



IN THE WESTMINSTER MAGISTRATES' COURT

02 June 2016

REGINA

-v-

ALEXANDER ECONOMOU

REASONS

Mr William Jones acted on behalf of the Crown. Mr David Lee, initially acted as advocate for the defence but Mr Colin Gibson was then instructed to conduct the case just before the first witness was called. I heard evidence on the 26<sup>th</sup> and 27<sup>th</sup> of May 2016 but reserved judgement till today.

1. I remind myself at the outset that the prosecution bear the burden of proof and that they must prove guilt beyond a reasonable doubt, in that I must be satisfied so that I am sure that the events took place as alleged by the Crown.
2. The Defendant faces one count contrary to section 2 of the Protection from Harassment Act 1997. It reads:

Between 05/11/2014 and 20/10/2015 within the jurisdiction of the Central Criminal Court pursued a course of conduct which amounted to the harassment of David de Freitas.

It is particularised at paragraph 19 of the Crown's opening note but in short, alleges, a letter to David de Freitas on 06 November 2014, a series of emails to Harriett Wistrich in November 2014, the uploading of materials onto web-sites in December 2014 and the publishing of material on [www.elanordefreitas.com](http://www.elanordefreitas.com) in January 2015.

3. **Section 2(1)** of the Act creates the offence of harassment:
  - (1) A person who pursues a course of conduct in breach of [section 1(1) or (1A)] is guilty of an offence.

**Section 1** creates the prohibition of harassment:

- (1) A person must not pursue a course of conduct
  - (a) which amounts to harassment of another, an
  - (b) which **he knows or ought to know** amounts to harassment of the other.

**Section 1(3)** creates defences:

- (3) Subsection (1) [or (1A)] does not apply to a course of conduct **if the person who pursued it shows –**
  - (a) that it was pursued for the purpose of preventing or detecting crime,
  - (b) that it was pursued under any enactment or rule of law or to comply with any condition or requirement imposed by any person under any enactment, or
  - (c) **that in the particular circumstances the pursuit of the course of conduct was reasonable.**
4. At least one incident must occur within the 6-month limitation period. If the prosecution prove the necessary ingredients of section 1(1) then it is a defence for the Defendant to show on the balance of probabilities that the pursuit of his course of conduct was reasonable. There is no statutory definition of harassment.
5. I find that the issues in the case are:
  - i. Whether the Defendant's actions amounted to a course of conduct of harassment.
  - ii. Whether the Defendant knew or ought to have known that his actions caused harassment of David de Freitas.
  - iii. Whether the Defendant's actions in relation to uploading the defrietas.com website was targeted at David de Freitas. The defence say not.
  - iv. Whether the Defendant, in his actions, acted reasonably, this being an objective test.

I have considered all the papers in the case and heard from three prosecution witnesses and the Defendant.

6. A brief chronology of undisputed facts is as follows:
  - i. On 4th January 2013 Eleanor de Freitas made an allegation of rape to the police that she had been raped by the Defendant, Alexander Economou, on 20th December 2012.
  - ii. The Defendant was arrested and interviewed and denied the offence. The police subsequently informed the Defendant that no further action would be taken on 20<sup>th</sup> February 2013.

- iii. The Defendant brought a private prosecution against Alexander Economou alleging that she had attempted to pervert the course of justice, and she appeared before Westminster Magistrates' Court in August 2013.
  - iv. The CPS took over that private prosecution in December 2013 and applied the Code of Conduct for Prosecutors. They decided that the test for prosecution was met and a trial date of 7<sup>th</sup> April 2014 set at Southwark Crown Court.
  - v. On 4<sup>th</sup> April 2014, Ms de Freitas tragically committed suicide. No adverse findings have ever been found against her as there was no trial.
  - vi. A Coroner's inquest into her death was set for 07 November 2014.
  - vii. The Defendant was interviewed in relation to this allegation of harassment on 13<sup>th</sup> October 2015 and subsequently appeared before this court on 11<sup>th</sup> January 2016.
7. The alleged victim of the harassment is David de Freitas. He is the father of Eleanor de Freitas who in January 2013 made an allegation of rape against the Defendant. The Defendant was arrested and interviewed but never charged with the offence. Thus, Alexander Economou is an innocent man and was wrongly accused. There was insufficient evidence to charge him with rape.

