Neutral Citation Number:
[2022] EWHC 3772 (QB)
IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION

No. QB-2016-004057

Royal Courts of Justice
Strand
London, WC2A 2LL

Tuesday 14 December 2021

Before:

HIS HONOUR JUDGE AUERBACH

(Sitting as a Judge of the High Court)

B E T W E E N :

(1) THE ALL ENGLAND LAWN TENNIS CLUB (CHAMPIONSHIPS) LIMITED
(2) THE ALL ENGLAND LAWN TENNIS GROUND PLC — Claimants

- and -

(1) ISSA HANIF NAKHUDA
(2) ADNAN SHABBIR
(3) 1PREMIER EVENTS LIMITED
(4) MUHAMMAD JUNAID MUAAWIYAH — Defendants

MR C. RAFFIN (instructed by Kerman & Co LLP) appeared on behalf of the Claimants.

MR D. HUGHES (instructed by Kelcey & Hall) appeared on behalf of the Fourth Defendant.

J U D G M E N T

JUDGE AUERBACH:

1 In 2016 the present claimants began an action against four defendants. On 6 June 2017 a consent order was made by Senior Master Fontaine prohibiting the defendants from engaging in certain conduct to which I will come. The order was not limited in point of time.

2 In 2019 the claimants made an application for the fourth defendant ("the Defendant") to be committed for contempt by having breached the 2017 order. That came before HHJ Walden-Smith sitting as a judge of the High Court on 22 January 2020. By that time the Defendant had sworn and filed an affidavit in which he had admitted the breach and apologised to the court for it and raised a number of matters in mitigation. For reasons she gave, HHJ Walden-Smith ordered that the Defendant be committed to prison for a period of thirteen weeks but she also suspended that order for eighteen months. He was also ordered to pay the claimants £10,000 costs.

3 The claimants have now applied for the Defendant to be committed for further conduct in contempt by further breaching the 2017 order on 17 and 30 June 2021 and, on the basis that such a breach occurred during the suspension period of the committal order made by HHJ Walden-Smith, for the suspension of that order to be lifted. That application has been heard by me today. Prior to today, through solicitors and again at the start of the day through his counsel, Mr Hughes, the Defendant has admitted the breach.

4 The Defendant was, indeed, represented by Mr Hughes today and the claimants by Mr Raffin of counsel. I have been provided with very full bundles of background documents and had the benefit of written skeleton arguments as well as hearing orally from them both.

5 As I will describe, the applications are supported by two affidavits and I also have admitted into evidence today a sworn affidavit from the Defendant, filed at the court yesterday, of

which an unsworn draft was previously tendered. Some other documentary material was handed up today by Mr Hughes to which I will return.

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6 The factual background up to the time of the hearing before HHJ Walden-Smith is very fully set out in her decision, the transcript of which was in my bundle and is available online, and reference may be made to it for greater detail. However, in summary, the background is

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this. The first claimant conducts its activities at premises owned by the second claimant, in particular, the world-famous annual Wimbledon Grand Slam Lawn Tennis Championship. In order to combat a growing black market in tickets, since around 1991 all tickets for this

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event, save for those sold to debenture holders, have been sold subject to conditions that they shall not be resold or transferred and will be void in the event of a breach of those conditions. These are known as non-transferable Wimbledon tickets.

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7 The four defendants were involved in dealing in such tickets for the 2016 Wimbledon Championship. That led to the claimants instituting proceedings seeking damages and an injunction which were settled by the terms of the 2017 consent order. That order included a

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notice to the defendants which read as follows:

> "This order prohibits you, the Defendants, from dealing in Wimbledon Lawn Tennis Championship tickets (except for Debenture Holder Tickets)

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> in any way except in compliance with the obligations set out in the Order."

