



Case No: HQ0004737 & HQ0004986

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION

Central Criminal Court
Old Bailey, London, EC4M 7EH

Date: 30/07/2010

Before :

MR. JUSTICE BEAN

Between :

JON VENABLES

1st Claimant

-and -

ROBERT THOMPSON

2nd Claimant

- and -

News Group Papers Limited and others

Defendants

JUDGMENT

Edward Fitzgerald QC and Phillipa Kaufmann (instructed by **Irwin Mitchell LLP**) for the
Claimant Venables

Anthony Hudson (instructed by **Pia Sarma, Times Newspapers Ltd**) for the **Media**

James Eadie QC (instructed by **the Treasury Solicitor**) for the **Attorney General**

Mr. Justice Bean :

1. Last Friday, 23rd July 2010, Jon Venables pleaded guilty to three offences concerning child pornography on his computer. The prosecution had been launched on 21st May 2010 by the unusual, though entirely proper, procedure of an application to me by counsel on behalf of the DPP for consent to prefer a voluntary bill of indictment. This originally contained two counts; a third was added by amendment two days before arraignment.
2. Also on 21st May, the DPP applied to me for an order of the Crown Court under the Contempt of Court Act 1981 prohibiting the reporting of the existence of the prosecution, which at that stage was brought against Mr. Venables in his new name. The purpose of that order was to attempt to ensure the fairness of the trial in the event of Mr Venables contesting the charges before a jury. The need for it came to an end with the pleas of guilty and I accordingly discharged that order last week.
3. There is, however, an injunction of much longer standing affecting this case. It was granted on 8th January 2001 by Dame Elizabeth Butler-Sloss (as she then was: now Baroness Butler-Sloss) prohibiting the solicitation or publication of any information as to the physical appearance, whereabouts or movements or new identities upon release from custody of Mr Venables or his co-claimant Robert Thompson, who had both been sentenced to detention at Her Majesty's Pleasure in 1993 for the murder of James Bulger. As granted by Lady Butler-Sloss, this injunction had a proviso excepting information relating to any proceedings in open court.
4. Mr. Venables was given a new identity on his release from custody in 2001 which he has maintained to the present day. When the prosecution was launched in May 2010

he was originally indicted in the new name. When it became clear that he would plead guilty the indictment was amended so as to give the name of Jon Venables.

5. By an order of 21st June 2010, made on the application of counsel for Mr. Venables, I amended Lady Butler-Sloss' injunction so that the proviso permitting publication of information relating to proceedings in open court would itself be subject to an exception for:

“such information as is likely to lead to the identification of (a) the first claimant's [ie Venables'] current name, (b) the address at which he was living immediately before his recall to prison in February 2010, (c) the location at which he is currently held in custody or (d) his current appearance.”

6. I directed that this amendment was to expire at 18:00 on 23rd July unless a further order was made. Edward Fitzgerald QC, on behalf of Venables, applied to me to renew this provision indefinitely. The Attorney General sought leave, which I granted, to intervene in the civil proceedings, to which the DPP is not a party, and James Eadie QC, instructed by the Attorney, broadly supported Mr. Fitzgerald.
7. Anthony Hudson appeared on behalf of a number of media organisations. News Group (publishers of the *Sun*) and Mirror Group Newspapers opposed the continued prohibition on publication of Mr Venables' new name. The BBC and ITN and Associated (publishers of the *Daily Mail* and *Mail on Sunday*), Guardian, Independent, Telegraph and Times Newspapers were neutral on this issue.
8. Associated, Guardian and Times Newspapers sought variation of the injunction so that the county in which the Claimant was living before his recall to custody could be identified, which in turn would identify the relevant police force and the probation service involved in his supervision. I granted that application. The county concerned was Cheshire.

9. I also received written representations from solicitors on behalf of James Bulger's mother Denise Fergus, opposing renewal of the injunction. Their letter included the submission, which I accept, that "the injunction should only be renewed if the court is satisfied on an evidential basis that Venables would be at risk of serious harm if his new identity were revealed".

