



Neutral Citation Number: [2023] EWHC 2684 (Fam)

Case No: FD23F00038

IN THE HIGH COURT OF JUSTICE
FAMILY DIVISION
IN THE MATTER OF THE CONTEMPT OF COURT ACT 1981
AND IN THE MATTER OF THE ADMINISTRATION OF JUSTICE ACT 1960
AND IN THE MATTER OF PART 37 FAMILY PROCEDURE RULES 2010

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 27/10/2023

Before :

THE HONOURABLE MR JUSTICE COBB

Between :

HIS MAJESTY’S SOLICITOR GENERAL

Applicant

- and -

JASON-STEVEN: WONG

Defendant

Adam Payter (instructed by **Government Legal Department**) for the Applicant
The Defendant was in attendance and unrepresented

Hearing dates: 1 & 9 August, 25 October 2023

Approved Judgment

This judgment was handed down remotely at 10.30am on 27 October 2023 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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MR JUSTICE COBB

This judgment was delivered in public.

The Honourable Mr Justice Cobb :

Summary of outcome

1. On the application brought by His Majesty's Solicitor General, I find beyond reasonable doubt that the Defendant is in contempt of court in that he:
 - i) Made a covert audio-recording of a substantive court hearing in adoption proceedings brought under the Adoption and Children Act 2002 conducted at the Family Court in Nottingham, sitting in private, before HHJ Watkins on 18 February 2022;
 - ii) Thereafter, within a few days of the court hearing, the Defendant disposed of the recording and associated documents to another with a view to their publication on YouTube.
2. This judgment explains my findings in relation to these proven contempts.
3. I will convene a sentencing hearing in one month's time. I have allowed this gap in time to enable the Defendant one more opportunity, should he wish to take it, to obtain legal representation.

Introduction

4. This is an application brought by His Majesty's Solicitor General ("the Applicant") under Parts 19 and 37 of the Family Procedure Rules 2010 ('FPR 2010') for an order committing Jason-Steven: Wong (hereafter "the Defendant") to prison for contempt of court. The application was issued on 20 April 2023.
5. For an application such as this to proceed otherwise than in existing proceedings, permission of the court must be sought (see rule 37.3(5) FPR 2010). It was clear on the face of the documents filed that the Applicant had assembled a strong *prima facie* case for seeking committal and that it was in the public interest for the proceedings to be pursued (see *Yaxley-Lennon* [2019] EWHC 1791 (QB) at [23]); I therefore granted permission at the outset of the hearing on 1 August 2023.
6. It is said that the alleged contempt arises in two ways:
 - i) That the Defendant made a covert audio-recording of a substantive court hearing in adoption proceedings brought under the Adoption and Children Act 2002 ('ACA 2002') conducted at the Family Court in Nottingham, sitting in private, before HHJ Watkins on 18 February 2022. The adoption proceedings (being conducted under a confidential serial number) concerned the Defendant's child;
 - ii) That, within a few days of the court hearing, the Defendant disposed of the recording and the associated documents to another with a view to their publication on YouTube.
7. For the purposes of determining this application, I read a bundle of statements and associated documents prepared by and on behalf of both parties. I have viewed a number of YouTube video recordings, one of which includes the audio-recording of

the hearing. I heard oral evidence from Joanna Arnold, a Senior Lawyer at the Attorney General's Office; the Defendant briefly cross-examined her. Each of the three relevant video recordings from YouTube have been downloaded and exhibited to statements of evidence. The Defendant chose not to give evidence; he nonetheless filed some written statements relevant to his case, and addressed me from the litigants' bench in court.

8. I should add that the Defendant expressly disavowed his family name, and wished to be addressed in court as 'Jason-Steven'. His full style is 'Jason-Steven: Wong. Of the House of Wong'. Documents served on him in his family name were met with the response:

“You are in violation of the terms of my Performance-Contract-Claim by the Commercialization-Violation of my Common-Law-Name. [Mr Wong] is a Legal Fiction and it has been made clear to you”.

9. On the first morning of the hearing in relation to the alleged contempt, the Defendant took preliminary issue with its 'authenticity'; he confirmed that he similarly challenged the 'authenticity' of the court hearing before HHJ Watkins. The Defendant sought sight of the court file created in respect of this contempt application in order (he said) to satisfy himself that it existed, that the application had been properly entered into the file, and the fee paid; indeed, he indicated that he would not engage with the contempt proceedings unless he could be so reassured. Deploying my powers under rule 29.12 FPR 2010, I gave my permission for him to be provided with a screenshot of the index of the FamilyMan digital file which confirmed the date on which the process had been launched, the fee paid, and documents entered on the court file.
10. Towards the conclusion of Mr Adam Payter's submissions on behalf of the Applicant, it became apparent that the Defendant did not in fact accept the summary note of his police interview (conducted on 8 April 2022), which had been included in the documents in the bundle. Mr Payter therefore applied to adjourn the hearing in order to obtain the audio-recording and a full transcript. I adjourned the hearing for one week so that an audio-recording could be obtained of the Defendant's interview, a transcript prepared, and both served on the court and the Defendant. This was done, but at the adjourned hearing (9 August), the Defendant was unwell and could not attend court; he submitted a medical certificate. The adjourned hearing was therefore re-listed for 25 October 2023.
11. The Defendant has throughout this process been unrepresented. On several occasions he has been advised of his right to publicly funded representation in line with Chamberlain J's observations in *All England Lawn Tennis Club (Championships) and All England Lawn Tennis Grounds PLC v McKay* [2019] EWHC 3065 (QBD) ([29(a)]: “As the Legal Aid Agency accepts, a respondent to High Court committal proceedings alleging breach of an order ... is entitled to legal aid as of right (i.e. without any assessment of his means or of whether it is in the interests of justice for representation to be provided)”). His right to legal representation was made clear in pre-action correspondence, and at the earlier case management hearing before Theis J. At various points of the hearing, I reminded the Defendant of his right to have a lawyer at public expense.

