



Neutral Citation Number: [2012] EWHC 2029 (Admin)

Case No: CO/9898/2011

**IN THE HIGH COURT OF JUSTICE**  
**QUEEN'S BENCH DIVISION**  
**ADMINISTRATIVE COURT**

Royal Courts of Justice  
Strand, London, WC2A 2LL

Date: 18/07/2012

Before:

**PRESIDENT OF THE QUEEN'S BENCH DIVISION**  
**and**  
**MR JUSTICE TUGENDHAT**

-----  
Between :

Her Majesty's Attorney General  
- and -  
Associated Newspapers Limited  
-and -  
MGN Limited

**Claimant**  
**First Defendant**  
**Second Defendant**

-----  
David Perry QC and Jonathan Hall (instructed by Treasury Solicitor) for the Claimant  
Jonathan Caplan QC (instructed by Reynolds Porter Chamberlain LLP) for the Defendant  
(Associated Newspapers Limited)  
Pushpinder Saini QC and Kate Gallafent (instructed by Reynolds Porter Chamberlain  
LLP) for the Defendant (MGN)

Hearing date: 13 June 2012  
-----

**Approved Judgment**

## President of the Queen's Bench Division :

### Introduction

1. The trial of Levi Bellfield began before Wilkie J at the Central Criminal Court on 6 May 2011. He was charged on Count 1 with the attempted kidnap of Rachel Cowles, aged 11, on 20 March 2002 and the kidnapping and murder of Milly Dowler, 13, on 21 March 2002. As we shall explain, the judge made rulings about pre-trial publicity and as to the bad character evidence which was admissible; he gave the jury, as would be usual, clear directions at the outset of the trial and in his summing up as to deciding the case on the evidence and ignoring anything that was published outside the courtroom.
2. The jury retired to consider its verdict at 12.41 p.m. on Wednesday, 22 June 2011. At 2.30 p.m. on Thursday, 23 June 2011 the jury convicted Bellfield of the kidnap and murder of Milly Dowler. They continued their deliberations in relation to Count 1, the attempted kidnapping of Rachel Cowles.
3. The conviction of Bellfield for the murder and kidnapping of Milly Dowler was then extensively reported during the afternoon and night on the news channels of Sky, ITN and the BBC, as well as on their main news and on Channel 4.
4. At 5.53 p.m. that same afternoon, the assistant head of communications at the CPS sent e-mails to various media organisations reminding them that the jury was still deliberating its verdict, that the proceedings were therefore active and nothing should be published which might prejudice the jury in its ongoing deliberations.
5. The following morning all the main national newspapers carried reports of the convictions and the background to Bellfield's convictions. Articles in the *Daily Mail* published by the first defendant and the *Daily Mirror* published by the second defendant set out information about Bellfield that had not been put before the jury; some of that information had been broadcast on the TV channels the preceding evening. The *Daily Mail* had a circulation of 2,047,206 and The *Daily Mirror* a circulation of 1,170,541; the readership is assessed at two and a half times the circulation.
6. On 24 June 2011 counsel for Bellfield applied to the judge to discharge the jury from giving a verdict in respect of the attempted kidnapping of Rachel Cowles on the grounds that there had been an "avalanche of publicity adverse to the defendant" which contained material that had not been before the jury. It was submitted that the jury could not conceivably have avoided the material and that the material had contained matters which were excluded from evidence which made it impossible for the jury not to have been affected by it.
7. After hearing submissions from the Crown, the judge discharged the jury on the basis that there had been:

"... an avalanche of material which strayed far beyond either the facts of what happened yesterday or the facts of the offences for which he had been convicted, and in particular

strays into territory of allegations being made ... of a hugely prejudicial nature.”

He added that it was “wholly unrealistic and quite hopeless” for the jury “to try to put that avalanche of material out of its mind, either individually or collectively.”

8. On 15 August 2011 the Treasury Solicitor wrote on behalf of the Attorney General to the publishers of the *Daily Mail* and to the publishers of the *Daily Mirror*, stating he was considering whether the publication of material in each of those papers on 24 June 2011 contravened the strict liability rule under the Contempt of Court Act 1981. After considering their responses, the Attorney obtained the leave of this court to proceed against both defendants.

### **The issue**

9. Under s.2(2) of the Contempt of Court Act 1981, the strict liability rule applies to:

“... a publication which creates a substantial risk that the course of justice in the proceedings in question will be seriously impeded or prejudiced.”

