



Neutral Citation Number: [2024] EWHC 1991 (KB)

Case No: QB-2019-001740

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

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 30 July 2024

Before :

MR JUSTICE JOHNSON

Between :

JAMAL HIJAZI

Claimant

- and -

STEPHEN YAXLEY-LENNON
(AKA TOMMY ROBINSON)

Defendant

-and-

HM SOLICITOR GENERAL

Applicant

Adam Payter (instructed by the Government Legal Department) for the Applicant

Hearing date: 29 July 2024

Approved Judgment

This judgment was handed down by release to The National Archives on 30 July 2024.

Mr Justice Johnson:

1. His Majesty's Solicitor General seeks a finding of contempt against Mr Yaxley-Lennon on the grounds that he has breached a court injunction ("the contempt application").
2. A directions hearing was listed for 29 July 2024. Mr Yaxley-Lennon did not attend the hearing.
3. At the hearing, I decided that:
 - (1) Mr Yaxley-Lennon was personally served with the contempt application.
 - (2) There was no good reason for Mr Yaxley-Lennon's absence from the hearing.
 - (3) It was appropriate to proceed with the hearing in Mr Yaxley-Lennon's absence.
 - (4) An order for substituted service should be made.
 - (5) The Solicitor General does not require permission to make the contempt application.
 - (6) A warrant should be issued for the arrest of Mr Yaxley-Lennon to secure his attendance at the substantive hearing of the contempt application.
4. I gave a summary of my reasons at the hearing and said that I would provide reasons in writing. These are those reasons.

The background

5. Because Mr Yaxley-Lennon did not attend the hearing and did not provide any evidence or other information to the court, the only material that was provided at the hearing emanated from the Solicitor General. It has not been tested. The following account amounts to a summary of the evidence provided by the Solicitor General. Except where I state otherwise, I do not make any factual findings about the account. The account primarily derives from an affidavit of Debra Chan-Smith (a senior lawyer at the Attorney General's office) and a witness statement of a process server, John Power.
6. Jamal Hijazi issued these proceedings against Mr Yaxley-Lennon seeking remedies against Mr Yaxley-Lennon for libel. The claim relates to two videos published by Mr Yaxley-Lennon which convey the imputation that Mr Hijazi participated in a violent assault on a young girl, causing her significant injuries, and that he threatened to stab another child ("the allegations"). The remedies Mr Hijazi sought included an injunction to prohibit repetition of the allegations.
7. Mr Yaxley-Lennon sought to prove the substantial truth of the allegations. Following a trial, Nicklin J found that he had failed to do so: [2021] EWHC 2008 (QB). On 22 July 2021 Nicklin J made an order, in the form of an injunction, prohibiting Mr Yaxley-Lennon from publishing the allegations. The order contained a prominent penal notice, capitalised in red text, stating that if Mr Yaxley-Lennon disobeyed the order then he might be held to be in contempt of court and might be imprisoned or fined or have his assets seized.