That was not the end of the matter. The Defendant subsequently commenced a private prosecution against Ms de Freitas, making an allegation that she had attempted to pervert the course of justice in that she had lied and made a false allegation of rape against the Defendant.

8. Sometime later, the CPS, upon her invitation, and as they were entitled to do, took over the prosecution, but on reviewing the matter, they resolved that there was sufficient evidence to found a realistic prospect of her conviction and that it was in the public interest to prosecute her. Independently of the views of Alexander Economou, the CPS decided that she should be tried on that allegation, though, tragically, that was to never be, as she took her own life three days before her trial. That is the real tragedy in this case. She suffered from a bi-polar disorder. Her father, David de Freitas, believes that the decision to prosecute her was wrong and has sought to raise his concerns and have the CPS role and issues of mental illness highlighted in public.

### Evidence

9. David de Freitas gave evidence. He had rather expected the CPS to discontinue the case against his daughter but they did not. He therefore, wanted the Coroner's inquest on 07 November 2014 to be broadened to consider the CPS role. On all the evidence before me, I am satisfied that Mr de Freitas's motivation in raising issues in public

was to seek a review of the CPS decision-making process in such cases and of the treatment of people with mental disorders rather than any desire to attack the Defendant.

10. It is not in dispute that he has not publicly named the Defendant in any of his public comments, though it is also clear that the media did separately name the Defendant as the man who had been accused.
11. David de Freitas had the benefit of legal advice and had given an interview to the Guardian Newspaper which was published on-line on 06 November 2014 and and was due to give an interview to the BBC on the following morning, the day of the inquest.
12. The Defendant says he became aware of the newspaper article online which did not mention his name that same evening and noted the volume of twitter activity about the story. His grievance was the suggestion by David de Freitas that his daughter had been wrongly prosecuted and that he had inferred that there was no evidence against her. It was being suggested that Eleanor de Freitas was a 'victim of rape', which in his mind, was a lie and was still suggesting that he was guilty of the rape. He also became aware that there was to be an interview broadcast the following morning on BBC Radio 4 but did not in fact know that David de Freitas was to be appearing.
13. Late on the night of 06 November, the Defendant sent by courier, a letter to David de Freitas which was posted through his letterbox. He did not in fact read it till the following morning.
14. In that letter, the Defendant outlined what he believed to be the strong evidence of his innocence. He wanted David de Freitas to understand that Ms de Freitas had indeed lied about the allegation of rape.
15. In particular, the Defendant thought if he told Mr de Freitas about the reality of the evidence, then he would be careful as to what he might say as to the allegation of rape. He was particularly concerned that if Mr de Freitas publicly spoke on that aspect, it might make it appear that the Defendant was guilty. The Defendant, in summary, said that this was the motive behind his actions. He wanted to deter a repetition of the false allegation.
16. The Defendant heard the Radio 4 interview on the morning of 07 November 2014 as did others. They had contacted him, knowing that the story was about him. The Defendant says that by the end of the day, the story was in every media publication in the UK. He was himself, 'door-stepped' by the media. Whilst David de Freitas had not named him, it was known, to some at least, that the story related to an allegation of rape against him and it was again being implied that he was a rapist.

The Defendant, in his evidence from the witness box, stated that he could not believe that it was being said that there was no evidence that she had lied. As he put it, 'his reputation was in tatters.'