Background

12. The Defendant is the birth father of a child who was the subject of public law ('care') proceedings under Part IV of the Children Act 1989 ('CA 1989') brought by Nottinghamshire County Council. In or about December 2020 a care order was made (section 31 CA 1989) in relation to the child, and a placement order (section 21 ACA 2002). The child was placed for adoption. An adoption application was then issued by the prospective adopters under a confidential serial number (see rule 14.2 FPR 2010). A hearing was convened on 18 February 2022 for the court to consider whether the Defendant and/or the child's mother should be given leave to oppose the adoption application (under section 47 of the ACA 2002). The Defendant and the child's mother were unrepresented at that hearing. The local authority was represented by counsel.
13. Evidence filed on this application from the Court Support Team at Nottingham County Court confirmed that at the time of the February 2022 hearing:

“...there are notices regarding recordings, around the court building, outside all the courtrooms, and also on a central notice board at the public entrance. Anyone member of the public entering the building has to pass through security and there are various notices at this point, including a notice about recording, taking photographs and audio recordings. The court in which [the Defendant] attended, has a sign on the entrance door which states “It is an offence to take unauthorized photo or record video anywhere in the building. Audio recordings are not allowed in the hearing rooms””.
14. At the conclusion of the hearing on 18 February 2022, the judge (HHJ Watkins) reserved judgment, which I am advised he delivered electronically on 25 February 2022. He refused the Defendant and the child's mother leave to oppose the adoption, and went on to make the adoption order. That order brought the adoption proceedings to an end.
15. On or about 27 February 2022, a YouTube video was posted which contains an audio recording of the entire court hearing, with accompanying text on a rolling screen; the video is entitled: “Jason-Stephen (sic.): Clearly Exposes the Corruption and Conspiracies within the Criminal Family Courts.” (“Video 1”).
16. On 1 March 2022, Nottinghamshire County Council wrote to the Defendant (“the Local Authority letter”) requesting that the Defendant remove the film from YouTube.
17. On 2 March 2022, a further video was published on YouTube (“Video 2”). It features a woman who identifies herself as Ms Sian Gissing-McMeel, and who describes herself as “a public advocate” (in Video 3 she describes herself as a “legal investigative journalist exposing [the judge] in the public interest”) and an unidentified man (believed to be Andrew Devine). The Local Authority letter is shared on the screen; Ms Gissing-McMeel refers to it as a “harassment letter”, in

which she claims that author has “threatened” the Defendant. She says that it is in the “public interest” to expose those guilty of “malfeasance” in public office.

18. On the same day a yet further video was published on YouTube (“Video 3”), in which the same two people appear; the Local Authority letter is once again shared on screen. Ms Gissing-McMeel claims that there are “false allegations of contempt of court” being made. She reads out an email to Ms Gallagher; she says that the “public” have “every right” to see and know of any corruption which obstructs the right to justice; she invites Ms Gallagher to withdraw the Local Authority letter and describes it as “null and void” and a “direct attack” on the Defendant depriving the Defendant of his “liberties as a man”. She again refers to it again as “harassment”, and calls her to “cancel all allegations”.
19. On 8 April 2022, the Defendant was arrested for an alleged offence under section 97 CA 1989 in respect of the recording of the hearing; later the same day, he was interviewed under caution. He was later charged with an offence under section 97. That prosecution was discontinued in November 2022 when the Attorney General indicated that she would bring contempt proceedings. A Pre-Action Protocol letter was sent to the Defendant on 17 January 2023 to which he replied on 1 February 2023 and proceedings were launched, as I earlier mentioned, on 20 April 2023.

The Applicant’s case

20. The contempt application is supported by an affidavit from Joanne Arnold, Senior Lawyer at the Attorney General’s Office; she exhibits the transcript of the hearing on 18 February 2022. There is an affidavit from Ms Theresa Gallagher, lawyer at Nottinghamshire County Council, exhibiting documents relevant to the publication of information arising from the proceedings; two short statements are provided from Adina Mercioniu of Legastat Ltd and she exhibits Videos 1-3. There is before the court a collection of documents and other material generated by the Nottinghamshire Police in the context of their investigation into the alleged criminal offence (section 97 CA 1989).
21. It is the Applicant’s case that on 18 February 2022, at the Family Court sitting at Nottingham, the Defendant covertly made an audio recording of an adoption court hearing, in proceedings brought by Nottinghamshire County Council in the Family Court in relation to his child. It is alleged that this recording was made in contravention of section 9(1)(a) of the Contempt of Court Act 1981 (‘CCA 1981’). It is said that this recording was made without the permission of the judge.
22. The Applicant further alleges that between 18 February 2022 and 27 February 2022, the Defendant then passed the recording (electronically) to another, namely Andrew Devine, who apparently lives outside of the jurisdiction, and who published it on his YouTube channel (which is called ‘Baron Andrew of the House of Devine’). This became Video 1. Specifically, the Applicant asserts that the Defendant “disposed of [the recording] or any recording with a view to such publication” and that this is a breach of both section 9(1)(b) of the CCA 1981 and section 12(1)(a) of the Administration of Justice Act 1960 (‘AJA 1960’).
23. I have viewed Video 1. Against the sound-track of the recorded court hearing, a rolling script is displayed on screen, identifying that the issue relates to “Jason-

Stephen (sic.): Wong: The Man v Nottingham County Council Employees... treasonous violent theft of his own kin and other people's flesh and blood". The script on screen continues:

"Burden of proof! And: he who leaves the battlefield first, loses the battle!