8. The Solicitor General alleges that Mr Yaxley-Lennon has breached the order by publishing a film which repeats the allegations (“the film”) and by making statements in interviews with Gareth Icke (on 2 February 2023), Gavin McInnes (on 26 May 2023) and Emerald Robinson (on 1 June 2023).
9. On 7 June 2024, the Solicitor General filed an application notice seeking an order of committal for contempt against Mr Yaxley-Lennon on the ground that he had knowingly breached the terms of the order made by Nicklin J.
10. On the same day Mr Power attended an address where he believed he might find Mr Yaxley-Lennon home (“the address”). He was unable to obtain any reply when he rang the intercom. The occupier of a neighbouring property said that “Stephen” lived at the address. At 7pm on 13 June 2024, Mr Power went back to the address. The door was answered by a man that Mr Power believes to be Mr Yaxley-Lennon. He says that he recognised him having seen him in the media and from downloading recent photographic images of him from the internet. The man denied that he was Mr Yaxley-Lennon. He showed Mr Power a driving licence in the name of another person with the surname “Lennon” and said that Stephen was a distant member of his family. Mr Power placed the application notice on the floor just inside the door. The man picked it up and then started to throw the papers back at Mr Power as he returned to his car.
11. There is evidence that Mr Yaxley-Lennon was in Denmark on 14 June 2024.
12. On 14 June 2024 Nicklin J ordered that there should be a directions hearing on 29 June 2024. He issued case management directions to seek to ensure that the hearing was effective. That order stated prominently and in capitalised red text that Mr Yaxley-Lennon must attend the hearing and that if he failed to do so a warrant for his arrest might be issued by the court.
13. On 26 June 2024, Mr Yaxley-Lennon’s former solicitors contacted the Solicitor General and said that they had been contacted by the man (not Mr Yaxley-Lennon) who had been served with the application notice on 13 June 2024. They said that Mr Yaxley-Lennon did not live at the address.
14. On 30 June 2024, Jordan B Peterson interviewed Mr Yaxley-Lennon. The interview was published on YouTube on or about 9 July 2024. In the course of the interview, Mr Yaxley-Lennon confirmed that he was aware of the contempt application, the possible penalty, and the hearing on 29 July 2024. He said that he had not received any papers concerning the application.
15. On 5 July 2024, the order of Nicklin J (and a further copy of the application notice) was emailed to an email address that Mr Yaxley-Lennon’s former solicitors had indicated (on 10 November 2023) was his email address and was to be used for the purpose of service of documents in these proceedings. A delivery receipt was obtained.
16. Mr Payter told me that on Saturday 27 July Mr Yaxley-Lennon was part of a demonstration. During the demonstration, he played the film. The film had a new forward that was narrated by Mr Yaxley-Lennon. In that forward he appeared outside the Royal Courts of Justice and says that the injunction was granted 3 years ago. He explained his reasons for breaching the injunction.

17. Mr Yaxley-Lennon was arrested at the Eurotunnel terminal in Folkestone on Sunday 28 July 2024 pursuant to schedule 7 of the Terrorism Act 2000. He was released on unconditional bail shortly before 10pm. He was reminded of the hearing on 29 July 2024. He then left the United Kingdom.
18. The information provided by Mr Payter was not contained in any evidence that was before the court. It is not necessary to make any finding as to the accuracy of the information. If necessary, that can be resolved at a further hearing.

Was Mr Yaxley-Lennon personally served with the contempt application?

19. I am sure that Mr Yaxley-Lennon was personally served with the contempt application on 13 June 2024. That is the evidence of Mr Power who served the application and who recognised Mr Yaxley-Lennon. It is supported by the fact that the neighbour said that “Stephen” lived at the address, and that shortly afterwards Mr Yaxley-Lennon made public statements from which it is clear that he was aware of the application. The fact that he was in Denmark on 14 June 2024 is not inconsistent with this finding. Mr Yaxley-Lennon’s apparent assertion that he did not have any papers relating to the application is not set out in a witness statement, is not supported by a statement of truth, and is insufficient to rebut the clear evidence of Mr Power.

Is there a good reason for Mr Yaxley-Lennon not attending the hearing?

20. If the information provided by Mr Payter is accurate then it appears that Mr Yaxley-Lennon made a deliberate decision not to attend the hearing and, instead, to leave the jurisdiction. There is no evidence of any good reason for him to have done so.
21. It is not, however, necessary to make any finding as to whether the information provided by Mr Payter is accurate. I am sure, on the basis of the evidence of Mr Power, that Mr Yaxley-Lennon has been aware of the hearing for more than a month. He was also aware that he was required to attend the hearing and that if he did not do so he might be subject to arrest. He has not communicated with the court or with the Solicitor General. I find that he does not have a good reason for not attending the hearing.

Should the court proceed in Mr Yaxley-Lennon’s absence?