10. The purpose of Lady Butler-Sloss' injunction was quite different from that of the temporary order which I granted on 21st May. It dealt not with the fairness of the criminal trial process but with threats to the Claimants' safety, whether in custody or at liberty. She said ([2001] Fam 430 at paragraphs [90-94]):

[90] The evidence which I have set out above demonstrates to me the huge and intense media interest in this case, to an almost unparalleled extent, not only over the time of the murder, during the trial and subsequent litigation, but also that media attention remains intense seven years later. Not only is the media interest intense, it also demonstrates continued hostility towards the claimants. I am satisfied from the extracts from the newspapers: (a) that the press have accurately reported the horror, moral outrage and indignation still felt by many members of the public; (b) that there are members of the public, other than the family of the murdered boy, who continue to feel such hatred and revulsion at the shocking crime and a desire for revenge that some at least of them might well engage in vigilante or revenge attacks if they knew where either claimant was living and could identify him.The response of some members of the public to emotive newspaper reporting has created highly emotional and potentially dangerous situations. The misidentification of a female member of the public, thought erroneously to be the mother of one of the claimants, was potentially very dangerous and demonstrates the probable reaction of members of the public to the knowledge that one of the claimants and his family were living nearby..... I also bear in mind that the media coverage has been international as well as national. The information might be gathered from elsewhere and presented to an English national or local newspaper. Once in the public domain, it is a real possibility, almost a probability, that there would be widespread reporting by the press. If photographs are taken, and they would be likely to be taken, the claimants would find it difficult to settle anywhere safely, at least within the United Kingdom.....

[91] The evidence provided by the Home Secretary supported and affirmed much of the reporting in the press. It is most significant that this is only the second time ever that the Home Office has

thought it necessary to provide a new identity for child murderers when they leave detention, the other being Mary Bell in 1980. This is a clear indication of the seriousness with which the authorities view the possibility that either claimant may be recognised with the consequences that they fear.

[92] The Attorney General and the Official Solicitor both submitted that there is a high risk of serious physical harm and the real possibility that a claimant might be killed if identified. Morland J and Pill LJ felt it necessary to grant injunctions to protect the children during their detention in secure accommodation. In 1993 Morland J considered that there was a very real risk of revenge attacks upon them from others. Lord Woolf CJ in his statement on the tariff in October 2000 (*In re Thompson (Tariff Recommendations)* [2001] 1 All ER 737) confirmed, from the information presented to him on the tariff, that that remained the situation. I heard evidence, in chambers, which supported the conclusion to which Lord Woolf CJ came, that there are solid grounds for concern that, if their identities were revealed on release, there might well be an attack or attacks on the claimants, and that such an attack or attacks might well be murderous.

[93] At the moment, the claimants are not at risk. First, the injunctions are still in force. Second, there is no current photograph of either claimant, or any current description of the appearance of either in the public domain. The photographs that are available were taken when they were children and they are now adults. When they are released from detention with new names, so long as they are not identified, they will be living in the community, under life-long supervision, but with the opportunity for rehabilitation and reintegration.

[94] I consider it is a real possibility that someone, journalist or other, will, almost certainly, seek them out, and if they are found, as they may well be found, the media would, in the absence of injunctions, be likely to reveal that information in the newspapers and on television, radio, etc. If the identities of the claimants were revealed, journalists and photographers would be likely to descend upon them in droves, foreign as well as national and local, and there would be widespread dissemination of the new names, addresses and appearance of the claimants. From all the evidence provided to me, I have come to the clear conclusion that if the new identity of these claimants became public knowledge it would have disastrous consequences for the claimants, not only from intrusion and harassment but, far more important, the real possibility of serious physical harm and possible death.....If their new identities were discovered, I am satisfied that neither of them would have any chance of a normal life and that there is a real and strong possibility that their lives would be at risk.

11. One would have thought that with the passage of 17 years since the murder and 9 years since Lady Butler-Sloss' judgment the threat from members of the public would have diminished. But there is clear evidence that it has not. In his witness statement for the injunction application the Claimant's solicitor, John Dickinson, writes:

“The level of animosity felt towards, and the risks faced by Jon Venables can be seen in the public attitude towards Mr. David Calvert formerly of Fleetwood, Lancashire who was mistaken for Jon Venables. Mr. Calvert was first mistaken for Jon Venables five years ago and he and his family have moved on a number of occasions, having been ‘forced to flee for our lives’. On a night out in a pub he was warned by a friend that he must leave immediately as he was going to be stabbed in the toilets. Police concern for his safety led to the installation of a panic button in his home. Since the Claimant's return to prison more than 2000 people have joined a Facebook group claiming that Mr. Calvert is Jon Venables. The group's members have vowed to track him down and wreak revenge for the murder of James Bulger. The Daily Mail agreed not to report the latest whereabouts of Mr. Calvert, to protect his safety.”

