

ATC/13/0202
ATC/13/0203

Neutral Citation Number: [2013] EWHC 1455 (Admin)

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
DIVISIONAL COURT

Royal Courts of Justice
Strand
London WC2A 2LL

Friday 26 April 2013

B e f o r e:

PRESIDENT OF THE QUEEN'S BENCH DIVISION

(Sir John Thomas)

MR JUSTICE TUGENDHAT

Between:

HM ATTORNEY GENERAL

Applicant

v

HARKINS

Respondent

HM ATTORNEY GENERAL

Applicant

v

LIDDLE

Respondent

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Miss Melanie Cumberland (instructed by Treasury Solicitor) appeared on behalf of the
Applicant (Nos ATC/13/0202, ATC/13/0203)

Mr Paul Cross (instructed by McKenzie Bell) appeared on behalf of
the Respondent Harkins

Mr Tehrani (instructed by Lancasters) appeared on behalf of the Respondent Liddle

J U D G M E N T

1. THE PRESIDENT: HM Attorney General applies today for the committal of two persons who used the social media to break an injunction imposed some time ago, with the potential for very serious consequences to other people. The Attorney General is doing this in the public interest. He has done so with a speed which we would like to commend because the effective way of deterring such use of the social media in the future is not only by the punishment that this court can impose but also by the swiftness with which action is taken.

The background

2. The background to these proceedings can be shortly summarised as the events which are at the root of it are so well known. On 12 February 1993 a two-year old child, James Bulger, was killed by Thompson and Venables. On 24 November 1993 when they were 11 years of age, they were sentenced after their conviction for murder to be detained at Her Majesty's pleasure - in effect a life sentence. Although the trial judge enabled a large amount of material to be published, he was concerned about everything being published because of the importance of the rehabilitation of both Venables and Thompson.
3. On 8 January 2001, prior to the release of Thompson and Venables on licence under new identities, the then President of the Family Division Dame Elizabeth Butler-Sloss granted to them an injunction binding on the whole world preventing the publication of their new identities. It was reported in Venables v News Group Newspapers [2001] Fam 430. The terms of the injunction, so far as material, were to prevent not only the defendants to that particular case but all the world from publishing or causing to be published in any newspaper, or broadcasting in any sound or television broadcast or by means of any cable or satellite programme or public computer network, any depiction, image in any form, photograph, film or voice recording made or taken on or after 18 February 1993 which purported to be of Venables or Thompson (excluding police photographs of Thompson taken on 18 February 1993 and Venables taken on 20 February 1993) or any description which purported to be of their physical appearance, voices or accents. There were modifications to that order at a subsequent time and qualifications to it to which it is unnecessary to refer.
4. The then President when she granted the injunction, had a clear purpose for doing so. She said:

"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 Venables and Thompson, not only from intrusion and harassment but, far more important, the real possibility of serious physical harm and possible death from vengeful members of the public. 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."

5. It was also clear, as is often the case where what is called vigilante action is taken on the basis of a verbal or photographic image of a person, that there can be mistaken identification. It is appreciated that in the present case we are concerned not only with the risk to Venables and Thompson but to ordinary members of the public who could be mistaken for them as a result of the publication of any image or any matter amounting to a description of their identity which might result in such a mistake.
6. The present case arises out of what appears to have happened on the twentieth anniversary of the murder of James Bulger. That was on 12 February 2013. On that day and the days following it is common ground that, as we have been told by Miss Cumberland on behalf of the Attorney General, hundreds, if not thousands, of times images (or purported images) were placed on to the social media or otherwise on to the internet. We are however concerned with two people who contributed to what happened at about that time. Fortunately, there is no dispute as to what happened in respect of each. We will turn to deal with each in turn.

A. Neil Harkins

7. Probably on 14 February 2013 Neil Harkins used his Facebook profile to put on to that profile photographs of persons said to be Venables and Thompson. His Facebook profile indicated that he had one-hundred-and-forty-one friends. The photograph in respect of each person purporting to be identified as Venables and Thompson showed a photograph of them purporting to have been taken in the early 1990s and the other in the late 2000s. Underneath, he said:

"Interesting that this photograph is not allowed to be shown and there is an investigation on how it got out. What is more interesting is why he got released and protected in the first place."

Although he only had one-hundred-and-forty-one friends, it is plain from the evidence that the placing of this on to Facebook resulted in over 20,000 sharings with other people. It is impossible to say how many people saw it, but it is obviously a very significant number.

8. In addition to the initial passage which we have set out, Neil Harkins also said on his Facebook page, some time after it had been put on, but on the same day (14 February 2013):

"Can't imagine what the poor kid went through. What is wrong is the fact he got released and then got done for downloading child pornography and yet he is still protected. What is wrong with the system?"