This video creation is made with the intention to gain public support of the peoples as jury and seek justice for the man and woman: Jason-Stephen (sic.) and [the mother] and the violent theft of their kin/flesh and blood property and at the same time enlightened people to what is happening in these buildings that are operating private hearings, alleging to be courts of public record and yet they have no public record that can be or is being concealed from being shown... and I concur with Jason-Stephen 100% that if publishing this video creates a claim being made of contempt of court that we will welcome that presumption under the form of an affidavit made and autographed by a living man or woman under the penalty of perjury... that court is not a court of record, and not authentic, valid or certified, and has no authority as a court and has not followed due process... any claims being made that the publication of this video is in contempt of the court are hereby for and on the record being formally challenged as of no material fact and those claiming the contempt are required to provide the forensic material evidence for the substantiation so that the claim is certifiable, correct, and with the provisions of the presentments and their supply...". (Emphasis by underlining added).

24. There follows, on screen, a still photograph of the judge (not taken in court), certain information about the judge contained from public records, various documents purportedly associated with the proceedings, the name of the relevant social worker; in further rolling text, serious allegations about the integrity of the proceedings and the honesty of the professionals associated with it are made. The script then contains a request for HHJ Watkins to recuse himself. The name of the Defendant's child is referred to on at least three occasions.
25. The Applicant contends that Videos 2 and 3 are relevant to the publication of Video 1 because they link the Defendant to Andrew Devine, and show that the Local Authority letter (sent after the hearing, but relevant to the same) was obviously passed by the Defendant to Andrew Devine and/or Sian Gissing-McMeel which was then published on YouTube. These later videos demonstrate, says the Applicant, that instead of removing the material from the YouTube site, the Defendant was defiantly passing on more information about the court process, which was itself being published.
26. It is said in one of the videos that a 'Jason' was to appear as a 'guest' on Andrew Devine's YouTube channel. I suspect that this is a reference to the Defendant, but I do not so find.

27. It is the Applicant's case that at the time the Defendant made the recording, it was clear to the Defendant that he was not permitted to make such a recording, having regard to the notices posted around the court which displayed the clear message that the recording of proceedings is forbidden. Moreover, it is clear that the Defendant was no stranger to the Family Court; the hearing on 18 February 2022 was the final hearing in long running care and adoption proceedings concerning the Defendant's child.
28. While notices are undoubtedly important to advise litigants of the law, it is a moot point whether the existence of these notices is relevant to the alleged contempt (see further on this at §66 below).
29. It is the Applicant's case that the Defendant has in fact accepted to all intents and purposes his culpability for this contempt. When arrested by the police, the Defendant was heard to say: "the source of the court orders are fraudulent, that's why I made the recording". I have viewed the bodycam footage of this event and confirm that these are his words.
30. Following his arrest, the Defendant was interviewed under caution. His responses to the police in interview include a number of material admissions (again, I have listened to the audio and matched this with the transcript). I have set out some of the most significant answers in Annex A to this judgment, perhaps most notable among them are:
 - i) "I was recording, collecting evidence for a criminal investigation because all my documentation has proved that the Council and the court are let's say -- their proceedings have not been through due process ... it's an alleged court. I did not see it as a court";
 - ii) "What I've had to do is I've had to start my own investigation into these private hearings because they are not real court hearings";
 - iii) "If it was a real court, I would not have recorded it";
 - iv) "Q: you admit making the recording? A: Yes ... if you can prove to me that it's a court hearing I will admit I'm wrong";
 - v) "I want to expose what's going on because my [child] has gone";
 - vi) "I think it's an absolutely brilliant video. Because it quite clearly shows that the courts -- that that was not a court hearing. There was no rule of law. There was no due -- I've been denied due process there".

The Defendant's case

31. The Defendant has admitted that he attended the court hearing on 18 February 2022 to seek leave to oppose the adoption order in respect of his child; he was unrepresented. He has accepted in a number of different places (including in police interview under caution) that he recorded the hearing; he has also accepted that he passed the recording to Andrew Devine and that it was published on YouTube. He accepts that

the video is entitled “Jason-Stephen (sic.): Clearly Exposes the Corruption and Conspiracies within the Criminal Family Courts”.

32. The primary argument raised in the Defendant’s defence of this application is that the hearing before HHJ Watkins on 18 February 2022 was a “sham hearing”, in “fabricated Family Court proceedings used by the proven violent paedo-sexual gang falsely and repeatedly using the authority of the courts as cover”. He said that in respect of this hearing, “justice was nothing but an illusion”. He told me that if the court hearing was proved to be ‘authentic’ then he would ‘hold my hands up’ and ‘apologise’.
33. Some months ago (I believe as long ago as November 2020), the Defendant issued an application purportedly under Part 18 CPR seeking sight of the court file created in relation to the adoption application leading to the order on 18 February 2022; this has never been addressed. He has sought to renew this application in these proceedings and contends that as the Applicant has failed to respond to this application, produce the court file, or otherwise demonstrate that the hearing was ‘authentic’, then the application for committal should be dismissed.
34. Without prejudice to the primary argument set out in the paragraphs above, the Defendant further contends, in summary, that:
 - i) The “alleged” hearing on 18 February was in fact a “crime scene”; he told the police in interview that he is conducting his own “criminal investigation” and was collecting evidence in relation to violent “paedo criminals”;
 - ii) HHJ Watkins should have recused himself, as the Defendant had “intelligence that Judge Watkins had broken his oath in a previous family law case”, and had shown “bias” in a previous case;
 - iii) Theresa Gallagher had perjured herself by making a false statement in the ‘Statement of Facts’ (filed in the substantive proceedings in compliance with rule 14.9(2)(b) FPR 2010), which has rendered “void” the subsequent adoption order;
 - iv) That he was entitled to publish the recording as it was in the public interest (“in good faith of public affairs”) to expose the criminal behaviour of the Family Court;
 - v) His recording “was a bold stand against an unjust system”; “My recording was made in the genuine belief that I was contributing to a larger discussion about transparency in our legal system. My actions were a testament to my commitment to the principles of fairness and justice”;
 - vi) At the time of the publication, the proceedings were not “active” and there is therefore no contempt.
35. In police interview he said that he had used a hand-held recording device to record the proceedings, and although he had not seen the notices in the court building on 18 February, he had been made aware previously by a court clerk that he could not

record. He concluded the police interview by stating that there are “a lot more recordings to come”.