8 Subparagraph 6:

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> "The defendants must not carry out, cause, or permit to be done any of the following acts, namely:
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> (a) offering or exposing for sale or transferring or in any way whatsoever trading or dealing in any tickets (except for Debenture Holders' tickets) for the annual Wimbledon Lawn Tennis Championships (hereinafter

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referred to as 'Non-Transferable Wimbledon Tickets'); or providing, or arranging for the provision by another of, Non-Transferable Wimbledon Tickets; or giving away Non-Transferable Wimbledon Tickets whether as part of a package of products and/or services or otherwise; and

(b) offering to buy, or buying, or in any way whatsoever trading or dealing in Non-Transferable Wimbledon tickets."

9 Guidance notes went on to explain the effect of the order. A penal notice was attached. The order was signed by the Defendant and he accepted in the proceedings before HHJ Walden-Smith that there was no issue about its service nor about him being aware of the contents of the order, including the penal notice.

10 In 2019 the claimant discovered evidence that the Defendant had breached the 2017 order in respect of that year's championships following investigations of two instances in which individuals had attended the event wrongly in possession of non-transferable tickets. That led to the application that came before HHJ Walden-Smith.

11 In the affidavit which he served for the purposes of that hearing, the Defendant admitted that he was in breach and gave an account of how this had come about. This was, in summary, that the tickets in question had been bought and sold by an employee working for the third defendant, being a company controlled by him. The employee had been told not to resell Wimbledon Championship tickets although it was not suggested that the employee was told of the injunction. The Defendant told the court on that occasion that the employee was relatively new and that this happened at a time when his mind was not focused on the business, in particular, because of his wife's ill-health. The judge found the breach to be serious and that the custody threshold was crossed. However, her conclusion, for reasons she gave, was that the sentence of thirteen weeks should be suspended for eighteen months.

12 Having pronounced that sentence, at the end of the transcript it is recorded at [32] that the judge told the Defendant that if he were to breach the terms of the injunction, he would be brought back to court and a further application made to commit him to prison. He was told that it was highly likely that he would be sent to prison immediately if that happened and that it would constitute a breach of the suspended sentence that the judge was passing and, therefore, that a suspended sentence was not an easy option. He is recorded as acknowledging that he understood that.

13 The two admitted breaches of the 2017 order of which the claimants now complain occurred by way of the Defendant purchasing pairs of non-transferable tickets for the 2021 championship. Specifically, on 17 June 2021 he purchased from the first claimant's agent a pair of tickets to the men's final on 11 July, and on 30 June he purchased a pair of tickets via the online public sale for 1 July.

14 The essential chronology of this application is as follows. Evidence having been gathered and prepared, it was issued on 22 October 2021. It identified that the alleged breaches were by way of purchasing a pair of tickets on each of the two occasions in June that I have mentioned. There was a supporting affidavit from Emma Shaw, an associate solicitor at the claimants' solicitors' firm. After setting out the background that I, indeed, have just set out, she referred to the fact that in 2021 an electronic ticketing system had been introduced by the claimants and one of their agents, the Lawn Tennis Association. She went on to explain and refer to exhibited evidence as to how it had been established that in respect of both occasions, the tickets had been purchased by the Defendant, including identifying material such as phone numbers, addresses, and email addresses that it was established had been used which, one way or another, were associated with him. There was also a supporting affidavit from Mr Frederick Kelsey of the Lawn Tennis Association expanding on such matters in relation to the tickets that had been purchased through their auspices.

15 The matter received a hearing date of 15 November at the stage of issue. By a letter of 25 October, the claimants' solicitors sought to serve the application and supporting materials, in person, at the Defendant's address in England, but it transpired that he was abroad at the time in Pakistan. They then emailed the material to him at the addresses that they had for him.

16 There then followed a letter from the solicitors who were already on the record, Kelcey & Hall, dated 29 October 2021, in which they wrote that the Defendant was not due to return to the UK until 17 November and they would need to take instructions on the papers served; but from a telephone call they understood that he did not dispute purchasing two tickets for the final for his personal use and that of his sister, and that he did not, in fact, attend because of the clash with the European Championship final that day. They went on to say that the application would be resisted and they asked that the matter be re-listed in view of his absence abroad. In subsequent correspondence the hearing was relisted and it was accepted that the papers had been properly served by service on the Defendant's solicitors who were on the record.