17. The Defendant stated that he wanted a dialogue with David de Freitas's solicitor and so made contact with her, first by phone, then by email. He says that his intention was not to harass her or him. I have to say, that listening carefully to his evidence, I did not find that his contact with her was born out of any desire to harass her client. I accept that he genuinely wanted, as he put it, to 'put the record straight' as David de Freitas was potentially the source of future adverse press and he wanted to ensure that he knew, what was, as he saw it, the reality of the evidence.
18. Touching on the Defendant's state of mind, let me deal with the prosecution evidence of Sebastian Gosden-Hood, a social friend of the Defendant. He described the Defendant's attitude towards Ms de Freitas as aggressive and that he was 'going after her'. The Defendant himself said in oral evidence that he wanted 'her locked up' for the wrong to him. On the 7<sup>th</sup> of November, the Daily Mail had named him publicly as the man accused of the rape. In the range of possible human responses, even anger does not at all seem an unnatural reaction and response. Being wrongly accused of rape is no minor slight.
19. Mr Gosden-Hood stated that the Defendant said that he was hoping to bankrupt her, causing her financial harm and that it was aimed at the de Freitas family. It must be said that a private prosecution would never, of itself, have bankrupted her. The consequences are a criminal conviction and sentence. He also said, the Defendant 'was sort of aggressively going after her'. The Defendant had launched a private prosecution against Ms de Freitas and later, launched a libel suit against her father, David de Freitas. Mr Gosden-Hood conceded that he didn't actually know what a private prosecution was and I find that he just read too much into what was being said. I find that the Defendant may well have said that he would 'go after those guys' after what he perceived that he was being called a rapist again and again.
20. The Defendant threatened David de Freitas with libel proceedings in aggressive terms and carried through that threat. He is seeking an injunction, damages and costs; that is the remedy in such actions and there can be serious financial consequences for a Defendant in such proceedings, that is a fact not a threat. Mr Economou after all, unlike most, has the financial ability to embark on such an action, even though he says he is unlikely to recover the same due to Mr de Freitas' perilous financial situation.

21. The Defendant was contacted on 18 November 2014 by the police who wanted to interview him about the complaint of harassment that had now been made by David de Freitas but he was unwilling to attend and instead, sent the police officer photographs of Eleanor de Freitas and a screen shot of her website advertising her services as a masseuse or call girl. In his mind, this was evidence of her capacity for deceit. Whether it is any such thing, is another matter, but I accept that is what the Defendant genuinely thought and he was quite prepared to send the same to the police to counter the allegation that was now being made against him. His argument then was, as it is now, that he was not harassing Mr de Freitas and was relating the facts and, as it was being implied that he was a rapist, he wanted to prove that he was not. The fact that he sent them to the police is, in my judgment, significant, as he clearly did not think he was doing anything wrong.
22. The same photographs were sent to David de Freitas via his solicitor, Harriet Wistrich. He said in oral evidence that the images shocked him. He considered them to be unnecessary, and designed to hurt and intimidate him. He went on to say that, in his view, the purpose of the sending was to threaten him, shut him up and gag him. He said there was a whole stream of these emails without let up. I accept that he did find them distressing. The Defendant, also, separately, sent the solicitor a copy of a death threat, he had received.
23. The Crown have accepted that Mr de Freitas 'plainly believes that that the allegation of rape was true'. He continued to publicly assert that position. In oral evidence, Mr de Freitas said of the Defendant 'he had spent a considerable amount of money prosecuting my daughter' and that that 'he had besmirched his daughter's name.'
24. I heard from Mr de Freitas's solicitor, Ms Wistrich. She said that she thought the Defendant wanted to damage Ms de Freitas's reputation and she received emails in bursts. I find that their timing was in response to comments made by her client or material in the media. The last contact with her was 13 December 2014 when the Defendant wrote that her client Mr de Freitas 'should shut the fuck up.' Her description of the emails was that they were 'offensive' and 'distressing'. She also initiated contact with the media so that the relevant issues could be aired in public.
25. The Defendant spoke to the Mail on Sunday and gave his version of events. The DPP made a public statement on 09 December 2014 explaining the CPS position in continuing the prosecution. The DPP described the evidence of Ms de Freitas lying as 'strong.'
26. The Defendant says that within 3 hours, David de Freitas had made a press statement that the DPP was wrong. Mr de Freitas is perfectly entitled to hold and express that view but the Defendant says that the

press focussed on his comments rather than those of the DPP as they were more 'interesting' and that, again, he received adverse comments about what he being a rapist.