22. In *R v Jones* [2002] UKHL 5 [2003] 1 AC 1 the House of Lords confirmed that a judge has a discretion to commence a criminal trial in the absence of the defendant, but that power was to be exercised with “great caution”. It set out factors that a judge should consider before deciding to proceed in the absence of a defendant. Contempt proceedings are quasi-criminal and the principles set out in *Jones* are relevant: *Attorney General v Branch* [2021] EWHC 1735 (Admin) *per* Dingemans LJ at [10], *Sanchez v Oboz* [2015] EWHC 235 (Fam) [2016] 1 FLR 897 *per* Cobb J at [4].
23. These proceedings might potentially result in an order for Mr Yaxley-Lennon’s imprisonment. Procedural fairness requires that Mr Yaxley-Lennon has an opportunity to be heard, including in respect of the directions for the determination of the contempt application. He has had that opportunity. He has decided not to take it. For the reasons I have given, I am satisfied that Mr Yaxley-Lennon was aware of the hearing and his obligation to attend the hearing, and that he does not have a good reason for his absence. This hearing was listed to set directions for the contempt application. The outcome of the hearing will not, in or of itself result in a finding of

contempt against Mr Yaxley-Lennon. Far less will it, in or of itself, result in an order for his imprisonment or other punishment for contempt. The substantive hearing will not take place until 28 October 2024. That is 3 months away. I will give Mr Yaxley-Lennon a (time limited) right to apply to set aside or vary the order I make. It is important that the hearing takes place within a reasonable time. The overriding objective requires that the contempt application is dealt with expeditiously. If directions are not set now then there will be delay, and there is no certainty as to when Mr Yaxley-Lennon will come before the court to enable directions to be set. If a warrant for the arrest of Mr Yaxley-Lennon is issued now, there is no certainty as to when it could be executed. If Mr Payter's information is accurate then it could not currently be executed and could not be executed unless or until Mr Yaxley-Lennon returns to the United Kingdom.

24. I consider that the overriding objective requires that directions are set now, but subject to giving Mr Yaxley-Lennon a right to apply to vary or set aside the directions. That ensures that the proceedings can be dealt with expeditiously but also fairly. If it turns out that the evidence or information I have been provided is incorrect, then Mr Yaxley-Lennon has a remedy.

Should the court make an order for substituted service?

25. In the light of the difficulties that have arisen in relation to service of documents on Mr Yaxley-Lennon, and the possibility that he may now be outside the United Kingdom, there is a good reason to authorise service by a specified method: Civil Procedure Rules 6.15, 6.23 and 81.5. There is evidence of Mr Yaxley-Lennon's email address and his former solicitors indicated that his email address could be used for service in these proceedings. I will direct that service may take place by transmission to that email address. I will also direct that steps be taken to send documents to Mr Yaxley-Lennon by means of any of his known social media accounts.

Does the Solicitor General require permission to make the contempt application?

26. At the time he set the directions for this hearing, Nicklin J evidently considered that there might be an issue as to whether permission was required to make the contempt application. He made a direction that if Mr Yaxley-Lennon contended that the Solicitor General required the permission of the court then he must notify the Solicitor General in writing by 15 July 2024. Mr Yaxley-Lennon did not do so.
27. Even though Mr Yaxley-Lennon has not sought to argue that permission is required, it is necessary to address the issue.
28. CPR 81.3(5) states:
- “Permission to make a contempt application is required where the application is made in relation to-
- (a) an interference with the due administration of justice, except in relation to existing High Court or county court proceedings
- ...”

29. The Solicitor General accepts that the present application is made in relation to the interference with the due administration of justice. Accordingly, the Solicitor General

requires permission to make the application unless it relates to existing High Court or county court proceedings. The application relates to High Court proceedings, namely the proceedings within which the application has been made (with claim number QB-2019-001740) which are the same proceedings as those within which Nicklin J made the order of 22 July 2021. These are, therefore, “existing” proceedings. The fact that judgment has been given in the proceedings does not mean that they have ceased to exist. On the contrary, they continue to exist and, as the current application shows, they have continuing vitality. They could form the basis for an (out of time) appeal against orders made in the course of the proceedings, or for a detailed assessment of costs, or for enforcement. The word “existing” means that the proceedings have started, so that they “exist”. That is the case here. I do not consider that rule 81.3(5)(a) is intended to limit the concept of “existing proceedings” to proceedings which have not yet resulted in a final order. There does not seem to me to be any good policy reason why, for example, permission should be required to bring contempt proceedings in respect of a final injunction, but not in respect of an interim injunction.