Legal framework

36. Rule 27.10 of the FPR 2010 provides that family proceedings of the kind under consideration here (adoption proceedings) “will be held in private”. The rules further provide that:

“No party or member of the public may use unofficial recording equipment in any court without the permission of the court. (To do so without permission constitutes a contempt of court under section 9 of the [CCA 1981]”.)

37. The privacy of proceedings involving children is reinforced by a number of statutory provisions. Section 97(2) of the CA makes it a criminal offence to:

“... publish to the public at large or any section of the public any material which is intended, or likely, to identify ... any child as being involved in any proceedings before [the family court] in which any power under [the CA 1989] or the [ACA 2002] may be exercised by the court with respect to that or any other child”.

An offence under section 97 is punishable on summary conviction by a fine, not exceeding level 4 (current maximum £2,500). Significantly for present purposes the protection offered by section 97 expires at the conclusion of the proceedings (*Clayton v Clayton* [2006] EWCA Civ 878).

38. The powers of punishment are more extensive in the event that contempt of court is proved; the contempt process outlives the substantive proceedings.
39. The relevant statutory law of contempt for these purposes is contained in the AJA 1960 and the CCA 1981. There is much which is useful within the judgment of the Divisional Court in *Solicitor General v Cox & another* [2016] EWHC 1241 (QB) (*‘Cox’*), on which Mr Payter relied, including a passage which provides a useful introduction to the issues arising here:

“[67] The general description of the nature of contempt in *Robertson and Gough*¹, at paragraph [29] of its decision, is a good starting point: “conduct that denotes wilful defiance of, or disrespect towards, the court or that wilfully challenges or affronts the authority of the court or the supremacy of the law itself”. The purpose of contempt proceedings is “effectively to protect the rights of the public by ensuring that the administration of justice shall not be obstructed or prevented”; Salmon LJ in *Morris v Crown Office* [1970] 2 QB 114, 129, cited by the Law Commission

¹ *Robertson and Gough v HM Advocate* [2007] HCJAC 63

in consultation paper 209 “Contempt of Court” at paragraph 5.8”. (Emphasis by underlining added).

40. In relation to the alleged contempt of court, the burden of proof is squarely on the Applicant. I can only find the Defendant to be in contempt if I am sure he has committed the act(s) alleged to be a contempt. The criminal standard of proof applies.

41. Section 12(1)(a) AJA 1960 has the effect of making it a contempt of court to publish:

“...information relating to proceedings before any court sitting in private ... where the proceedings (i) relate to the exercise of the inherent jurisdiction of the High Court with respect to minors; (ii) are brought under the [CA 1989] or the [ACA 2002]; or (iii) otherwise relate wholly or mainly to the ... upbringing of a minor.”

42. In *Re B* [2004] EWHC 411 (Fam), Munby J as he then was said at [72²]:

“[72] ... there is a "publication" for the purposes of section 12 whenever the law of defamation would treat there as being a publication. I recognise that this means that most forms of dissemination, whether oral or written, will constitute a publication, but I do not shrink from that. After all, the purpose of section 12(1)(a) is surely to protect what Lord Shaw³ called "truly private affairs", what Balcombe LJ in *In re Manda* [1993] Fam 183 at p 195 referred to as the "curtain of privacy" imposed by the family court for the protection of the particular child”.

And at [77]:

“... whilst section 12 does not prohibit publication of "the nature of the dispute", it does prohibit publication of even summaries of the evidence.”

43. The principal contempt legislation is the CCA 1981. Section 9 of the CCA 1981 is key to the current application; the relevant parts of that section provide:

“Use of Tape Recorders

(1) Subject to subsection (4) below, it is a contempt of court—

(a) to use in court, or bring into court for use, any tape recorder or other instrument for recording sound, except with the leave of the court;

(b) to publish a recording of legal proceedings made by means of any such instrument, or any recording derived

² Repeated in the summary section at [82(iii)]

³ *Scott v Scott* [1913] AC 417.

directly or indirectly from it, by playing it in the hearing of the public or any section of the public, or to dispose of it or any recording so derived, with a view to such publication”.

Subsection (4) deals with the making of recording for official transcripts and is not therefore relevant here.

44. I pause to reference here section 1 CCA 1981 and the ‘Strict Liability Rule’; if this rule applies to a given case, it removes any need for the Applicant to prove the ‘intent’ of the Defendant (i.e., to interfere with the course of justice):

“In this Act “the strict liability rule” means the rule of law whereby conduct may be treated as a contempt of court as tending to interfere with the course of justice in particular legal proceedings regardless of intent to do so.”

Section 2 CCA 1981 explains the strict liability rule:

“(1) The strict liability rule applies only in relation to publications, and for this purpose “publication” includes any speech, writing, [programme included in a cable programme service] or other communication in whatever form, which is addressed to the public at large or any section of the public.

(2) The strict liability rule applies only to a publication which creates a substantial risk that the course of justice in the proceedings in question will be seriously impeded or prejudiced.

(3) The strict liability rule applies to a publication only if the proceedings in question are active within the meaning of this section at the time of the publication.

(4) Schedule 1 applies for determining the times at which proceedings are to be treated as active within the meaning of this section”. (Emphasis by underlining added).