The Act provides that the proceedings must be active within the meaning of the Act. It is accepted on behalf of both newspapers that the proceedings were active and the reports complained of amounted to a publication.

10. The question therefore is whether the articles in *The Daily Mail* and the articles in *The Daily Mirror* each created a substantial risk that the course of justice in the trial of Bellfield would be seriously impeded or prejudiced.
11. The issue before the court was essentially one of fact. Indeed the following were common ground:
  - i) The fact that Wilkie J stayed the proceedings was not of itself determinative: see Simon Brown LJ in *Attorney General v Birmingham Post and Mail* [1999] 1 WLR 361 at 371. As was also said in *Birmingham Post and Mail* at 374 the trial judge was concerned with the risk of the defendant not having a fair trial and the jury not reaching a just verdict; s.2(2) was concerned with the risk that a serious issue might arise as to whether a judge should have to stay a trial or take some different course to avoid that.
  - ii) In considering the test under s.2(2) the question is whether the publication would have given rise to a seriously arguable ground of appeal if the trial had been allowed to continue and proceeded to conviction. (See Simon Brown LJ at page 371); this approach is the one to be followed (see *A-G v MGN* [2011] EWHC 2074 (Admin), [2012] 1 Cr App R 1. at paragraph 28).
  - iii) The question of risk must be looked at at the point of publication; the conduct of each publisher must be looked at separately: *A-G v MGN Ltd* [1997] 1 All ER 456 at 460; *A-G v Express Newspapers* [2005] EMLR 13. The case against each must be considered separately and the cumulative effect cannot

be lumped together. It must be proved to the criminal standard of proof that the publication in question caused the substantial risk of serious prejudice.

- iv) The fact that there is some risk of prejudice by reason of earlier publications is not conclusive; if several newspapers publish prejudicial material, they cannot escape by contending that the damage has already been done. It is sufficient that the latest publication has afforded an additional or further risk of prejudice or exacerbated and increased that risk: see *A-G v Independent Television News* [1995] 2 All ER 370 at 381 and *A-G v Express Newspapers*.
  - v) The test under s.2(2) generally satisfies the balance required under Article 10 of the Convention: see paragraph 32 of the decision in *A-G v MGN*.
12. In the light of that common ground, there were two factual sub-issues in the case which can be described as follows:
- i) Could there have been a substantial risk of serious prejudice by the publication of the articles in each of the newspapers, given what had been put before the jury about Bellfield in the course of the trial and the jury's decision to convict him in respect of the murder and kidnapping of Milly Dowler?
  - ii) Was what had been broadcast the preceding evening on the news channels such that the particular publications could not have given rise at the point of publication of the morning of 24 June 2011 to a substantial risk that the course of justice would be seriously prejudiced?

It is convenient to consider these sub-issues first before answering the overall question as to whether the course of justice would have been seriously prejudiced or impeded.

13. Mr Perry QC on behalf of the Crown submitted that we should also consider whether the course of justice had been impeded, but on the facts of this case we do not consider that the question of impeding the course of justice adds anything further to the question of prejudicing the course of justice.
14. It was accepted also that ordinarily, as Simon Brown LJ pointed out in *A-G v Birmingham Post and Mail*, it was difficult to envisage a publication which has concerned the judge sufficiently to discharge the jury and yet is not properly to be regarded as contempt where the publication occurred during the trial. However he pointed out that his observation applied where there was no question of other prejudicial publications complicating the position. In addition, as Mr Caplan QC submitted on behalf of the *Daily Mail* and Mr Saini QC on behalf of the *Daily Mirror*, that this case was quite exceptional given what had been put before the jury about Bellfield and the jury's conviction of Bellfield on the counts relating to Milly Dowler.

**Issue 1: Could there have been a substantial risk of serious prejudice by the publication of the articles in each of the papers, given what had been put before the jury about Bellfield in the course of the trial?**

(a) **What was made known to the jury about Bellfield?**

15. It is necessary to set out what was made known to the jury and what was not.

(i) *The other murders*

16. Although the attempted kidnapping of Rachel Cowles and the murder of Milly Dowler had occurred in March 2002, Bellfield had been convicted on 25 February 2008 of:

- i) The murder of Marsha McDonnell on 4 February 2003.
- ii) The murder of Amelie Delagrang on 19 August 2004.
- iii) The attempted murder of Kate Sheedy on 28 May 2004.