27. It is worth re-visiting a couple of observations in the prosecution position as stated in their opening note:

- i. The prosecution accept that in the course of arguing that the prosecution was wrongly brought, Mr de Freitas was asserting that his daughter's allegation of rape was true. Indeed, Mr de Freitas plainly believes that it is true and said so....
- ii. The prosecution therefore accept that even though David de Freitas did not name Alexander Economou, his public assertions that his daughter had been the victim of a rape had the same effect, from the defendant's perspective, as if he had named him. The Crown also accepted that Alexander Economou must have felt that he was being publicly accused, at least by implication.

28. On 01 January 2015, the Defendant set up a web-site and uploaded material onto the web about Ms de Freitas to show the world, what he described as 'the absurd amount of evidence' he had about her, screenshots of the massage services she was offering, the sex toys/aids that she had bought in Anne Summers and the CCTV showing her paying. He accepted he updated the site in August 2015 (indeed, several times in his prepared statement for interview) and stated that he thought there would be potential bad press to come. He also uploaded the CCTV on YouTube, Liveleak and Vimeo. David de Freitas, nor his solicitor were prepared to make any retractions on the rape allegation.

29. In his prepared statement to the police, the Defendant said that he created a website to:

- i. Protect himself and his family from being killed and harmed physically by those who had written anonymously stating that they would inflict harm in their belief that he was a rapist
- ii. Demonstrate that he was innocent of rape
- iii. Demonstrate that the CPS was correct in prosecuting Ms de Freitas.

In it, he also suggested that the solicitor Harriet Wistrich made a defamatory tweet implying that the evidence in the case was false and that he was guilty of rape, for which she later apologized and withdrew the tweet. That an associate of hers, a Lisa Longstaff, went on to the BBC and alleged that he was the rapist that got away with it

and was responsible for Eleanor's death and that the BBC had to publicly apologise for their error.' I did not hear any oral evidence on the points and he was not challenged on his assertions. Further, the Defendant suggested that an injunction to stop a defamation would take years through the courts and that it was in his eyes important 'that the material was updated from time to time to make sure it was accurate.' He also said 'for the time being it is important for the evidence that shows I am innocent to be made publicly available so that current and future friends, business associates and others can see that I am innocent of rape...' In oral evidence, he added that 'I needed a little bit of presence, on the same medium on which there were the lies.' He added that 'for sanity, I needed the material out there.'

### Analysis

30. In the case of *Majrowski v Guys and Thomas' NHS Trusts* [2007], it was said:

'Where the quality of the conduct said to constitute harassment is being examined, courts will have in mind that irritations, annoyances, even a measure of upset, arise at times in everybody's day-to-day dealings with other people. Courts are well able to recognise the boundary between conduct which is unattractive, even unreasonable, and conduct which is **oppressive and unacceptable**. To cross the boundary from the regrettable to the unacceptable the gravity of the misconduct must be of an order which would sustain criminal liability under section 2 ..... Harassment is not defined in the Act, but it includes causing anxiety or distress. A course of conduct means conduct on at least two occasions ..... A great deal is left to the wisdom of the courts to draw sensible lines between the ordinary banter and badinage of life and genuinely offensive and unacceptable behaviour'

31. The case of *Levi v Bates* [2015] is also pertinent because it stated that harassment had to be targeted behaviour, **namely behaviour aimed at someone**, rather than behaviour which caused alarm or distress without being aimed at anyone, *Thomas* explained. Provided that it was targeted at someone, the conduct complained of did not have to be targeted at the claimant, if he or she was foreseeably likely to be directly alarmed or distressed by it; there was no reason why Parliament should have deliberately excluded from the Protection from Harassment Act 1997, persons who were foreseeably alarmed and distressed by a course of conduct of the targeted type contemplated by the word harassment.