45. Schedule 1 paragraph 12 CCA 1981 describes when proceedings are to be regarded as ‘active’ – i.e., “from the time when arrangements for the hearing are made or, if no such arrangements are previously made, from the time the hearing begins, until the proceedings are disposed of or discontinued or withdrawn”.
46. This rule only applies in certain circumstances. It is the Applicant’s case before me that there is no basis in principle to tie section 9(1) of the CCA 1981 and section 12 AJA 1960 to the strict liability rule set out in section 1 of CCA 1981 Act. Mr Payter argues that the Defendant’s conduct in the instant case is, or is akin to, contempt in the face of the court – misconduct in the course of proceedings which subverts the administration of justice – to which section 1 CCA 1981 is not intended to apply.

47. For alleged contempt under section 9(1)(a) of the 1981 Act, Mr Payter submits that it is sufficient simply for the Applicant to prove that a person (the Defendant here) knowingly brought a tape recorder into court and intended to, or did in fact, use it. For this proposition, Mr Payter relies on *Re Hooker* [1993] COD 190, where Kennedy LJ expressed the preliminary view (the appeal was determined on other grounds) that, in respect of section 9(1)(a) there would be no need to demonstrate intention to interfere with the administration of justice or an element of defiance. Arlidge, Eady & Smith on Contempt 5th Ed'n at 10-209 confirms this:

“It would seem in principle to be enough for liability under s.9(1)(a) that one knowingly takes a tape recorder, intending to use it. In accordance with the general rule that mistake of law is no defence, it would not avail a person who was unaware of the provision; a student for example, who went to court and hoped to take a recording of that experience would commit an offence. But ignorance of that sort would be understandable, and should be regarded as an important matter of mitigation”.

48. In relation to section 9(1)(b) Mr Payter repeats his submission – i.e., that (as per section 9(1)(a)) there is no need to tie this subsection to section 1 (the strict liability rule). He disputes any need to prove the element of intent or *mens rea* (i.e., that the Defendant intended to interfere with the due administration of justice) in establishing contempt on this ground. In this regard, Mr Payter relies again on Arlidge, Eady & Smith on Contempt 5th Ed'n and the concluding words of 10-209 quoted in §47 above:

“Similarly, as to s.9(1)(b), all that would appear to be required is that the publication should take place knowingly.”

49. He draws heavily from the Divisional Court judgment in *Cox* (citation §39 above) in inviting me to conclude that I do not need to be concerned with section 1 CCA 1981 at all. *Cox* was a case in which photographs were taken in a Crown Court at a sentencing hearing of a Defendant convicted of murder; a criminal offence had been committed by the action complained of (in that case, the taking of photographs in a court room [section 41 of the Criminal Justice Act 1925], in this case the alleged recording contrary to section 97 CA 1989). One of the defendants had indicated that he was not aware that he could not take photographs and that he had no intention of interfering with the course of justice and “did not foresee that justice might be interfered with”. The Divisional Court treated the taking and publishing of photos as contempt in the face of the court; Mr Payter argued that taking photos and making a recording were analogous.
50. The Divisional Court in *Cox* had itself relied on *R v Vincent D (Contempt of Court: Illegal Photography)* [2004] EWCA Crim 1271 (see [35] of *Cox*) and observed that:

“The illegal photography was dealt with as a contempt in the face of the court, though it had not actually disrupted court proceedings. It followed that it could be dealt with on application for committal as well”.

At [66] of *Cox*, the Divisional Court importantly said this:

“... we are concerned with acts which fall into the broad category of contempt in the face of the court or contempts closely related to such contempt” (emphasis added).

51. At [70] of *Cox* it was said that:

“The substance of this part of the common law is to enable courts to prevent and punish interference with the administration of justice by acts done in the face of the court. The intent required cannot depend on the foresight, knowledge or understanding which the ignorant or foolish might have of the ways in which his acts risk or actually do interfere with the administration of justice”.

And at [74]:

“... the taking of photographs does involve a contempt in the face of the court, and their publication is directly connected to the purpose and effect of that contempt; it may take place almost simultaneously”.

52. There are two important points to arise from *Cox*:

- i) First that the Divisional Court in *Cox* concluded that the taking of a photograph and the subsequent publication of a photograph on Facebook each constitute the *actus reus* of contempt;
- ii) Secondly, that in contempt of this kind there is no need for the Applicant to prove that the Defendant intended to interfere with the administration of justice. In this regard, I was particularly interested in the following paragraphs of the Divisional Court judgment in *Cox*:

“[23] ...illegal photography will in general interfere with the proper administration of justice through the very fact that it defies the criminal law relating to the administration of justice. Second, the statutory prohibition on photography in court is also a reflection of the serious risk to the administration of justice necessarily inherent in photography in court without the permission of the court which can be given under the relevant statutory provisions in very limited circumstances. This prohibition is underlined by the notices forbidding the use of mobile phones and photography in court buildings.”

“[26] The publication of the illegally taken images was itself a contempt, and one which aggravated the contempt committed by the taking of the images. The publication of an illegally taken image is an offence”.

The court continued at [68]/[69]/[70]/[74]:

“[68] In the overwhelming majority of cases, it will no doubt be readily inferred that the person deliberately taking photographs intended to interfere with the due administration of justice...

[69] However there may be rare cases where that is not the inference; ... It is therefore necessary to decide whether a specific intent is required. In our view, it is not. It is sufficient mens rea that the acts must be deliberate and in breach of the criminal law or a court order of which the person knows”.

[70] No specific intent is required beyond that. The substance of this part of the common law is to enable courts to prevent and punish interference with the administration of justice by acts done in the face of the court. The intent required cannot depend on the foresight, knowledge or understanding which the ignorant or foolish might have of the ways in which his acts risk or actually do interfere with the administration of justice.” (Emphasis added).

“[74] ... even if such publication is not a contempt in the face of the court, the required *mens rea* should be no different from that applicable to contempt in the face of the court. First, the deliberate publication of illegally taken photographs is a crime under the CJA 1925. Second, the taking of photographs does involve a contempt in the face of the court, and their publication is directly connected to the purpose and effect of that contempt; it may take place almost simultaneously. Third, the prohibition in notices on the taking of photographs and the use of mobile phones must carry with it by necessary implication the prohibition on the publication of what their use achieves. The publication of what are known to be illegally taken photographs must be regarded as a breach of the same prohibitions”. (Emphasis throughout by underlining added).

