



Neutral Citation Number: [2020] EWHC 934 (QB)

Case No: QB-2019-001740

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
MEDIA & COMMUNICATIONS LIST

Date: 21 April 2020

Before :

THE HONOURABLE MR JUSTICE NICKLIN

Between :

Jamal Hijazi
(by his litigation friend Abdulnaser Yousef)

Claimant

- and -

Stephen Yaxley-Lennon

Defendant

Ian Helme and Emma Foubister (instructed by Farooq Bajwa & Co.) for the Claimant
William Bennett QC (instructed by Watson Woodhouse Limited) for the Defendant

Hearing date: 12 March 2020

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Approved Judgment

I direct that pursuant to CPR PD 39A para 6.1 no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

.....
THE HONOURABLE MR JUSTICE NICKLIN

The Honourable Mr Justice Nicklin :

1. This is a claim for libel. It was issued on 15 May 2019 and complained of two videos that were posted on Facebook by the Defendant on 28 and 29 November 2018 (“the First/Second Video”). Both videos were self-recordings showing the Defendant addressing his remarks directly to the camera. The First Video was just short of 7 minutes long, and the Second Video just over 8 minutes. Agreed transcripts of the two videos are set out in Appendices 1 and 2 to this judgment. I have added paragraph numbers – in square brackets, for ease of reference – and removed what appear to me to be some irrelevant asides. The Claimant’s case is that the First Video and Second Video were “viewed directly” respectively over 850,000 and 100,000 times.
2. These libel proceedings are at an early stage. The parties have exchanged statements of case. The Defendant has admitted publication of the videos, that they defamed the Claimant at common law and that their publication has caused serious harm to the Claimant’s reputation.
3. On 15 November 2019, Senior Master Fontaine ordered that the meaning of the two videos be determined as preliminary issues. This is the judgment following the trial of these preliminary issues. It is important to note that the Court is only dealing with the issue of meaning. The Defendant has advanced a defence of truth. Unless the parties resolve the litigation, that issue (and others) will be determined at a later trial. Expressly, the Court is **not** deciding whether the meaning that I find below is true or false. The Court has not considered any evidence on the underlying facts at this stage.

The parties’ cases on meaning

4. The Claimant contends that both videos bear the following meanings:

“The Claimant:

 - (1) was a violent individual who was part of a gang that committed numerous acts of violence against schoolgirls;
 - (2) had himself committed very serious violence against at least one girl; and
 - (3) had threatened to stab an individual at school.”
5. In his written submissions, Mr Bennett QC on behalf of the Defendant argued that the two videos each bear the meaning that the Claimant has committed acts of violence against children. In his oral submissions, he amended this to:

“As part of a gang, the Claimant has committed serious acts of violence against a schoolgirl.”

Meaning: the Law

6. There a large measure of agreement as to the relevant principles.
7. The correct approach to determining meaning is set out in *Koutsogiannis -v- The Random House Group Limited* [2020] 4 WLR 25 [11]-[13]. Since *Koutsogiannis*, the Supreme Court, in *Stocker -v- Stocker* [2019] 2 WLR

1033; [2019] EMLR 18 [41]-[45] per Lord Kerr, has emphasised the importance of the medium of publication and context when assessing meaning. Similarly, on this point, Mr Bennett QC has reminded me of Sir Thomas Bingham MR's guidance from *Skuse -v- Granada Television Limited [1996] EMLR 278, 286* where the publication complained of was viewed rather than read.