17 On 24 November Kelcey & Hall wrote that the Defendant had returned on 17 November and that they had now had the opportunity to meet with him. They continued:

> "… we wish to make it plain that our client accepts, having spoken to us, that he is in breach of the terms of the Order. He had foolishly thought that he was not prohibited from entering Wimbledon himself to watch the Championships. He accepts that he entered on 1 July 2021 with his sister and watched the Federer v Gasquet match on Centre Court, arriving at Wimbledon at approximately 4.00 p.m. At no stage had he intended or tried to dispose of the tickets to a third-party. He accepts, however, that he is in breach of the Need to Buy Provision.

So far as the Final was concerned, he had obtained tickets as he was going to watch the Final himself, again with his sister. However, as the European Football Championships progressed and he had tickets to watch England play in the Final, he decided not to attend Wimbledon. He did not seek to sell the tickets or pass them on to a third-party and they were unused."

18 They said a statement would follow. They also responded to the evidence having noted that he had used a different address for one of the purchases. They wrote:

"For the avoidance of doubt, Mr Muaawiyah's mother has recently been widowed following the death of her husband and he spends approximately 3 nights per week at his mother's address. This was the Churston Avenue address, and this was the address he was registered with with the LTA. In fact, he purchased his own property moving out of the family home in 2020, hence the Haigh Road address. His use of the two addresses was not meant in any way to be a deception."

19 This was followed by the provision of a document in the form of an affidavit of the Defendant but which was, at that stage, unsworn and undated. This covered essentially the same ground as the solicitors' letter to which it indeed made reference. It added:

"I can only apologise and place myself at the mercy of the Court. The tickets were not obtained for any commercial purposes as I have set out above."

20 At the start of today's hearing, as I have noted, I was provided with a copy of the sworn version of that affidavit which was sworn and filed at court yesterday. The other materials that Mr Hughes handed up were photocopies of medical correspondence relating to the Defendant's wife's ongoing ill-health, a completion statement said to support what had been

stated in the affidavit about the claimant's use of two addresses, and a death certificate of the Defendant's father showing him having passed away in November 2020, said to support what had been said about his mother needing support in the wake of her bereavement. I will come to the reliance placed or sought to be placed on these by Mr Hughes presently.

21 Given the seriousness of an application for committal, there are a number of enforcement formalities and safeguards that must be observed in every case. With reference to Civil Procedural Rule 81, I note that this application has been made in existing High Court proceedings. I have described that it is supported by the affidavit evidence of Ms Shaw and Mr Kelsey. It was made in proper form and set out all the relevant matters required by the CPR and, as I have noted, service has been accepted by the Defendant's solicitors.

22 At today's hearing, as I have already noted, both sides were represented by counsel. The Defendant was at court and I reminded him at the outset of the fact that he was entitled but not obliged to give oral evidence, as well as providing written evidence, and that he had the right to remain silent and, in particular, to decline, if he gave evidence, to answer any question that might incriminate him. We had a short break at a point that Mr Hughes requested one, so that he could take instructions from his client, after which he confirmed that he did not wish to give oral evidence and relied upon the affidavit and other evidence before the court.

23 As I have said, I am satisfied that it has been proved to the criminal standard and, indeed, admitted to the court, that the Defendant is in breach of the 2017 order by having, on two occasions in June 2021, bought pairs of tickets for the Wimbledon Championships. That breaks the prohibition in subpara.6(b), which includes a prohibition of buying such non-transferable tickets. It was common ground that, therefore, what I have to decide is not whether there has been a breach which places the Defendant in contempt - I am satisfied that there was - but what I now have to decide is what order is appropriate having regard to this

and to the fact that this conduct occurred during the currency of the suspension period of the order made by HHJ Walden-Smith.