53. I have dwelt on this issue in this judgment because Mr Payter pointed out that a different approach to the issue of *mens rea* was taken by MacDonald J in *AG v Dowie* [2022] EWFC 25 in proceedings with some factual similarities to those before me. This was a case in which the Defendant had made a number of recordings of family court hearings, which were then posted on YouTube. Among the issues in that case were that (a) the Defendant contended that he was not in contempt of court in circumstances where at the time he uploaded the videos he was not aware that the family proceedings were heard in private, it being only later that he realised his actions were unlawful, and (b) the publication of the videos had no impact on the Children Act proceedings long since concluded and that there is no evidence that the publication in fact undermined the administration of justice more widely.

54. MacDonald J specifically considered that section 1 CCA 1981 did apply in these circumstances, and it was necessary to consider the defendant's *mens rea* in a case which was no longer 'active' (i.e., the applicant needed also to prove that the defendant intended to interfere in the due administration of justice). MacDonald J drew a distinction between those contempts which fell within the strict liability rule (section 1 CCA 1981) and those outside (see in particular [33], [43], [47] et seq.)
55. The circumstances in which contempts of court arise are too varied for one *mens rea* to be applicable to all forms of contempt: "[n]or is that the law" (see *Cox* at [66]). I accept Mr Payter's argument that the strict liability rule in section 1 and 2 of the CCA 1981 is not relevant to my determination, and it is not necessary for the court to find that the Defendant had a specific intent to interfere with the due administration of justice in section 9(1)(a)/(b). I say so for the following reasons:
- i) I accept Mr Payter's submission that tape recording of proceedings is, or is akin to, contempt in the face of the court to which section 1 CCA 1981 is not intended to apply. I note that section 9 falls with the second discrete section of the CCA 1981 (entitled 'Other Aspects of Law and Procedure'), and not in the first section which deals with (and is entitled) 'Strict Liability';
 - ii) I am persuaded by the comments of the editors of Arlidge, Eady & Smith on Contempt 5th Ed'n at [10-209] (under the '*Mens Rea* requirement') cited above (see §47/48) viz: "It would seem in principle to be enough for liability under s.9(1)(a) that one knowingly takes in the tape-recorder, intending to use it" ... "Similarly, as to s.9(1)(b), all that would appear to be required is that the publication should take place knowingly";
 - iii) The approach of the editors of Arlidge, Eady & Smith on Contempt (5th Ed'n) echoes the comments of Kennedy LJ in *Hooker* in relation to section 9(1)(a); it would be perverse for a different rule to apply to the two sub-sections in section 9(1);
 - iv) To import an *additional* mental element (a specific intent to interfere with the due administration of justice) would engage the problems identified by the Divisional Court in *Cox* at [72] in that the court should not be left powerless to deal with the risk created to the administration of justice as a result of being unable to prove 'intent';
 - v) In *Attorney General v Pritchard* [2020] EWHC 607 (QB) (a case in which the defendant used his mobile telephone on ten occasions to make audio recordings of proceedings in the Crown Court, without leave of the Court), Dingemans LJ said at [8]:

"It is necessary to show an intention to record the proceedings, so that an inadvertent pocket recording would not be caught, see *HM Solicitor General v Cox* [2016] 2 Cr App R 15 at paragraph 69. It is not necessary to show that the contemnor knew what he was doing was not prohibited".

- vi) In *HM Solicitor General v Katarzyna Paczkowska* [2022] EWHC 3458 (KB) at [14] Chamberlain J indicated that section 1 CCA 1981 referred to a “different species of contempt” from the tape-recording cases, adding:

“[14] ... the Solicitor General must prove to the criminal standard that [the Defendant] deliberately –

(a) used a tape recorder or other instrument for recording sound and,

(b) disposed of the recording with a view to publication.

[15] There is no other mental element, and it is no defence that the individual did not intend to interfere with the administration of justice, or did not know that recording or publication was prohibited. (See by analogy the *HM Solicitor General v Cox* [2016] EWHC 1241 (QB) [2016] 2 Cr App R 15 paragraphs 66 to 80 ...” (Emphasis by underlining added).

56. I should add that in the appeal in the *Dowie* case (*His Majesty's Attorney General v Dowie* [2022] EWCA Civ 1574), Peter Jackson LJ (while not deciding the point) observed at [27] and [28] that there was “considerable substance” in the Attorney General’s argument that MacDonald J was in fact wrong to conclude that it was a necessary component of the *mens rea* for contempt under section 9(1) of the Contempt of Court Act 1981 and under section 12 of the Administration of Justice Act 1960 for the Appellant to have intended to interfere with the administration of justice.
57. Finally, with regard to Section 12 AJA 1960, Macdonald J in *Dowie* said this at [42]:

“[42] In the circumstances, with respect to the question of *mens rea* required to establish the ground of contempt under the Administration of Justice Act 1960 s.12(1), it is necessary to prove beyond reasonable doubt that the alleged contemnor published information in the knowledge that the proceedings were being heard in private. Beyond being aware that that the information relates to proceedings taking place in private, it would not appear to be necessary to show that the alleged contemnor was aware of the specific legal provisions which prohibit publication, having regard to the general principle that ignorance of the law is no defence”.

Double jeopardy:

58. It is right that I should address in this judgment the issue of ‘double jeopardy’ which was raised in argument by the Defendant.
59. Initially, the Defendant was arrested and charged with the criminal offence under section 97 CA 1989. The criminal process was halted as the Crown Prosecution Service took the view that the statutory offence did not reflect the gravity of the

Defendant's conduct (the offence under section 97 is punishable only by way of fine) and referred the case to the Attorney General's office to consider contempt proceedings. It was in those circumstances that this application was made. The Defendant was never tried in the criminal court.