8. To avoid over analysis, and in an attempt to put myself in the position of the ordinary reasonable reader, I have followed the standard practice of watching the two videos and noted the impression they made on me and my immediate reaction to what they were saying about the Claimant: *Triplark Limited -v- Northwood Hall (Freehold) Limited & Others [2019] EWHC 3494 (QB)* [19]. I have deliberately not considered the truth defence advanced by the Defendant, which has no bearing on the meaning of the two videos.
9. Mr Bennett QC has relied upon passages in *Turcu -v- News Group Newspapers Ltd [2005] EWHC 799 (QB)* [105], [109]; *Chase -v- News Group Newspapers Limited [2003] EMLR 11 [38]* and *Simpson -v- MGN Ltd [2016] EMLR 26 [14]-[21]* which clearly state the principle that a defendant relying upon a truth defence is required to prove the substantial truth of the sting of the allegation. These authorities are not relevant to a determination of meaning; rather they establish the correct approach to the assessment of a truth defence.
10. In his argument, Mr Helme suggested that the two videos ought to be watched in the context of each other. He submitted that, "*given the prominence of the First Video and the ... gravity of the allegations it makes, it provides important context for the meaning of the Second Video*". That is not, however, how the case has been pleaded. The Claimant has treated the two publications as separate and they are pleaded as distinct causes of action. There may well be, as a matter of fact, an overlap between those who watched the First Video and then watched the Second Video, but that is not necessarily so. Some people may only have watched the Second Video. The First Video is not pleaded as providing context for the Second Video and Mr Helme did not, in fact, submit that the meaning of the Second Video would be different if the hypothetical viewer also watched the First Video.
11. On the facts of this case, and given Mr Helme's concession, the point does not assume importance in this case, but I would respectfully agree with what Warby J held in *Monroe -v- Hopkins [2017] EMLR 16 [35]*. In assessing the natural and ordinary meaning of a publication, context will include (a) matters of ordinary general knowledge; (b) matters that the publisher put before the reader/viewer. The second category has provoked some discussion in earlier cases as to the limits of what can properly be regarded as having been put before the reader, in particular hyperlinks in the text complained of (see *Greenstein -v- Falter -v- Atzmon [2018] EWHC 1728 (QB)* [12]-[13]; *Poulter -v- Times Newspapers Ltd [2018] EWHC 3900 (QB)* [21]-[24] and *Campaign Against Antisemitism [2019] EWHC 281 [17]*).
12. Whether the material strictly extrinsic to the words complained of could properly be considered as context requires an assessment of several factors. In *Monroe -v- Hopkins* Warby J concluded [38]:

“... a matter can be treated as part of the context in which an offending [publication was made] if it is... sufficiently closely connected in time, content, or otherwise

that it is likely to have been in the hypothetical reader's view, or in their mind, at the time they read the words complained of. The test is not the same as but is influenced by the test for whether two publications are to be treated as one for the purposes of defamation: *Dee -v- Telegraph Media Group Ltd* [2010] EMLR 20 [29] (Sharp J)".

13. In *Poulter -v- Times Newspapers Ltd* I suggested the following would be considerations when assessing hyperlinked material [24]:

"Whether readers follow links provided like this is influenced by a number of factors, including: (1) their familiarity with the story or subject matter and whether they consider they already know that they are offered by way of further reading; (2) their level of interest in the particular article and whether that drives them to wish to learn more; (3) particular directions given to read other material in the article; (4) if the reader considers that he or she cannot understand what is being said without clicking through to the hyperlink. It might be reasonable to attribute items (3) and (4) to the hypothetical ordinary, reasonable reader, but (1) and (2) will vary reader by reader."

14. This assessment is highly fact specific, but there are limits to what can properly be considered by the Court as "context" when assessing a natural and ordinary meaning. First, if a claimant (or a defendant) wishes to rely upon particular matters as "context" then they must be pleaded. It is not acceptable to introduce matters as alleged "context" in a skeleton argument for a preliminary issue trial. Second, there is what Warby J described as "*the rather important and principled distinction*" (*Monroe -v- Hopkins* [40]) between material that would have been known (or read) by *all* readers and material that would have been known (or read) by only *some of them*. The former is legitimately admissible as context in determining the natural and ordinary meaning; the latter is relevant only to an innuendo meaning (if relied upon).
15. Newspaper articles, by way of example, rarely *require* pre-existing knowledge on the part of the reader. As a matter of reality, the readership of a daily newspaper will fluctuate day-to-day, as will the articles any reader will choose to read, whether online or in hardcopy. The assessment of the natural and ordinary meaning is therefore what, read on its own, the article means, applying the well-established principles set out above ([7]). In the case of a series of published articles, if the claimant (or defendant) contends that the meaning of the subsequent article(s) is altered if the reader has read the earlier article(s) (or has knowledge of other extrinsic facts) then that it usually a strong indication that it is an innuendo case and not a matter of "context".

Meaning: Submissions

16. Mr Helme submits that the First Video bears the Claimant's pleaded meaning. The Defendant makes plain and specific allegations of violent conduct against the Claimant and suggests that he has been involved in attacks on girls (plural). The Second Video, he submits, has to be seen "*in the context of*" the First Video and that the hypothetical viewer would have had in mind the First Video when watching the Second. In consequence, he argues, "*the earlier content about gangs, serious violence, and threatened stabbing is all context*". Specifically, in the Second Video, he contends that the substance of the allegation of the Claimant having been involved in a gang attack on one schoolgirl is expressly repeated.

