

Libel trial McCann v Gonçalo Amaral - Day 4 Witness No1

20.09.2013 10am. *The session starts with a request from the defence concerning a plaintive witness, the President of the Bar Association (bastonário da ordem dos advogados) since 2008, António Marinho Pinto (MP) who was supposed to give evidence this afternoon.*

MP was cited as a witness in the libel writ but in January 2012 determined that he would submit a written statement, which was his privilege as bastonário. He was however obliged to inform the Court of his intentions.

On the 20th January 2013, MP declared his wish to waive his right to make a written submission and declared that he would be present to testify in the court room.

At the last minute, MP let the lawyer for the plaintive, Isabel Duarte (ID), know that he had changed his mind. He now wished to deposit a written statement on the basis of his privilege. This change would bring his written statement late to the proceedings and would not afford the defence an opportunity to properly consider his evidence or to put questions to him regarding same.

The judge said MP should have revealed his intention during the 10 legal days so lost his right because he didn't do so. It now falls to the lawyer for the plaintive to ensure that MP appears personally in order to be examined in the final allegations session.

10:30pm The testimony as it happens...

The first witness of the session is **Michael Wright**, an administrator, whose wife is Kate McCann's cousin. He has known Kate since she was ten years of age and Gerald McCann since 2001. They used to have regular contact.

He went to PDL in May 2007 and many times during that summer (10 weeks). Since the McCanns returned to the UK, he visits them regularly. They spent the first Christmas without Madeleine together. He tries to give them some comfort and calls or e-mails or sends sms messages at least once a week.

The Judge asks how regularly he had contact with the McCanns in the period from 2008-2009. **MW** says he saw them once a month. He adds he was monitoring e-mails that came to the Madeleine site.

The Judge asks whether he read the book of Gonçalo Amaral. **MW** answers he read a translation on the internet.

The Judge asks "when". **MW** Very shortly after the book was published.

The Judge asks whether he watched the documentary on the same theme. **MW** says he did on the internet.

The Judge asks whether he knows the author of the book. **MW** says "only by hearsay".

The Judge asks whether his family relationships will influence his testimony.
MW answer "yes".

The Judge asks whether it will prevent him from telling the truth.
MW says "no".

1) McCann family lawyer, Isabel Duarte, is the first to question the witness.

ID - We are here to analyse the effect on the McCann's family life of the publication of GA's book and the documentary inspired by this book. Can you tell the court what you know about this?

MW After the lifting of the *arguido* status they (the McCanns) were well, though no authority was searching for Madeleine any more. It was very important that people looked for her in Portugal. According to the book they were somehow involved in the disappearance of Madeleine. Therefore the book hampered the search for her.

ID interrupts MW because she can't hear him (there's a motor outside, perhaps cutting the grass). ID makes known the lines of questioning she intends to pursue but the Judge reminds her that witness statements which are off topic will not be permitted.

ID - asks whether the investigation was hampered because of GA's book and an article in the *Correio da Manhã* (*Portuguese Morning Post newspaper*).
MW says it's what he understood.

ID - What happened when the files were released?

MW The McCanns had to have them translated in order to study them. They had to lead a campaign to motivate the public to search for Madeleine.

ID - Do you know whether there was an end to the investigation?

MW It was public knowledge that the investigation was stopped.

ID - Did this event occur because of the publication of the book?

MW The content of the book was conflicting with what was in the files. He says he would be speculating if he answered the question.

ID - Don't you have knowledge of this direct relationship?

The Judge interrupts and asks whether the book was published before or after the archiving of the files.

MW says it was after.

The Judge – Then how could the book interfere with the investigation?

MW stays silent.

The Judge repeats the question.

MW says it didn't but it interfered with the following investigations made by the private investigators hired by Kate and Gerry.

The Judge overrules ID who wanted to know how the book influenced the McCann investigation.

ID starts asking if because of the.... but the Judge overrules again arguing she reveals the answer in the question. She adds that questions should be asked in an appropriate way.

ID - In which circumstances did the McCanns learn about the book and the documentary?

MW says they knew before the shelving of the case, that a book would be published. About the documentary, they were told it had been broadcast on TV in April 2009.