Findings

60. I reject the Defendant's primary assertion that the hearing in Nottingham on 18 February 2022 was a "sham court", not 'authentic', not held in a properly constituted courtroom, and was not heard by a duly appointed judge, or one authorised to hear public law CA 1989 / ACA 2002 cases. These propositions are all utterly baseless. It is to be noted that the Defendant made a similar unfounded claim that the hearing of this application for contempt was similarly not properly constituted (the Defendant has continued to refer to these proceedings under "Alleged Case Number..." and referred to me as "... acting as Judge Justice Cobb"), which of course I have no hesitation in rejecting. I dismiss his assertion that the hearing in Nottingham was a "crime scene"; his purported claim under Part 18 CPR for sight of the court file in order to demonstrate this is dismissed as totally without merit.
61. I reject the Defendant's argument that he was entitled to 'dispose' of the recording for publication because the proceedings were no longer 'active'. The Divisional Court in *Attorney General v Pelling* [2005] EWHC 414 (Admin) effectively put paid to that argument, holding that it was a criminal contempt to publish on the internet the content of a judgment given in private during the course of proceedings under the CA 1989 many years earlier, notwithstanding that the publication could have no direct impact on the proceedings, the court accepting that the publication undermined the interests of justice in a broader sense.
62. I reject the Defendant's argument that the order made by HHJ Watkins was "void" as a result of an alleged error of fact on the Statement of Facts. Even if there was an error of fact, it was inconsequential, and not a fundamental defect. I am told by the Defendant that the recusal application was dealt with by HHJ Watkins himself, and this court therefore has no place to gainsay his decision.
63. Turning to the Applicant's case, having reviewed all of the material, I am satisfied beyond reasonable doubt that the Defendant knowingly brought a hand-held recording device into the Family Court on 18 February 2022 and intended to, and did in fact, use it to record the entirety of the hearing.
64. In this regard, I rely on his admission when arrested and his comments in police interview. There is nothing in the evidence to suggest that anyone else was involved in the recording.
65. I am further satisfied beyond reasonable doubt that the Defendant did know at the time he made the recordings that the family proceedings were being held in private; in this regard the Defendant had been extensively involved in proceedings under the CA 1989, and the ACA 2002 in relation to his child. He knew that earlier proceedings were in private (he confirmed this to the police) and that previous orders were made prohibiting him from publishing information about the family; it is simply not credible that he did not know he was involved in proceedings being heard in private. The Defendant acted *covertly* in making the recording; the only reasonable inference

that can be drawn from the fact that the Defendant acted covertly was that he knew he was prohibited from recording.

66. Moreover, I accept the evidence (see §13 above) that there were explicit notices placed around the court warning court users that recording proceedings was an offence. As it happens, the absence of signs and/or ignorance of the prohibition would offer him little defence; as the Divisional Court said in *Cox* at [72]:

“If there were no signs prohibiting the taking of photographs in the part of the building where the act takes place or prohibiting the use of mobile phones in court, and there may be none say in canteens, the court could not be left powerless to deal with the risk created to the administration of justice as a result of ignorance of the criminal law on the part of the person whose acts create or risk creating the interference” (Emphasis by underlining added).

67. I am further satisfied beyond reasonable doubt that on a day between the 18 and 27 February 2022, the Defendant ‘disposed of’ the recording to Andrew Devine, who subsequently posted the same, together with other material related to the proceedings on YouTube. In this regard, I rely specifically on:

- i) The Defendant’s admissions in interview (see §29 above and Annex A);
- ii) The contents of the rolling text on the YouTube post, which includes correspondence addressed to HHJ Watkins ‘signed’ by the Defendant, and court documents drafted by the Defendant;
- iii) Correspondence sent by the Nottingham County Council to the Defendant inviting the Defendant to remove the video was also published on Andrew Devine’s YouTube channel on the date the correspondence was received (‘Video 2’). The author of the letter was also contacted by an associate of Andrew Devine on the same date (‘Video 3’). That evidence underlines that the Defendant was passing material connected to the proceedings to others, including Andrew Devine, for the purposes of publication;

By sending the recording to Andrew Devine, the Defendant was ‘disposing’ of the recording for the purposes of section 9(1)(b) CCA 1981 and ‘publishing’ (as that term is understood in this context) for the purposes of Section 12 AJA 1960.

68. I reject the Defendant’s claim that recording the proceedings was in some respects to further the public interest, i.e., to expose alleged criminal conduct in the Family Court. In this regard, I respectfully adopt the succinct and unequivocal despatch of a similar argument in *HM Attorney General v Paterson* [2019] EWHC 1914 (QB) per Males LJ:

“The defence which he seeks to run to the effect that he was seeking to expose some kind of fraud for organised crime is simply nothing to the point”.

69. As it happens, had I been required as a matter of law to be satisfied to the criminal standard that the Defendant intended to interfere with the due administration of justice, I would have had no such difficulty:
- i) The Defendant claims that he made the recording and published it in order to ‘expose’ the workings of the Family Court and to gain public support for his ‘campaign’; he wanted to “show the fraud” of the system; he wanted to expose the “violent paedo gang”; these comments show the Defendant’s intent to disturb public confidence in the due administration of justice in the Family Court;
 - ii) The Defendant sought *ex post facto* to require HHJ Watkins to ‘recuse’ himself; the contents of the rolling text on the YouTube post includes correspondence addressed to HHJ Watkins signed by the Defendant to that effect;
 - iii) The Defendant used Video 2 and Video 3 in order to try to exert pressure on Nottinghamshire County Council to withdraw the allegation that the Defendant had been guilty of contempt;
 - iv) I adopt MacDonald J’s judicious formulation in *Dowie* at [53] that:

“[T]he use of recordings of proceedings held in private to level unfounded allegations and to paint a highly partial and partisan account of proceedings is itself apt to further undermine the administration of justice more widely”.
 - v) The recording is accompanied by a specific encouragement in Video 1 to others to defy the authority of the Family Court.