17. Mr Bennett QC contends that the First Video makes a clear allegation of a single incident of violence involving the schoolgirl. Taken as a whole, it does not suggest that the Claimant has been involved in other incidents of gang violence. Mr Bennett attacks the Claimant's meaning as untenable in relation to the Second Video. There is no reference in the Second Video to any threat to stab another child. He suggests that the inclusion of this element in the meaning shows a lack of care in the pleading of the Claimant's meaning.

Meaning: Decision

18. I determine that the natural and ordinary meaning of the First Video is:

“The Claimant had (1) as part of a gang, participated in a violent assault on a young girl which had caused her significant injuries; and (2) threatened to stab another child.”

19. And the meaning of the Second Video is:

“The Claimant had, as part of a gang, participated in a violent assault on a young girl which had caused her significant injuries.”

20. In reaching these conclusions I have rejected (a) that part of the Claimant's meaning that suggests that there were incidents of violence beyond the particular acts that were identified; and (b) the extrapolation of a wider meaning that the Claimant was generally a violent individual. These go beyond what the ordinary reasonable viewer would understand the Defendant to be saying in the First (or Second) Videos. In my judgment, the viewer would recognise that the Defendant was making a specific allegation of violent conduct against the Claimant (albeit that in the First Video it has two parts: the gang attack on the schoolgirl and the subsequent threat to stab the boy with whom he had the lunchtime fight). I acknowledge that there are a couple of places where the Defendant refers to the Claimant having attacked “girls” (plural), but, in my judgment, the Claimant would be understood to be speaking figuratively at these points – “he's not innocent, he attacks young girls” (see paragraphs [3] and [7] First Video) – based on the single incident that he was reporting. It is very clear from the balance of the recording that the allegation was that the Claimant had participated in a gang attack on one schoolgirl. The final sentence of [4] in the First Video makes the point very clear, but the rest of the video conveys the same essential message.
21. My immediate impression having watched the Second Video for the first time was that this was very much a follow up video that sought to advance a wider argument. It contains references to further material that the Defendant had been sent by his viewers and the premise of the Second Video could be summarised as suggesting that the incident involving the Claimant was not an isolated incident, but one that was repeated in other schools in the country. It clearly repeats the main thrust of the allegation against the Claimant: that he had been involved in a gang attack on the young school girl, but the viewer would understand that it was not being suggested that the Claimant was involved in the other incidents to which the Defendant made reference to illustrate his wider point. Specifically, the Second Video cannot bear the extended meanings advanced by the Claimant for the further reason that the Second Video makes no reference to the Claimant having threatened to stab the other boy. Even had it been expressly pleaded on this basis (which it has not), it is simply impossible to seek to

insert a specific meaning like that relying upon a separate earlier publication, which did make that allegation, as “context”. In my judgment, it could not be relied upon even as an innuendo meaning. These are two separate publications, that have been identified and sued upon as such by the Claimant. The First Video contains the allegation of a threat to stab the other boy; the Second Video does not. I reject Mr Helme’s argument that the First Video provides this meaning by way of “context” for the Second Video for the reasons I have explained above ([11]-[15]).

22. I have rejected the meaning advanced by the Defendant. This fails to capture the gravity of the allegation being made against the Claimant – specifically that she had been beaten “black and blue”: First Video [2], [4] and [5] and Second Video [6] – and ignores, completely, the allegation of a threat to stab the boy that is made clearly in the First Video.