9. On the following day, 15 February, the publication on the Facebook page was notified to the police. The Facebook page was investigated and the police confirmed that the identity under which it had been put forward was indeed that of Neil Harkins.
10. About a fortnight later on 28 February 2013, the Treasury Solicitor wrote on behalf of the Attorney General to Neil Harkins telling him that the publication was prohibited,

that the Attorney General was considering bringing proceedings and asking him to remove the photograph.

11. It is a commendable feature of the action of Mr Harkins that on 1 March 2013 he immediately sent to the Treasury Solicitor an e.mail saying he had removed the photograph from the Facebook page immediately and had de-activated his account until further notice. A few days later on 5 March 2013 he wrote a long manuscript letter explaining what he had done. He stated that he posted the images and comment in response to a news article that appeared when he logged in. He mentioned that Thompson and Venables had been returned to prison and there had been speculation about the identity. He continued:

"The article showed the images that I posted which I know are some of many which are widely accessible on the internet. I believed at the time that the images I posted were not within any legal constraints as they were freely accessible on the internet. I was also under the impression that the legal restrictions applied to images published in the media. However having received a copy of the injunction which you enclosed, I realise that is not the case."

He set out his personal circumstances.

12. It was not entirely clear until the hearing today what position he would take in respect of the breach of the injunction. It would have been for the Attorney General to have proved that he knew of the injunction or at least of the broad thrust of that injunction and the purposes it was intended to serve. However on the evidence that has been provided by the Attorney General, we have no doubt at all that Neil Harkins was right to admit, as he has done, that he was in breach of the injunction. We therefore look on him as a person who has not only taken action immediately to rectify what he has done and immediately apologise for what he has done, but has accepted that he knew that he was acting in breach of the court's injunction.

B. Dean Liddle

13. At about 1.42 a.m. on the morning of 14 February Dean Liddle posted on a Twitter account in the name of "OpinionatedDad", on his Twitter profile accessible to the general public, photographs purporting to identify Venables and Thompson as adults. It is said, and there is no reason not to accept this, that he had picked up the photographs from photographs published elsewhere on the internet. The photographs purporting to identify Venables and Thompson were removed by him at about 2.25 to 2.27 a.m. on the same day, 14 February 2013. They were removed - it appears from what is stated on his Twitter account - because someone had pointed out that the images were not those of Venables. It is again clear that he appreciated that what he was doing must have been wrong because he knew of the injunction.
14. One of the tweets upon which the Attorney General relies is one that states:

"I heard about it [the injunction] for a while, but posted it as people are

talking about being prosecuted for putting it and I don't think it's right."

15. The fact he must have appreciated what he was doing was wrong was indicated by a further tweet at 2.51 a.m. on the same day after he had removed the photographs:

"So I get a huge fine. Great. They will get £2 a week off me and the evil men who murdered a child will be known publicly - #worthit."

16. This matter came to the attention of the Attorney General on 14 February 2013. He immediately asked the Metropolitan Police to make inquiries as to who operated the account "OpinionatedDad". Those inquiries established that the owner was Dean Liddle. It was clear from his site that he had nine-hundred-and-fifteen people who were followers of what he said.

17. The Treasury Solicitor wrote in terms similar to the letter to Neil Harkins to him on 5 March. His immediate response to that was the following two comments posted on Twitter:

"Just been served with court papers for posting picture of sick child killers Venables and Thompson. What a joke."

"Love them to take me to court. I'll tell them exactly why I posted pictures of sick child killers."

18. Wiser counsel must have prevailed because on the following day - 6 March - he telephoned the Treasury Solicitor. He acknowledged the receipt of papers and was immensely apologetic. He indicated that he now had understood what an injunction was and he realised it was a serious issue. He followed that a few days later by an e.mail to the Treasury Solicitor in the following terms:

"I would like to offer, firstly, my sincerest apology. It was a mistake on my part and one which I vow never to commit again. I must also add however when I posted these photographs on Twitter I had already noticed the exact photo hundreds of times that day on Twitter so was thinking it was still something which was already out in the public, visible to all. Still, I was aware there was a ruling for there not to be printed or posted on line but still did so. My biggest error was in not fully understanding the implication of what an injunction was, what it covered and what breaking the injunction actually meant. I don't want to play dumb here, but I genuinely did not fully understand how serious this situation was. I am now fully aware of the injunctions and why they need to be upheld."

19. From what we have been told by counsel on his behalf, his family and those close to him have clearly brought home to him the seriousness of his misconduct, in contradistinction to the way he had immediately reacted to the commendably swift actions of the Attorney General.

20. There can be no doubt in our own minds that he was right to accept today that he was also in breach of the injunction, that he knew of it and is guilty of a contempt. We think that that was an admission properly made in all the circumstances of the case.