Conclusion

70. There is, arguably, no category of case within the wide range of our diverse jurisdictions (i.e., both within and outwith the family jurisdiction) which is more sensitive or private than those concerning the adoption of a young child. As I have earlier said, almost all hearings in the Family Court involving children are heard in private; the privacy law is designed for “the protection of the interests of the minor in question, not the adjudication without interference of the issues arising for decision” (see *Pelling* (citation above) at [40]). As Laws LJ further observed in *Pelling* at [43]:

“... it is an affront to justice that a judgment or proceeding should be publicised which, in the interests of the child, the court has advisedly determined should be kept private”.

This principle is enshrined in both primary and secondary legislation.

71. The public identification of a child who has been placed for adoption following due process of law has very significant implications for that child, and for the family with whom the child is placed; it may threaten the security and confidentiality of the placement, and the emotional stability of the child and their new parents. It is, in my judgment, a most serious contempt of court to defy the long-established principle of

privacy in adoption cases by covert recording of a hearing; the contempt is aggravated when the recording is published. Whether proceedings are current or completed, the protection granted by Parliament remains operational.

72. I propose to list this application in about a month's time to consider sanction for the proven contempts. The Defendant must attend that hearing in person. I take this opportunity to remind the Defendant of his right to have a publicly funded lawyer. It is not too late for him to receive legal advice, and benefit from representation at the next hearing.

[End]

Annex A

Defendant's answers in interview:

Recording

- i) "I was recording, collecting evidence for a criminal investigation because all my documentation has proved that the Council and the court are let's say -- their proceedings have not been through due process ... it's an alleged court. I did not see it as a court";
- ii) "I was not in a court hearing. I was in a room in a court building where criminals were planning - planning a way to steal my [child] and they're doing it all across the country through fraudulent claims. Using the court as an instrument of fraud and this is what they're doing. They're stealing children. And I was collecting evidence to expose this violent, paedo sexual gang that are stealing children and using commerce to do it";
- iii) "I have proof that them -- that the Council have hired out the court room, right, and are holding private hearings that are not issued by the court because every court case has to have what...court case file";
- iv) "I made a recording of a violent paedo sexual gang trying to steal my [child] through the fraudulent abuse of the court";
- v) "What I've had to do is I've had to start my own investigation into these private hearings because they are not real court hearings";
- vi) "If it was a real court, I would not have recorded it";
- vii) "Q: you admit making the recording? A: Yes ... if you can prove to me that it's a court hearing I will admit I'm wrong";
- viii) "When I go into that building I record everything. ... For my own safety, because I'm trying to expose a crime and you see normally they say in these alleged hearings, "Do not record." They didn't say that at this hearing";

- ix) “In other alleged hearings they've said -- the clerk stood up and says, "You can't record in this hearing"”.

Publishing

- x) “I want to expose what's going on because my [child] has gone”;
- xi) “I didn't upload it onto YouTube”;
- xii) “Q: you've shared it with somebody that has [put it onto YouTube]; A: well, I would not have done it if I believed that was a real court”;
- xiii) “I didn't publish it and I didn't say he couldn't, but a friend of mine, well, not a friend, associate or whatever, he's put it on his You Tube because he feels like he -- basically, he's the sort of guy that if he sees something wrong he speaks up because it's like what I'm saying, he's a guy who if someone points out something wrong to him he will stop and he will try to fix it straight away”;
- xiv) “Q: Who did you pass that recording on to? I know you said an associate, what's his name? A: Andrew. He lives in Greece”;
- xv) “Q: Why did you give it to Andrew? Why did you pass it to him? A: Because he's been helping me for the last year and he's been trying to expose how, what he calls the whistleblowers, how they've been treated and the same thing -- I know it's digressing a bit but the same process they're using to take children is being used to imprison whistleblowers, fraudulent court orders. And, yeah, he's just -- he's standing up for the truth!”;
- xvi) “Q: Did he tell you what he intended to do with it? A: We said we'll make a video”;
- xvii) “Q: When you sent that video, that recording to Andrew, did he tell you that he planned to put it on YouTube? A: We talked about it but not at that time. It was something that basically we were collecting evidence. He's helping me collect evidence. There's a number of people. I'm not going to keep all my documents in one place. I send my documents to a number of people so that if anything happens to me it's all there”;
- xviii) “Q: Did he ask your permission to put it on YouTube? A: No. Q: No? How do you feel about that? A: I'm not bothered”;
- xix) “What's more important is me showing the fraud that has basically destroyed my life”;
- xx) “There's only one way I'll take that down [from YouTube], if they can prove to me that them court proceedings are real. Because I don't -- like I said in court, I don't want to take part in any crime”;
- xxi) “I didn't know at the time it was going to be uploaded”;

- xxii) “Q: You know the recording, it says: "Jason Steven clearly exposes the corruption and conspiracies within the criminal family court." Did you call it that? A: No. Q: Was it Andrew that called it that? A: I believe so”;
- xxiii) “I think it's an absolutely brilliant video. Because it quite clearly shows that the courts -- that that was not a court hearing. There was no rule of law. There was no due -- I've been denied due process there”.
- xxiv) “I sent it to a couple of people”.

Other:

- xxv) “Q: Do you know anything about section 97 of the Children's Act? A: I know it doesn't apply to me. Because I'm a living man. I'm not a person. I'm not a corporation. I'm not a dead entity. It's corporate law. I do not consent to it. ... I'm not a part of that corporation. I don't agree to the terms. And, one other thing is it wasn't a real -- it wasn't a court hearing.”

The underlined sections above may be relevant to the Defendant's state of mind in relation to the publication, were it necessary to consider this (see §69 above).