Appendix 1 – Agreed Transcript of the First Video

- [1] ... This is about the Syrian refugee Jamal. And yes, if you're watching this, if you're one of the people ... This is about the Syrian refugee Jamal who had his throat grabbed in the school up in Huddersfield.
- [2] I now have it as absolute fact, I've seen images of the young girl that he was involved in beating up. This is Jamal, the innocent refugee that you people or people out there have raised a hundred thousand pounds for. A young girl was beaten badly by Muslim girls. While those Muslim girls were beating her up, Jamal was involved, in kicking, in biting her, she was bitten, she was black and blue. She had to be taken out of school and home-schooled. She had to leave that school, the same school.
- [3] Her family have been to the *Huddersfield Examiner* with all of this, but guess what? They've refused to report it. They've refused to report it. So this young boy, this young English boy, that this young Jamal, now that we know he's not innocent and he violently attacks young English girls in his school, now we know that, and the family are terrified, because after the young Muslim girls who jumped [her], they were arrested for that, taken to court, after that they jumped her and battered her again. They battered her again. So, Jamal isn't that innocent. Jamal is the same age as the young English boy that grabbed him by the throat.
- [4] Now after beating up a girl in the school, after being part of a gang that attacked a girl in the school, you'd ask why he wasn't expelled, but he wasn't expelled. You'd ask why the whole world, this has made news and world attention, because he's Syrian and he's a refugee and an English kid hit him, right. But then you'd ask what you would do, what I would have done as a 16-year-old English kid with this boy terrorising girls in my school. Now this boy, Jamal, and according cause I've heard from the child in question, he threatened to stab him. He was giving it to him, so at lunch time, he's gone and grabbed him by his throat. This Jamal isn't innocent. He beat a girl black and blue.
- [5] How come no one's telling this? How come the media, cause I know now from the little girl's family, have been telling the media this. So why have the media not reported that? Why have none of them, why have none of them reported that? Why has this kid been portrayed as the ultimate victim in this whole entire country, yeah, when with a little bit of investigating, with a little bit of asking witnesses at the school, cause I've had lots of the kids from the school message me yesterday and I didn't, and d'you know what, even for who I am I was a bit worried about commenting. Ain't that sad? I was a bit worried about commenting until I just spoke to the kid's mum and dad! The little girl's mum and dad! Who showed me images of her black and bloody blue! That Jamal was involved in beating her!
- [6] So to the little kids, and I've just read reports, I've just read the screenshots and messages of people saying how they're going to stab and murder this little English boy that gripped him by the throat, now you know the real story, or there was more to the story, or the fact that Jamal had been giving it to him and this kid has stood up for himself on his lunch break. Even when you watch the video, I watched the video and I thought exactly the same with that little snippet of video but that was before I spoke to other kids at the school and before I saw images of a young girl who had to leave that school. She was taken out and home-schooled for months because of Jamal and the groups of Muslim girls. Unbelievable. Unbelievable that no, none of the media would have found this out in 10 minutes.

- [7] I've been busy, yeah, even today, I've literally just got onto this story, gone through my messages and I'm inundated with messages saying this isn't the true story, you're not, no one's reporting the truth on this issue...
- [8] So if you've seen that story, that young boy has been driven from his home, he's been targeted by the whole, the entire left wing fascist left of this country, tracked down, found his address, posted online, threats to murder him, his mother's threats to rape her, home under constant attack, because he stood up to a Syrian refugee that beat the shit out of an English kid, and out of an English girl. That's what needs reporting.
- [9] That young kid, how bad, I know people felt sorry for that Syrian kid, but bearing in mind this Syrian kid jumps and beats up girls in groups, and then a young English boy stands up to him, and the whole of England attacks him. The whole of England attacks the young English boy, without finding out the facts of what happened, without finding out what Jamal could possibly be like, without finding out any of that. Everyone comes out in full attack against the kid, and that kid's now in hiding, and there's messages, I just read one of the messages of Muslims saying we're gonna be outside your school till we find you if it takes a week, we're gonna stab you, we're gonna kill you, I've got all the messages.
- [10] I'm hoping I can get an interview out of these other people, I've got all those screenshots, I've got all the images of the young girl who's been beaten up, I've got all those screenshots of the Muslims threatening to kill this child, where's all the condemnation of them threatening to murder and beat him up? He grabbed someone by the throat and poured a little bit of water on him. Waterboarding. The police, the media in this country are calling that water boarding. Waterboarding. This much water poured on his head, waterboarding, cause he's Syrian, cause he's a refugee and cause the young kid was white and English. That's why this has been blown the f*** up. 10 minutes would have found this mother, 10 minutes cause she I found her, of a young girl that was beaten by the same boy.