30. This approach to the words of rule 81.3(5) is consistent with the decision of Bacon J in *Care Surgical Ltd v Bennetts* [2021] EWHC 3031 (Ch) at [7]. Bacon J said that “existing” is a “broad term” which seeks to distinguish between “intended proceedings” (ie proceedings that do not yet “exist”) and proceedings that have “come into existence”. Pepperall J reached the same conclusion in *Achille v Calcutt* [2024] EWHC 348 (KB). He said the “rule distinguishes between the position where the allegation of contempt is in relation to proceedings that have come into existence and cases where the proceedings remain intended or indeed have never come into existence”. I agree.
31. Mr Payter very properly drew my attention to the decision in *YSA v Associated Newspapers* [2023] UKUT 00075 (IAC). In that case the Upper Tribunal did not consider that it would be right to describe proceedings as “existing” when they were “now over”. I respectfully disagree. For the reasons I have given, I prefer the approach taken in *Care Surgical* and *Achille*. Accordingly, I direct that the Solicitor General does not require the permission of the court to bring this application.

Should I issue a warrant for Mr Yaxley-Lennon’s arrest?

32. CPR 81.7(2) states:

“The court may issue a bench warrant to secure the attendance of the defendant at a directions hearing or at the substantive hearing.”
33. For the reasons set out above, I proceeded with the directions hearing in the absence of Mr Yaxley-Lennon. There was therefore no reason to issue a bench warrant to secure his attendance at that hearing.
34. The substantive hearing is another matter. It is highly desirable, and it is in Mr Yaxley-Lennon’s interests, that he is present at that hearing. His failure to attend the directions hearing without any good reason, and despite an order requiring his attendance, indicates that he may well fail to attend the substantive hearing. It would be possible to wait and see if he does fail to attend that hearing, and only then issue a bench warrant. In that event, it is almost inevitable that the substantive hearing would have to be adjourned, leading to further delay. There is a degree of urgency given the allegation that Mr Yaxley-Lennon is continuing to breach the injunction order of

Nicklin J. Accordingly, it is appropriate to exercise the jurisdiction under CPR 81.7(2) to issue a bench warrant to secure Mr Yaxley-Lennon's attendance at the substantive hearing. That hearing will not take place before late October 2024. The warrant will not be executed before October 2024. That means that Mr Yaxley-Lennon has a 2-month window of opportunity within which he can seek to explain his absence at the directions hearing and to assure the court that he will attend the substantive hearing voluntarily (perhaps backed up by the surrender of his passport and/or other conditions). He has a general right (albeit within a limited time period) to apply to set aside or vary the order I make, which includes the order for the issue of a bench warrant. That approach balances the need to ensure fairness to Mr Yaxley-Lennon whilst also ensuring the expeditious progress of the application to a substantive hearing.

What directions should be made?

35. In the light of the information provided by Mr Payter, there is the possibility that the Solicitor General might seek to amend her existing application, or issue a fresh application, to cover the events that allegedly took place on 27 July 2024. If so, it is convenient that any amended, or new, application is addressed at the same time as the existing application. It would be undesirable, and potentially unfair to Mr Yaxley-Lennon, if he is not given sufficient notice of any amended or fresh application. I will therefore make a direction for the time within which any amended or fresh application must be made, which will be well before the time for Mr Yaxley-Lennon to submit evidence in response to the application (if he chooses to do so). I will also make directions to seek to ensure that the substantive hearing is effective.

Outcome

36. The directions hearing took place, at my direction, in Mr Yaxley-Lennon's absence. I direct that the Solicitor General does not require permission to make the contempt application, and I have made directions for the substantive hearing of that application. Those directions include the issue of a bench warrant to secure the attendance of Mr Yaxley-Lennon at the substantive hearing.