The judge ruled on 20 April 2011 that these convictions could be placed before the jury as evidence of bad character. In addition there was evidence of his bad character of obtaining by deception in relation to credit cards.

(ii) *Johanna Collings*

17. Bellfield's ex-wife, Johanna Collings, was called to give evidence to the jury linking Bellfield to the area where Milly Dowler's remains were found six months after her disappearance. Admissions were placed before the jury to the effect that she had been offered money to give her story and on 22 February 2008 an article was published in the *Sun* based on an interview that Johanna Collings had given to a journalist for which she had been paid £10,000. Furthermore, on 23 August 2009 an article had appeared in the *Daily Mirror* which purported to quote Johanna Collings but she was not paid for that.

(iii) *Emma Mills*

18. Bellfield's ex-girlfriend, Emma Mills, was called to give evidence to establish Bellfield's movements at the time Milly Dowler disappeared and at the time the body was disposed of and his connection with a motor car seen in the vicinity. In the admissions put before the jury it was said that she had moved to a women's refuge as a result of the breakdown of her relationship with Bellfield, during which time Bellfield had had unsupervised access with his children.

(iv) *Evidence excluded*

19. The judge had ruled on 20 April 2011 that the prosecution was not entitled to adduce evidence from Emma Mills or Johanna Collings or an earlier girlfriend (Ms Heddings) that Bellfield had an interest in schoolgirls in uniform. Although the judge considered that the evidence showed a distasteful and unhealthy sexual interest in schoolgirls, the evidence would be highly prejudicial and its probative value would be limited; the imbalance would give rise to the risk that the trial would be unfair.

20. On 6 May 2011 the judge had ruled that the Crown could not adduce the evidence of Anna Maria Rennie that Bellfield attempted to kidnap her in 2005; the jury had failed to agree when the allegation was tried. The judge ruled that the Crown could not adduce her statements under the hearsay provisions of the Criminal Justice Act 2003 on the basis that she was fearful of attending. One of the reasons that led the judge to this conclusion was that he considered that putting before the jury a series of statements would detract from the jury's concentration on the trial process of hearing

live evidence. He considered that that process of concentrating on live evidence would make it likely that any previous knowledge of events garnered from the media would have an insignificant impact upon the jury.

**(b) The information published on 24 June 2011**

*(i) The articles in the Daily Mail on 24 June 2011*

21. In the first article published in the *Daily Mail* on 24 June 2011, the front page headline in large type accompanied by a picture of Milly Dowler read, “DID MILLY MURDERER KILL LIN AND MEGAN RUSSELL?” The article went on to say that “serial killer Levi Bellfield was linked the previous evening to the hammer murders of Lin and Megan Russell and police face demands to re-open their investigation into the attack in 1996.” Page 4 carried a detailed account, under the heading “BELLFIELD AND THE JOSIE CONNECTION”, of the connection with the Russell case. It set out point by point evidence which was said to show that Bellfield was much more likely to have committed the attacks than Michael Stone who had been convicted of their murders in 1998 and, following a retrial, in 2001. There was a comparison of the photographs of Bellfield and an e-fit photograph of the killer of Lin and Megan Russell.
22. Page 5 of that edition of the newspaper carried a further article under the heading, “THE MUMMY’S BOY WHO SAYS BLONDES ARE NOT FIT TO LIVE” about Bellfield’s life. It then set out a report that he had a crazed hatred of women, that many stories about how he treated them emerged from witness accounts at his trial. It went on:

“He regularly used prostitutes and kept an empty flat near his home for sex sessions. At night he would stalk nightclubs in search of young women, drug their drinks and bring them back to the flat. He would invite friends over to share the captive girl around.

Disturbingly, six cases of drug-induced rape were sent to the Crown Prosecution Service more than two years before Bellfield was jailed for murdering Amelie and Marsha. They involved girls aged between 14 and 16. The CPS decided there was not enough evidence at that stage to proceed – and when Bellfield was given a whole life sentence in 2008, it was agreed there was no public interest in pursuing the cases.

A former colleague recalled how, by working as a bouncer in Maidenhead, Berkshire, Bellfield gave rohypnol to a young clubber before raping her in the club car park and stealing her mobile phone. When the girl’s mother rang, Bellfield answered and boasted about what he had just done to her. Another teenager was assaulted in a toilet cubicle at a club in Cobham, Surrey after Bellfield got her drunk. A friend of the victim looked over the top of the door and asked if she was all right. Bellfield held the girl’s jaw and moved her mouth like a ventriloquist’s dummy to make her say yes.”