21. The sentence for contempt

22. The fact that both had admitted this serious contempt of court has resulted in this hearing today being concerned solely with the establishment of the circumstances of what happened and the consideration of the penalty that the court must impose. The maximum penalty which we can impose is a penalty of two years' imprisonment or an unlimited fine. It is accepted in respect of both, as a consequence of their financial circumstances, that we should not consider a fine. Whatever their financial circumstances were, we would have regarded a fine as wholly inappropriate to the gravity of the offending.
23. It was submitted by Miss Cumberland, on behalf of the Attorney General, that there were no comparable cases. Having reviewed those cases, we are of the same view. We therefore have to look at this case as a case where there is no precedent. We must therefore assess the seriousness, both in terms of the general serious misconduct committed but reflecting also on the personal circumstances of the two before us and the circumstances in which they have come to court to admit their contempt and to apologise.
24. There is no doubt that the first very serious aggravating factor was the potential consequences, not only to Venables and Thompson but to persons who might be mistakenly identified as them and therefore subject to the serious risk of vigilante attack resulting in serious injury or worse.
25. Secondly, it is plain that they knew of the prohibition contained in the injunction though they may not have known the full extent of the consequences of what they were doing.
26. Thirdly - and we regard this as an aggravating and in no way a mitigating factor - they became part of a determined internet campaign on the twentieth anniversary of the death of James Bulger. They freely joined in that campaign. We cannot accept as in any way exculpatory that others were doing it. From the view point of the court their conduct has to be judged on the basis that they knew that what they were doing was wrong and it was no excuse that others were doing it.
27. The mitigating features are clear. Both removed the offending pictures, Liddle having removed them very quickly. We also have to take into account the apology and the way in which these proceedings have been conducted and the admissions so promptly and fulsomely made.
28. We therefore turn to consider the penalty that we should impose. We have already set out the purposes of the injunction and the risks that are faced not only by Thompson and Venables but others. We must therefore look at a sentence that makes clear the determination of the court to protect those potentially numerous people.

29. Secondly, we must also take into account the importance of upholding the rule of law in two respects. First, this court has made an injunction about which there can be no room for argument. Secondly, it is important to emphasise that no one should or could contemplate taking the law into their own hands by encouraging punishment of an offender by others. Punishment is imposed by a court alone and not by others. Vigilantism has no place in a civilised society. We must have particular regard to deterring such conduct.
30. We must also take into account the very serious nature of publication on a social media or otherwise on the internet. We have already set out the potential - and in fact in one case the actuality - of the very widespread use of the information that was placed by them onto the internet. The social media can reach very many people, as this case shows. Therefore the conduct of anyone who publishes such information - whether it be on the social media or elsewhere on the internet - has that very serious consequence.
31. For those reasons therefore the court must consider the imposition of a custodial sentence, not only to punish for the consequences we have set out but also to deter others. The length of the sentence we have considered appropriate in this case is one of nine months' imprisonment. We impose that not only because of the serious consequences to which we have referred, which would ordinarily have led us to a significantly higher sentence than the one that we have indicated, but we have also taken into account the very strong personal mitigation to which we will refer in a moment.
32. We next must consider whether we should suspend those sentences. We have to take into account in the present case that both knew the risk to Venables and Thompson and must have appreciated, because there have been so many well publicised incidents, the risk to other people who might be wrongly identified.
33. They must have appreciated that what they were doing was wrong, but we accept what we have been told by counsel instructed on their behalf that they did not appreciate the very serious nature of their conduct and the potential of the spreading of what they had done so extensively across the internet. Equally importantly, we regard as the strongest mitigating factor the action that both took in co-operating with the Attorney General, apologising and enabling the court to deal with the matter in the shortest time possible.
34. Thirdly, there is strong personal mitigation. In the case of Dean Liddle that is of a very high order. We have heard touching reference to his charitable work, the effect that custody would have on his young son who is deaf and the injuries he has sustained when going to the aid of another person which not only demonstrate his own good character and the wish to help others but which would make custody more difficult for him. We have considered too the effect on his family and taken into account the good character of each.
35. Weighing those matters together, we think we can in this case take the exceptional course of suspending those terms of imprisonment for a period of fifteen months.

36. We must however conclude by saying that for the future if there is a similar publication on the internet or through the social media then we consider that there will be little prospect of such a person - if the publication occurs after the date of this judgment - escaping from a substantial custodial sentence without there being any prospect of suspension.
37. We hope that message will be clear. We also hope that HM Attorney General will take steps to ensure that the injunction made, and which is so necessary for the maintenance of the rule of law in relation to Venables and Thompson, is published in a prominent position so no one can claim he or she does not appreciate the serious consequences to which we have referred.
38. (To respondents) Both of you, you appreciate what the court has said. We would have sent each of you to prison for nine months; we are suspending it for a period we have indicated. We trust that you will not engage in any such conduct again. You can be fortunate in that.
39. (To respondents' counsel) Can we pay a special thanks to both of you for the very considerable assistance you have given to your clients and for the way in which you have dealt with the matter. We regret that it was so difficult for both to obtain legal advice at a much earlier stage.