ID - When did they read the book and watch the documentary?

MW – They read the book when I sent them the translation that was on the internet in August 2008. They heard about the documentary in March/April 2009. There was a big campaign in Praia da Luz, they needed people to support them and the documentary had a negative effect on that.

ID - When they learnt about it, how did they react? Was it sadness or pain? Were they socially and professionally affected?

GA's lawyer, SO, interrupts asking the Judge to ask the witness what is the paper he is reading.

MW says that they are notes about feelings, etc. to remember.

The Judge asks what is actually in the notes.

MW repeats that it is to help him remember feelings and special contacts.

SO dictates the court clerk a request for a copy of the paper listing feelings is joined to the process for appreciation by the court.

GP's lawyer completes quoting the Law that insist on the importance of testimonies being spontaneous.

ID protests arguing the witness has the right to have notes with dates and facts. She asks that only the Court checks the paper.

The Judge concludes saying the witness himself says the notes concern feelings and contacts with the McCanns, which might cast doubt upon spontaneity, moreover because the witness is part of the McCann family. She concludes it's important to clarify totally what these notes are in the interest of the witness' credibility.

The Judge asks the court clerk to make photocopies (note: it's an A4 page, with parts underlined in green).

ID - resumes her question about the feelings that the book and the documentary provoked.

MW When the book was launched, the McCanns were trying to launch a campaign and their own proper investigation. The contacts they had in Portugal said the publicity about the book was huge and that there was also some publicity in the UK. This provoked much distress in the family.

The court clerk comes back with a lot of photocopies and distributes them to all. ID asks for a recess in order to read the document. Everybody reads.

ID observes the notes are on stationary paper. She asks the witness where that paper comes from. The witness answers that it's from the hotel where he stays. He took notes to help his memory.

ID - When you speak of the stress and the anger, how was this expressed in the behaviour of the McCanns?

MW When the book came out, the reactions were of much anger. Kate was upset and cried. She felt Madeleine was betrayed.

ID - Why?

MW - Because of the thesis of the book according to which Madeleine was dead and her body had been concealed. At the time they were very keen to re-establish a normal family life, Gerry was working again full time and they were starting a campaign. The stress increased between the book and the documentary in March/April 2009. They were preparing a new campaign before the second anniversary. Anger and anxiety overwhelmed them because of the documentary. He says there always was activity on the internet (e-mails...) but they became very subdued.

ID - What does "negative e-mail" mean?

MW says it refers to all sorts of conspiracy theories that appeared on various forums.

ID - asks if the witness can name some of these forums.

MW The 3 Arguidos and Madeleine Foundation. He says Tony Bennett invited Gonçalo Amaral to do conferences in the UK. These forums were full of speculation focused on GA's conclusions. People said those conclusions must be true because GA had been in charge of the initial investigation.

ID - When?

MW – Activity was increased and heavy in March/April 2009.

ID - Did the McCanns learn about these forums? How?

MW They learned through me, the family members who monitored the activity and their support group. I wondered whether it was worse to let them know or not to. I didn't want to add up to their pain, but a significant change happened. There were several instances of threats to kidnap the twins on the 3 Arguidos site. Then I couldn't but speak. There was a chat where a poster suggested someone should kidnap a twin to get to the truth.

ID - Is this dialogue on the forum? Can you get a copy?

MW says he has a copy and can deliver it.

ID - asks if it's possible to put the paper copy on the internet?

MW thinks the 3A doesn't exist anymore. He says the McCanns took action against this threat and against the Madeleine Foundation. The main page of MF had the 5 conclusions.

ID asks whether he has a copy.

MW says he has screen shots. He adds he had to tell his cousins about the threats. They reported them to the UK police (Leicestershire Police). He was visited by a police officer on the matter.

ID - Was a process formally investigated?

MW had only one contact with the police. He doesn't know what happened afterwards.

ID - What consequence did this have on the McCanns family life and in particular that relating to the twins?