12. In addition Mr Dickinson refers to a large number of Facebook sites in which contributors actively canvass vigilante action to bring about Mr Venables' death. In the last three days (since I granted the application to renew the injunction) a national newspaper has reported that “Merseyside crime lords” have offered a reward of £100,000 to anyone killing him in prison. I have no way of knowing whether this is true, but it would be at least consistent with the earlier evidence.
13. On behalf of the *Sun* and the Mirror Group, Mr Hudson relied on two issues: public protection and open justice. As to the first, he argued that the Claimant is a

paedophile who has committed what I described in my sentencing remarks as a form of child abuse. At some stage he will be released. That will be on licence: but, says Mr Hudson, he was on licence when these offences were committed, and that fact did not prevent their commission. The public where he lives should know that their new neighbour has been convicted of these crimes.

14. There was no evidence before me in the criminal proceedings that the Claimant had been grooming children for sex or physically abusing them himself. The abused children whose images he downloaded or exchanged with the paedophile Blanchard may have had no connection with the neighbourhood in which the Claimant was living. A measure of public protection is provided, not only by the life licence deriving from the murder conviction, but also by the requirement for the Claimant to notify his identity and whereabouts to the police for ten years for the purposes of what is generally known as the sex offenders register pursuant to the Sexual Offences Act 2003.
15. Mr Hudson's main argument was based on the principle of open justice. There are many judicial statements of high authority emphasising the general rule that court proceedings should be conducted in public and fully and freely reported. The cases include *Scott v Scott* [1913] A.C. 417 and *A-G v Leveller Magazine* [1979] A.C. 440. In *ex p Kaim Todner* [1999] Q.B. 966 at 977, Lord Woolf MR said that:

“The need to be vigilant arises from the natural tendency for the general principle to be eroded and for exceptions to grow by accretion as the exceptions are applied by analogy to existing cases. This is the reason why it is so important not to forget why proceedings are required to be subjected to the full glare of a public hearing.”

16. *In Re S (a child) (Identification: Restrictions on Publication)* [2005] 1 AC 593 considered whether an injunction should be granted prohibiting publication of the name of a woman on trial for the murder of one of her children on the grounds that this would lead to the identification of a surviving brother of the victim, then aged five and thus interfere with his right to respect for his private and family life. The House of Lords affirmed decisions of the lower Courts refusing such an injunction. Lord Steyn said (at paragraph 30):-

“A criminal trial is a public event. The principle of open justice puts, as has often been said, the judge and all who participate in the trial under intense scrutiny. The glare of contemporaneous publicity ensures that trials are properly conducted. It is a valuable check on the criminal process... Full contemporaneous reporting of criminal trials in progress promotes public confidence in the administration of justice. It promotes the value of the rule of law.”

17. Similarly, in *Re Trinity Mirror Plc* [2008] QB 770 at paragraph 32 Sir Igor Judge P (as he then was), delivering the judgment of a five-member Court of Appeal, said:-

“In our judgment it is impossible to over-emphasise the importance to be attached to the ability of the media to report criminal trials. In simple terms this represents the embodiment of the principle of open justice in a free country. An important aspect of the public interest in the administration of criminal justice is that the identity of those convicted and sentenced for criminal offences should not be concealed. Uncomfortable though it may frequently be for the defendant, that is a normal consequence of his crime... From time to time occasions will arise where restrictions on this principle

are considered appropriate, but they depend on express legislation, and, where the Court is vested with a discretion to exercise such powers on the absolute necessity for doing so in the individual case.”