Appendix 2 – Agreed Transcript of the Second Video

- [1] ... Just more on this Syrian child situation at the school in Huddersfield. So we've seen the world's media portrayal of one incident at the school. An incident where a young boy (and it didn't look good) received no visible injuries to himself. Um. I've since that moment been sent pictures of young white English children, girls and boys, who haven't been attacked or had an altercation or had a physical confrontation one on one, but we have one girl, who was violently beaten by a gang of Muslim girls including this Syrian boy. That's according to all of the conversations I've had with the family of that child.
- [2] Now of course, just like this young boy who grabbed the kid by the throat, everyone threatens to rape, murder, kill and destroy this family. Of course, the young girl's mum, is of course she is scared. There's been threats to blow this kid's house up. There's gangs of Muslims now outside the school. They've been outside the boy's house for two days.
- [3] But the reality and the truth and the facts, from what I can understand from the pictures I am receiving, is that one girl with very visible injuries in which the police were involved. The girl, the Muslim girls jumped her, Jamal was involved, then they got taken to court, and then straight after court they jumped her again. They're still in the school, they haven't been expelled from the school. Then I've been sent another mother at the same school, has sent me an image of her 13-year-old son who was beaten by a gang of five, not one man grabbing his neck, not one boy the same age grabbing his neck, five young Muslims, who kicked the living shit out of her 13-year-old white English son. Did that make the news? Were they arrested? Was there a go fund me page set up? Was the whole nation made to feel guilty?
- [4] So, at the one school this one school. Then I've had another father who is messaging me now with proof of his contact with the school, his daughter went to the school that young Muslim children in there were putting ISIS insignia on their school bags. He reported it to the school. He was told by the headteacher: "Do not fight the system." So, it seems there are a lot of problems in that school.
- [5] Now you have to look at it from the young 16-year-old boy's version yeah. This happened 6 weeks ago – why has it now been elevated, right now? It happened 6 weeks ago. This was done and dusted. This Syrian boy, this happened 6 weeks ago. Now according to the young boy and according to a young girl, who had to be taken out of that school and home-schooled because their family were too scared of the Muslims in the school, who were beating them up. This is all... no one is hearing any of this, why not? Why not, when I've actually got copies, I've got copies of emails to the *Huddersfield Examiner* asking from the parents of the girl that was beaten up, I've got copies of the emails back and forth saying why won't you report this racist gang attack against our daughter. Why won't you report it? Their reply says: "Because your daughter's 13 it will make the situation worse for her".
- [6] Ok but your quick to fucking run off and report to the world about a young boy getting gripped by his throat. All I said, which I've said yesterday, cause *The Sun* were running a big headline about it, according to this young girl's family Jamal isn't a victim. He was involved in the violent attack against their daughter and then according to the young boy who grabbed him by his throat, who obviously went up and said, "what are you saying now," I believe. So, something's been said before that point. Both boys are in the same year at school, both boys are the same age. There was no booting, kicking, punching. He gripped him by his throat. He's now living in complete fear and the whole country has turned on him without understanding any of what's gone on prior. Imagine being in that school.

You have lots of Muslim gangs beating up loads of young English kids not one on one, but gangs booting the hell out of them and then you decide to make a stand against this kid, and you go up and grab him and then what happens? The whole world turns against you. The whole world turns against you without even knowing the fair, in fact it was one kid versus one kid. It wasn't nice to watch, no one should resort to violence on anybody but we do have a young girl that's been beaten black and blue, we have another boy at the same school which I've just put this picture up of him on my Facebook you can see it – share it. He's been beaten black and blue. His mum is scared. All of these parents are scared. The first thing they're all saying is "we're scared." Why are they scared? Look at the response to this young 16-year-old kid that grabbed another kid by the throat. The whole country, the whole of Pakistan is threatening to rape and murder his family. Of course they're scared. They're found they they're getting attacked left right and centre.

- [7] Ahh anyway so Bailey, when the truth has come out, there's a one little young Syrian kid who's involved in the gang attack apparently, according to the family of which I have all the evidence. They might be saying no now because you're all threatening to rape them and murder them. They might be scared now, in fact they weren't scared now, they were scared before, they were scared even when they were talking to me. Every one of these parents who was talking to me is terrified of the response of violence by the Muslim gangs in that school and in that area. Right now we have loads of bearded Muslim men outside the school. It's a school. They're children, why are you outside the school with your big beard? What are you doing outside the school? It's kids.
- [8] Well anyone who went to school. I tell you when I went to school one altercation and the Muslim men were outside the school. The men, not children, men. In fact my school had to be shut down for three days. They closed the school for three days, because the men were coming to the school to attack.
- [9] So, I'm sorry but anyone who doesn't understand what goes on in these schools or doesn't understand the level of violence or doesn't understand the fact that there isn't a one-one fight. Bailey went up and it looked like he tried to have a one on one altercation with a kid – that's unheard of. When you reverse the roles – unheard of. That's why there's pictures of two young kids black and blue, beaten not by one, not by two but by three, four and five young Muslims in the same school. Report on that.
- [10] Why don't the mainstream media go and interview those mums. Why don't you go -- any mainstream media watching this contact me I've got the mum talking to me right now. Showing me details of her son's injuries telling me the school's done nothing, the headteacher's done nothing, no one done nothing. No one expelled these young Muslim gangs for battering him. Yes of course Bailey was expelled, of course he was. Of course he was. The victim is Syrian. Of course he was. Anyway enough of that.