23. The two key matters that the articles set out which were not before the jury were:

- i) The detailed allegations in respect of the Russell murder.
- ii) His drug induced rape of girls between 14 and 16.

(ii) *The article in the Daily Mirror on 24 June 2011*

24. The article in the *Daily Mirror* on 24 June 2011 was under a heading, “MILLY MURDERER: TERROR OF HIS WOMEN. 6FT OF PURE EVIL” with the sub-headings, “BELLFIELD’S EX: HE SAID HE RAPED A DISABLED GIRL.” “MUM OF HIS KIDS: HE RAPED ME AND BURNED ME WITH CIGARETTES”. The article described how Bellfield got his twisted kicks by beating, raping and terrorising his partners. He had made their lives a living hell and targeted them even when they were pregnant with his children. The article continued:

“He openly boasted of carrying out sex attacks on women – and branded blondes evil f\*\*\*\*\* bitches who must die.

He also bragged about raping a disabled girl on a car bonnet in a club car park after lifting her from her wheelchair, according to his ex-wife Johanna Collings. Johanna, 38, who endured two and a half years as his sex slave in the mid-90s, said: “He was six foot of pure evil. When he came in late after working on a club door, he’d tell me how he had had ‘another little slut’.

“Levi took great pleasure in telling me how they fancied a kiss and a cuddle.

“But when he got them where he wanted them, he just took them.

“He would tell me straight out if he had raped a girl, or even two, on an evening. He’d laugh and say they deserved it.

“He warned them what would happen if they went to police. I was just too scared to even think of saying anything.”

25. She described his savage attacks on her, including wrapping his belt round her neck and raping her. There was a prominent picture of her.

26. The article also carried a picture of Emma Mills and described her as a cowering wreck after living with Bellfield. She also described a violent relationship including rape, even when she was pregnant, burning her with cigarettes and forcing her to meet his sexual desires. The article also referred to another girl friend, Becky Wilkinson who described a similar relationship.

27. The two key matters that the article set out which were not before the jury were:

- i) His violent treatment and depraved sexual abuse of Johanna Collings and Emma Mills.

- ii) The rape of a disabled girl on a car bonnet and his sexual interest in and rape of girls.

**(c) Did the knowledge the jury had mean that there could not have been a substantial risk of serious prejudice?**

*(i) The submissions made*

- 28. It was submitted by both Mr Caplan QC and Mr Saini QC that the fact that there had been publication by the *Daily Mail* and *Daily Mirror* of material which the judge had withheld from the jury did not of itself give rise to a breach of the strict liability rule; there had to be a substantial risk of serious prejudice. Given what the jury knew about the depravity of Bellfield, these further descriptions of his depravity could not have resulted in a substantial risk of serious prejudice to the proceedings. The jury would have disregarded the material and reached their verdict according to the evidence. There was nothing in the material published which was directly relevant to the count of attempted kidnapping that the jury was considering.
- 29. I accept that the publication of material that a judge has withheld from the jury does not *per se* involve a breach of the strict liability rule, though it might well be contempt at common law if the necessary intention could be established. It is necessary that the publication gives rise to a substantial risk of serious prejudice.

*(ii) My conclusion*

- 30. The system of trial by jury rests on the assumption that a jury will follow the judge's directions and return a true verdict according to the evidence and that the jury will focus on the evidence rather than matters outside the courtroom.
- 31. The position of the jury must be examined in context. They had been told of the murders he had committed and of the attempted murder. They could have inferred that Bellfield had been violent to Emma Mills, as she went to a women's refuge, but that fact was mitigated by the knowledge that Bellfield had been permitted unsupervised access to the children. They had reached the decision that he had committed a further murder and kidnapping. The one issue that they had to resolve was whether he had committed a further attempted kidnapping and they were taking time to consider that further count.
- 32. At that point in time (and not as in other cases months before a trial), as I have set out, the articles in the *Daily Mail* purported to link Bellfield to another murder and more importantly put forward an account of the drug induced rape of schoolgirls. The article in the *Daily Mirror* set out his rape of a disabled girl on a car bonnet and his depraved sexual abuse of two of the witnesses who had not given evidence of these matters.
- 33. The material in each newspaper was in my view highly prejudicial to Bellfield in that it set out material in relation to his sexual perversion in relation to his partners and his perverted interest in and rape of girls. I accept that some of the evidence given was highly prejudicial, but this material went way beyond what the jury had been told about Bellfield, murderer though they knew him to be and had again found him to be. There was a real risk that the jury would have thought that the additional material was



relevant to the remaining count where he was charged with attempting to abduct a schoolgirl. I am quite satisfied that both the *Daily Mail* and the *Daily Mirror* by publishing the further material, particularly that relating to his rape of girls, created a quite separate and distinct risk of serious prejudice.