The Defendant published the web-site with, at one time, a headline 'we now know 'vulnerable' Eleanor de Freitas was in fact a high class escort'. He used Eleanor's name as the website address. It is worthy of

note that there is nothing about Mr de Freitas, it is all material about Eleanor. The uploaded content may or may not be entirely true; it matters not for the purposes of this hearing. The objective of it, was, as the Defendant saw it, to expose Eleanor de Freitas for what she was. In that sense, it was about her and aimed at her. It was designed so that the world could see 'the truth'. As the defendant's legal team have put it, it 'was designed to exonerate the Defendant of wrongdoing in the mind of the general public'. But in publishing it to the world at large, it was reasonably foreseeable that David de Freitas would read it. In fact, the Defendant had specifically drawn the site to his attention by sending him the website address via his solicitor on 28<sup>th</sup> November 2014. The solicitor had told him that she was obliged to send on his communication to him, and part of the Defendant's strategy was that David de Freitas should know the full state of the evidence as he felt that he did not have the full picture of his daughter. In those circumstances, I am quite satisfied that David de Freitas was a person who was a person capable of being foreseeably and directly harmed by the Defendant's course of conduct and, therefore be a potential 'victim' of the harassment.

Did his course of conduct constitute harassment?

32. I find that the material that the Defendant posted was upsetting, a grieving father was being drawn to information about his dead daughter which painted her as a call-girl and as a liar. That was surely distressing, even if all true. It was also embarrassing, not only in the uploading of the purchase of the sex aids bought but the fact that she had been offering her services as a masseuse in the sex industry. On the other hand, David de Freitas in his campaigning in the media, was, as the prosecution themselves put it, 'asserting that his daughter's allegation of rape was true'. This, the Defendant, says, was causing harm to his reputation.
33. Mr de Freitas was not dealing with the 'average man in the street'. The Defendant is a wealthy man with considerable resources available to him. He employed a PR management company, spent £50,000 on reputation management and on removing material from websites and seeking amendments to material published by newspapers. The Defendant says he has spent £700,000 (so far) on his libel action against David de Freitas. The Defendant's reaction or response has certainly not been of the 'average man in the street' wrongly accused of rape; indeed, the 'average man' could not even contemplate such steps. His response has been uncompromising to say the least.
34. The Defendant has certainly been aggressive in the tone of his emails, both directly to Mr de Freitas and through his solicitor, Harriet Wistrich. Robust threats of financial consequences in litigation are designed to deter and cause the other party to reflect. Again, I read

them in context, he was a man falsely accused of a most serious crime and his name published in the national press. The Crown have accepted that Mr de Freitas was wrongly asserting that his daughter's allegation of rape was true and Alexander Economou must have felt that he was being publicly accused, at least by implication.

35. Mr de Freitas, as he was entitled, resolved to continue with his campaign in relation to the CPS. The fact is that the Defendant having previously been wrongly accused, remained in the firing line and accused of rape again and again. I do not find, that taken as a whole, the Defendant's communications by email or indeed the first delivered by courier, reach the threshold of oppressive and unreasonable. Whilst I find that the Defendant's response did cause distress and upset, that, in my view, was inevitable, simply due to the nature of the subject matter.
36. That said, the Defendant has been consistent in both any written material I have seen and in his evidence at trial. He came over as credible in his oral evidence.
37. I found Mr Gosden-Hood unclear and confused in his recollection and critically, he did not know what a private prosecution was. He could not remember the words that the Defendant used about bankrupting anyone and I am left with doubt as to whether Mr Gosden-Hood understood as to what the Defendant's intentions really were and any consequences. The text messages (exhibit 2) rather suggest to me it had nothing to do with money, it was clearly about proving that Miss de Freitas had lied. A formal conviction would undoubtedly prove to all for all time, that she had lied in making the false allegation. I do not find that Mr Gosden-Hood's testimony was evidence that the Defendant wanted to do anything other than assert available legal remedies, albeit in a robust manner which alone could never amount to harassment. It is clear that Mr Gosden-Hood did not think that the Defendant should pursue Ms de Freitas as he did and he thought he should drop it. Later, the view of the CPS would be that the prosecution against her was indeed justified on the evidence and in the public interest.
38. I find that the timing of that letter on 06 November 2014 was due to the Defendant learning of the Guardian article and the prospect of the Radio 4 interview, and not, as alleged by the Crown, the fact that David de Freitas was due to give evidence at the inquest the following day. I am satisfied that the Defendant's intention was, indeed, as he suggested in evidence, that he wanted to explain that there was a lot of evidence suggesting Miss de Freitas was not telling the truth. He thought Mr de Freitas was none the wiser and that he didn't know what had really gone on.