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24 In line with authority, Mr Raffin's approach has been similar to that of a prosecutor in the Crown Court, drawing the court's attention to the law and making relevant submissions as to the circumstances, but without specifically inviting any particular penalty. The powers of the court under CPR 81.9 are principally to commit for up to two years, whether or not on a suspended basis, to impose a fine, and there are other powers such as to confiscate assets that are not said to be relevant in this case. Where the matter is one of contempt, there are no specific sentencing guidelines but some analogous guidance can be drawn from the breach of order guidelines that apply in some cases in the Crown Court. The authorities establish that there is no tariff and every case depends on its particular facts. However, the purposes of such an order are to punish, to deter, and to secure future compliance. The court has regard to its assessment of the degree of culpability and harm in the particular circumstances of the case.

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25 A number of authorities give examples of circumstances that may be considered to be relevant either by way of aggravating or mitigating features in the given case. I do not need to quote from these authorities extensively, but like HHJ Walden-Smith I found useful the general overview given by Nicklin J in *Pirtek (UK) Ltd v Jackson* [2018] EWHC 2834 (QB) and I refer to her reasons which set out the guidance that he gave in that case, referring also to some earlier authorities. Nicklin J has given very similar guidance more recently in *Oliver v Shaikh* [2020] EWHC 2658 (QB). One observation he makes (at [18]) is:

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> " The mitigating the factors may also have a bearing on the Court's view as to the likely risk of repetition of breach and therefore the assessment of the degree to which the sanction needs to serve the objective of securing future compliance. If a contemnor, even belatedly, demonstrates a genuine insight

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into the seriousness of his prior conduct ... the Court may well be able to conclude that [he] has 'learned his lesson'..."

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26 However, I observe that it may be said that this is the second occasion on which this Defendant has appeared before the court on a committal application arising from the 2017 order; and therefore, I need to consider, in light of that background, whether he has indeed learned his lesson.

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27 There is also guidance in the authorities as to the approach that the court should take when being asked to revisit a previous suspended sentence order and to lift the suspension. I was referred, in particular, to what Lloyd LJ said in *ABC & Ors v CDE & Ors* [2010] EWCA Civ 533 at [37], in particular, that it is not automatic that a suspension will be lifted in every case, and the court needs to consider the various options that are open to it. I observe that these may include, for example, extending the suspension period, partially but not wholly activating the custodial period, or making some other or further order.

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28 The approach which commends itself to me on this occasion is to treat the fact that this conduct occurred during the suspension period of the earlier order as an aggravating feature when considering the appropriate order to make in respect of the conduct itself, and to reflect that in a single order. I will thereby have marked and attached due weight to this feature, and to the breach of the suspension terms, and that would then be sufficient to do so because, of course, I should not then impose some further order, which would amount to double counting.

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29 I should note briefly a point raised in his written skeleton by Mr Hughes by reference to the case of *Bluffield v Curtis* [1988] 1 FLR 170, whereby he observed that HHJ Walden-Smith did not state, in terms, in her order what terms attached to the suspension. However, Mr Hughes told me that he did not seek to take any point in that regard and, in my judgment, he was right not to do so. In brief, that is because, firstly, it seems to me that the remarks in

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Bluffield were more directed to the sort of case in which there is some ongoing failure to comply with a positive order and the defendant may need to be told what steps they ought now to take in order to avoid a suspension being revisited. Secondly, because this Defendant was told, in substance, by HHJ Walden-Smith that if there was any further breach of the order by him during this suspension period, then it was liable to lead to an application for him to be immediately committed on the basis of the order being activated. I do not think it was necessary for her to put that in the terms of the order itself having clearly told him that and established that he understood it. I am therefore content that Mr Hughes was right not to take any such point, and that I can take account of the fact that the conduct occurred during the suspension period and by way of aggravation of the breaches that occurred in 2021.

30 It is well established that a contempt of court is always a serious matter because of the disobedience to the court's orders in and of itself and the implications of that for the administration of justice and public confidence in the system. There are also dicta in a number of authorities as to the seriousness with which unlawful ticket touting activities of one form or another are viewed, although I remind myself that this matter is concerned with an application to commit for contempt, not with an allegation of a specific touting offence.