## **Issue 2: The effect of the broadcasts on the preceding evening**

### *(i) Pre-trial publicity*

34. Those acting for Bellfield had at the outset of the trial in May 2011 made a submission that there had been “a tide of adverse publicity” in 2008 at the conclusion of the trial of the murders of Marsha McDonnell and Amelie Delagrange. That publicity had accused him of a number of “horrendous offences” of which he had never been charged and there had been suggestions that he had confessed to the murder of Milly Dowler. Much of this was still available on the internet. The judge decided on 6 May 2011 that given the lapse of time and the directions he would give, the risk of prejudice was not so great that a fair trial could not take place.

### *(ii) What was broadcast on the afternoon and evening of 23 June 2011*

35. After the verdict had been given on 23 June 2011, the TV channels carried reports that afternoon and evening. The coverage on Sky News, ITN, the BBC and Channel 4 News was primarily directed at an account of the murder of Milly Dowler, police failings and the defence conduct of the trial. However, there were matters that went beyond this which are relied on by the *Daily Mail* and the *Daily Mirror*. These can be summarised as follows:

#### i) Sky News :

- a) Reported that the terms “woman hater” and “a violent predator” were used by the prosecution. The reporter described Bellfield as having a history of violence against even those that loved him.
- b) Carried an interview with Emma Mills in a 12 second part of which she said he had been raping her for some years and there was a night where she thought he might kill her. The remainder of the interview was concerned with the murder of Milly Dowler.
- c) Referred to the existence of some evidence found by the police that he had committed 20 other attacks including date rapes and attempted abductions, but investigations came to nothing as there was not enough evidence.
- d) Made allegations in a part of the programme that lasted about three minutes that Bellfield might be related to the murders of Lin and Megan Russell. This drew attention to the e-fit, the remarkable resemblance and carried an interview with the solicitor of the person convicted of the murder.

#### ii) ITN

- a) Carried an interview with Johanna Collings in which she said that nothing was needed to wind Bellfield up or trigger him; she spoke of an occasion when she did not iron his trousers correctly and he then “beat me, biting, kicking, punching everything”.
- b) Carried an interview of former Detective Chief Inspector Sutton who had led the investigation into the murders of Marsha McDonnell and Amelie Delagrangé who stated that Bellfield “would commit anything – he had no regard for the law or even morality”.
- iii) BBC
  - a) Spoke of a man with “a long history of brutality” who had left a trail of trauma ... including within his own family, showing a short interview with Bellfield’s daughter.

(iii) *The effect*

- 36. In my view, the contrast between what was reported on the news channels and what was published in the *Daily Mail* and the *Daily Mirror* is clear. It is right to say that there were references on the news channels to his abuse of Johanna Collings and Emma Mills, the latter specifically accusing him of rape. The Sky News report carried an extensive item on the Russell murder. But none carried the allegations of a sexual interest in girls or his rape of girls.
- 37. In my judgment, although there was no further or additional prejudice resulting from the publication of that part of the article in the *Daily Mail* that related to the Russell murder, there was further and additional risk of prejudice created by the articles in both *The Daily Mail* and the *Daily Mirror* in relation to Bellfield’s interest in and rape of girls. The terms in which those articles were written did, in my judgment, significantly exacerbate the risk of serious prejudice.

**Overall conclusion**

- 38. I have considered each of these factual sub-issues separately, but it is necessary to ask the overall question as to whether each publication created a substantial risk of seriously prejudicing the course of justice in the continuing trial.
- 39. I am sure that each publication did create such a substantial risk of serious prejudice. The allegations of his sexual interest in and depraved conduct to young girls was highly prejudicial to the count that the jury were then still considering. What was set out went way beyond what the jury had been told or what had been broadcast on the preceding evening. I have little doubt that if the jury had not been discharged, there would have been a seriously arguable point that the conviction was unsafe.
- 40. We shall invite submissions from the Attorney General and counsel for the two newspapers on penalty.

**Mr Justice Tugendhat :**

- 41. I agree.