39. I did not find that the Defendant's contact with Ms Wistrich was born out of any desire to harass her client. I accept that he genuinely wanted, as he put it, to 'put the record straight' as David de Freitas was potentially the source of future adverse press and he wanted to ensure that he knew, what was, as he saw it, the reality of the evidence.
40. It is right that the Defendant published embarrassing material but I read it in the context in which it was said. I find that the Defendant's actions were calculated to counter the continuing incorrect assertions that the allegation of rape was true. The material published was relevant to his innocence, some of it more directly so than the other. Of course, that is not a defence in itself, as I must also consider not only the content but the tone in which he wrote and published. Through his actions, he protested his innocence in the strongest terms and the legal and potential financial consequences if Mr de Freitas unlawfully repeated the false allegations. He was doing so because he was wrongly being accused and trying to deter repetition. Through the internet, he felt he was telling the world the facts to counter what was being wrongly said of him.
41. I have asked myself whether the hypothetical reasonable person in possession of the same information as the Defendant would think the course of conduct amounted to harassment? In the particular circumstances, I am just *not* sure the reasonable person would necessarily come to that conclusion.
42. In *Dowson v Chief Constable of Northumbria* [2010] EWHC 2612 (QB), the threshold for harassment was described as being at the point where the torment of the victim is of an order which would sustain criminal liability. The Crown have accepted that Mr de Freitas 'plainly believes that that the allegation of rape was true'. He continued to publicly assert his position. Understandably, he was very protective of his daughter but I also formed the clear view that he had a very strong dislike of the Defendant. He has clearly not liked what was said about his daughter. I was unable to rely on his evidence as to the true impact on him as a result of the Defendant's actions. Overall, I did *not* find that the Defendant's conduct such that it ought to attract criminal liability.
43. The prosecution remind me that in order to prove their case they bear the burden to show that what was done was 'more than unattractive, regrettable or unreasonable' (as per para 28 of their opening note). The prosecution have not persuaded me that to be the case. The prosecution also state that I must be satisfied that his conduct satisfies the test that it be 'oppressive and unreasonable'. The standard required in a criminal trial is that I must be sure. Mr de Freitas continued his media campaign to highlight, what he believes to be

failings at the CPS, and in doing so continued to assert that his daughter's allegation of rape was true. The Defendant countered that in a robust and uncompromising way. In doing so, I find he caused offence. That said, the prosecution have been unable to satisfy me to the criminal standard that his conduct was oppressive, nor in all the circumstances, unreasonable.

44. This really has been hard for all involved and most tragic for the family of Eleanor de Freitas to whom I express my condolences. The standard of proof on the prosecution in criminal trial is a high one and they have failed in this case to discharge it.

I find the Defendant not guilty.

45. In making my above findings, I do not in any way question David de Freitas's right to publicly raise issues of mental illness and how the criminal justice system deals with them, nor his challenge as regards the CPS and their decision to continue the prosecution of his daughter. I express no view as to whether, in relation to that, he is right or wrong in views expressed. That matters not in this trial. I also do not pass any comment on whether there has been any libel against the Defendant, that also, has not been an issue for this court.

**District Judge (Magistrates' Courts) Tan Ikram**

V1.5