31 I was referred, for example, to the observations of Davis LJ in the case of *Corrigan v Chelsea Football Club Ltd* [2019] EWCA Civ 1964, and, as I have noted, having been referred also to such material, HHJ Walden-Smith had no doubt that the conduct with which she was dealing in 2020 passed the custodial threshold. However, I have to consider the specific conduct with which I am concerned on this occasion. As I have said, it is alleged and accepted that the Defendant breached the order by purchasing two pairs of tickets for the 2021 Championship, but it is not alleged that he sought to sell or planned to sell those tickets on. His evidence in his affidavit is that they were for his own use in the sense of being so that he could go and take his sister with him, although, in the event, they only

attended on one of the two occasions. It is on the basis of that alleged and admitted conduct that I must consider the appropriate order. That is all that is alleged and admitted, and all that I can be satisfied has occurred to the criminal standard.

32 There are, I would observe, of course good reasons why the order does prohibit buying or offering to buy, because it is quite obviously a necessary precursor to selling or offering to sell. This was still therefore a clear breach, even though what has been alleged and found does not go beyond buying which the Defendant has told the court was for personal use.

33 That being so, I accept in broad terms Mr Hughes's submissions that the nature of the breach which I am addressing by the order that I will now make is at the lower end of the scale of breaches of the 2017 order that one could envisage, and it is plainly not as serious as the breach that HHJ Walden-Smith was concerned with, which involved reselling. It is, nevertheless, right – and Mr Raffin drew my attention to the dicta in the recent case of *Lockett v Minstrell Recruitment Limited* [2021] EWCA Civ 102 (CA) – that this, nevertheless, is a contempt that gives rise to real harm. It damages the system by the disobedience and disrespect shown to the court and its orders, and the claimants were fully entitled to pursue the matter, and it has put them to the time, trouble, and cost of having to do so and bring it before this court.

34 It is also an aggravating feature that the Defendant has been in breach of this order already once before for which he received a custodial order, albeit suspended, and it is an aggravating feature that these breaches occurred during the currency of the suspension of the period of that custodial order. I do not think it is particularly mitigated by the fact that it occurred close to the end in point of time of that order, given that it relates to purchase of tickets for the annual Wimbledon Championships, of which the court can take judicial notice there were none in 2020.

35 Further, this Defendant was fully able to avoid this conduct. He was not compelled in any way to buy tickets, and not only could he have got advice, he had very ready access to advice and he knew that he had already committed one breach and been warned of the severity of ever doing so again.

36 Turning to mitigating features, Mr Hughes relies on the admission and apology to which I have referred. I agree with Mr Hughes that the Defendant is entitled to some credit for this. He has admitted to the conduct and he has apologised to the court for it including, again through Mr Hughes, with his client sitting behind him, in court today. Nor do I treat this as a 'doors of the court' admission or apology. It is true that matters could have been dealt with rather more promptly and expeditiously than they were. The Defendant, following his return to the UK, did see his solicitors promptly, but he could have more promptly put together, sworn, and filed his affidavit and ensured that the court was aware of the stance that he was taking and his apology, as well as the claimants. In terms of the alacrity with which he has admitted and apologised, this matter stands somewhere in the middle ground. It is the sort of thing for which in the Crown Court I would give him credit of around 25 percent.

37 Mr Hughes makes submissions about the impact of the pandemic on prison conditions. As the Crown Court has been doing for some time, and as the case of *Lockett* confirms, the court can and should in broad terms take judicial notice of the effect that the pandemic is having on prison conditions and take this into account in deciding whether to impose a sentence of custody, how long it should last, and whether it should be suspended.

38 In terms of the additional materials tabled to the court by Mr Hughes today, I already have, in the Defendant's sworn evidence, a reference to the explanation for his use of two different addresses and the fact that he was spending time with his bereaved mother. I do not, even if it would be open to me to do so, therefore need to attach any weight to the

additional documentation that has been tendered relating to that. I have no reason to doubt the authenticity of the documentation tendered relating to the Defendant's wife's ill-health but it has not been tendered in proper form and, in any event, does not take matters much further. I can, having read references to his family in other materials before the court, accept that if he is sent into immediate custody, his family, wife, and children would be deprived of his presence and support. However, I would not attach any great weight to that, I have to say, because it would be through his own actions, and there are no particular exceptional circumstances that would weigh as mitigating in that regard, notwithstanding his wife's unfortunate ill-health.

