has been approved by the Judge