18. On this basis, the Court of Appeal refused anonymity to a defendant who had pleaded guilty to child pornography offences, similar to those committed by Mr. Venables, which had been sought on the grounds of protecting the rights and interests of his children.
19. Mr. Eadie QC drew my attention to three recent decisions of the Supreme Court. *In Re British Broadcasting Corporation* [2010] 1 AC 145 involved an application by the BBC to discharge an anonymity order made in respect of an individual who had been tried and acquitted on a charge of rape. The BBC wished to produce a programme naming the individual and suggesting that his case should be reconsidered under the new statutory regime permitting retrials of acquitted Defendants in certain circumstances. The Supreme Court discharged the anonymity order. Similarly, in *Re Guardian News and Media Ltd* [2010] 2 WLR 325 the Supreme Court discharged anonymity orders protecting the identities of individuals subjected to the statutory regime permitting the Treasury to freeze the assets of persons suspected of involvement in terrorism.
20. These two decisions are to be contrasted with *Secretary of State for the Home Department v AP (No, 2)* [2010] 1 WLR 1652. In that case AP had been subject to a control order under the Prevention of Terrorism Act 2005. After holding that the residence requirement of that order had been rightly quashed the Supreme Court went on to consider whether AP should continue to have anonymity. The Court noted that they had not had submissions on behalf of the media. Nevertheless it is significant to

note the decision they reached, which was that both AP's identity and the town where he was required to live should not be revealed, and their reasons for that decision. They found that if AP were revealed to be someone who was formerly subject to a control order and was now subject to deportation proceedings for alleged matters relating to terrorism, he would be at real risk not only of racist and other extremist abuse, but of physical violence. In other words, said Lord Rodger, there was at least a risk that his Article 3 Convention rights would be infringed. The court was:

“unable to discount the risk that AP might indeed be subject to violence if his identity were revealed. The court also has regard to the potential impact on his private life. For all these reasons the court has concluded that in this particular case the public interest in publishing a full report of the proceedings and judgment which identifies AP has to give way to the need to protect AP from the risk of violence.”

21. In the *BBC* and *Guardian* cases the Supreme Court was balancing an individual's Article 8 rights with the Article 10 principles of freedom of expression and public debate. In each of the two cases Article 10 prevailed and anonymity was lifted. In the *AP* case, by contrast, Article 3 was in play as well. It will be seen from the passages I have cited that the evidence of risk of physical violence to AP was considerably less strong than the evidence of the risk to Mr Venables in the present case. Nevertheless the Supreme Court granted anonymity.
22. The principle of open justice resoundingly affirmed by the Court of Appeal in the *Trinity Mirror* case was why, as soon as counsel indicated that Mr Venables intended to plead guilty, I allowed the fact of the prosecution to be made public, and why last Friday's proceedings took place in open court with a large number of media

representatives present. However, I consider that Lady Butler-Sloss' injunction prohibiting publication of Mr Venables' new name should continue notwithstanding that it was referred to in open court in the criminal prosecution: and likewise his address before arrest (which was also referred to) as well as, for the avoidance of doubt, his location in custody and his appearance (which were not).

23. There is understandable and legitimate public interest in the fact that one of James Bulger's killers has now been convicted of child pornography offences. That fact and the details of those offences can now be (and have been since last Friday) freely reported. But there is no legitimate public interest in knowing his appearance, his location in custody; or the exact location at which he was arrested and to which he might return in the event of being released; or, if there is, it is of marginal significance when set against the compelling evidence of a clear and present danger to his physical safety and indeed his life if these facts are made public.
24. As for his new name, my original view was that if he were to be tried and convicted by a jury in that name, it would then inevitably become a matter of public record, and the Claimant would have brought that on himself. But now that he has been convicted on his own pleas of guilty entered in the name of Venables, there is no reason why his new name should be made public. The effect of doing so would simply be to assist those who seek to track him down. The fact of public interest, as I have already said, is that the man formerly known as Jon Venables has been convicted. His new name is entirely immaterial.
25. I do not think it makes any difference whether the case is put on the basis of Mr. Venables' right to life under Article 2 of the ECHR or on the basis of domestic law. Even if the Human Rights Act 1998 had never been enacted I would reach the same

conclusion as a matter of domestic law. It is a fundamental duty of the State to ensure that suspects, defendants and prisoners are protected from violence and not subjected to retribution or punishment except in accordance with the sentence of a Court. That principle applies just as much to unpopular defendants as to anyone else.

26. For these reasons I allowed Mr Fitzgerald's application to make permanent the amendment to Lady Butler-Sloss' injunction prohibiting the publication of information about Mr Venables' new name, appearance, location in custody or location prior to being recalled to custody, other than that it was in Cheshire, and declined to discharge Lady Butler-Sloss' injunction in respect of the Claimant generally. It was for the same reasons that before the plea and sentencing hearing in the Crown Court I directed that Mr Venables was to be permitted to appear by livelink, and that he would be visible only to me. That was a very unusual procedure. But this has been a very unusual case.