39 Had the June 2021 breaches been the first and only breaches of this order, I would doubt that they would pass the custodial threshold and I might have considered a fine to be the appropriate order to make. However, taking into account that this is not the first breach and that it occurred during the suspension period of the first order, those aggravating factors mean that this matter does pass the custodial threshold notwithstanding that the conduct itself is much less serious than it was on the first occasion. Nevertheless, it is less serious and I need to take that into account as well. As I have said, I do not propose to deal with the impact of Judge Walden-Smith's order by way of some separate sanction, but to take all of this into account as an aggravating factor.

40 For this conduct itself, and putting to one side for a moment the feature of it having occurred during the suspension period of the previous order, and balancing the aggravating and mitigating features out, I would have taken as my starting point a custodial sentence of four weeks. The fact that it is the second breach and occurred during the suspension period of the first order is a significant aggravating factor and I need to take into account as a baseline, when considering the impact of that, the length of the underlying custodial sentence imposed by HHJ Walden-Smith, which was thirteen weeks. I consider that, in order to do so, and to mark that aggravation, my starting point of four weeks custody should

be extended by a further six weeks, that is, just under half of the underlying custodial period that Judge Walden-Smith imposed. My starting point is therefore a custodial order of ten weeks.

41 However, bearing in mind again the nature of the conduct on this occasion, what has been stated in the Defendant's affidavit about how this occurred, and that I must sentence on that basis, and bearing in mind the admission and apology, I do not think it is necessary in order to mark the seriousness of this contempt, to send the Defendant into immediate custody. I have borne in mind also that it would have been an option potentially for me to extend the suspension period of the first order.

42 This is, therefore, one of those relatively rare occasions on which, notwithstanding that conduct has occurred during the suspension period of a previous order, I will not make an order for any period of immediate custody. The order of ten weeks' custody will therefore be suspended; but I will suspend it for two years.

43 I turn to the matter of costs. I have a statement of costs before me in the total amount of £17,203.50 and the hourly rates and features of the breakdown have been highlighted to me in submissions. Mr Hughes sensibly acknowledged that he could not resist the court making some order as to costs and left it to me to summarily assess the appropriate amount. I note that on the previous occasion, that was not that long ago, that costs sought were in the order of around £10,000, which was the amount ordered by HHJ Walden-Smith. These costs are rather greater, but I accept that is largely attributable to the fact, firstly, that more territory has had to be covered on this occasion in the preparation of the case, because the history, essentially, is longer and has had to be updated, and because care was needed to explain, as it were, the digital audit trail establishing these breaches between the two deponents' affidavits and the extensive supporting exhibits that were required. This was all, broadly

speaking, necessary work given, particularly, the meticulousness with which an application to have someone committed for contempt must be prepared and presented to the court.

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44 All of that being said, and even approaching the matter on the indemnity basis, I am inclined to think that on a detailed assessment there would have been some adjustment here and there. Overall, therefore, the amount of costs that I will order the Defendant to pay is £15,000.

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45 I think that is everything, save that I want to now say something to you specifically, Mr Muaawiyah. Everything I have said so far has been addressed to you but you need to understand that you were at serious risk of an immediate custodial sentence on this occasion, given that this was not the first time, and that this was in breach of the previous order during its suspension period. I sincerely hope that there will not be any occasion for a third application. If there is, it will be considered by the court, on the basis of whatever the facts or circumstances are at that time, which I cannot and would not pre-empt and I cannot and would not close the door to what the outcome might be. However, if there was an admitted or established breach on a third occasion, particularly if there was during the period of suspension of this order, it is hard to envisage how the court could do anything other than send you into immediate custody.

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Do you understand?

THE FOURTH DEFENDANT: Yes.

JUDGE AUERBACH: Yes?

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THE FOURTH DEFENDANT: Yes.

JUDGE AUERBACH: All right.

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