MW Around the time of the negative e-mails and threats, which was when they tried to launch the campaign, we went away for the second anniversary with Kate and Gerry to a remote house in the countryside. Anniversaries and Christmases were never very good. But in 2009 it was horrible. When they arrived at the cottage, they heard through friends they had in Praia da Luz that the 10,000 posters they had distributed and put up in the Algarve had been ripped and torn. Their friends had called them on the phone to say it was awful and that there were some people who were saying that the child was dead.

The fact that people in Praia da Luz believed the conclusions of the book was terrible for them because they were already depressed. It was a time of great anger and sadness. During the week-end we talked about the effect of the book.

ID - What did they say?

MW That was the first time I ever heard Gerry say he couldn't manage going on any more. I never heard him speak that way before. It was an upsetting conversation.

ID - Why?

MW He and Kate are incredibly strong. They had been dealing with it all for two years. There had been the media backlash when they were made *arguidos*. But they always left the rest of the family and the helpers out of it. Now Gerry was saying that it was too much to carry on. It was a great shock for me. It was at the end of a night. The following day Gerry said he had no choice. I wondered how much more they could take.

ID - How did the revelations of that week-end evolve?

MW says he had a similar conversation with Gerry about being down because people believed Madeleine was dead.

ID - Did they feel deeply ashamed at being considered responsible for her death and the concealment of her body? Did they feel like cowards?

MW says "no, because they knew the truth". However he saw how Kate changed last week in Lisbon and how she couldn't smile or properly relax. She couldn't have come on her own because she feared people think they are responsible. Her behaviour in Portugal is very different.

ID - In what way was the relationship between the parents and the twins influenced?

MW The threats made them more vigilant, in particular when they started to use the internet at school or at home. Amélie googled her name and told Kate and Gerry she had found a site, Madeleine Foundation, which was at the top. So they realized they had to control the use of the internet.

ID - Did she find internet pages related to the book?

MW believes so, a page with the conclusions of the book. Ah but he doesn't know whether she opened the page. He says in the future they'll search and they'll find that her parents killed (sic) Madeleine.

ID - Is that a daily pressure on the McCanns?

MW is not sure he can answer that. He says that probably their friends as the friends of his children comment on this at school. It's inevitable they'll know the conclusions.

ID (*seems not to have understood*) repeats – Is it a daily pressure for the couple?

MW No.

ID - Is Kate depressed?

The Judge overrules, saying this is a question for a doctor.

ID - Have you read the criminal investigation Report?

MW says he didn't read it all, he read the conclusions

ID - Do the facts reported by Gonçalo Amaral in his book and in the documentary correspond to the facts of the investigation?

MW says "no", in no way.

ID - Why?

MW The PJ Report made after Gonçalo Amaral was removed from the inquiry and after the McCanns were made *arguidos* concludes that there was no evidence that they were involved.

ID - This means that the book doesn't correspond with the investigation facts?

MW The thesis that Madeleine died and the parents concealed her body contradicts the AG Report which led to the lifting of the *arguido* status. His understanding is that the PJ files say that Madeleine could be dead but there was no evidence that the parents were involved. This is contradictory with the conclusions of GA's book.

ID - Is it the same with the documentary?

MW says "yes".

ID - Was this documentary subtitled on the internet?

MW knows it was published on the internet with subtitles in English.

ID - Do you have anything else you wish to tell the Court within the questions that you have been asked?

MW says that, in terms of impact on the family, he saw in 2009 an e-mail from a British broadcaster, Channel 5, which offered Gonçalo Amaral €80,000 for an interview. He adds that Kate's reaction was that it confirmed that all this had to do with money and not justice.

ID wants to know more... but the Judge overrules because it's not known whether such an interview occurred.

It is 12:30, the interpreter is tired, the Judge suggests a 5 minutes recess, but the interpreter wishes more time. The Judge then decides to bring the proceedings to a close for lunch and resume the session at 1.45pm.

Everybody is in the Court room by 1.50pm, the Judge arrives at 2pm.

2) Defence lawyers.

a) TVI lawyers' questions.

TVI - Have you watched the documentary on TVI?

MW says "no", he watched it on the internet.

TVI - How do you know it is the TVI one?

MW says he's sure as much as he can be

TVI - Why? Did it have the TVI logo on it?

MW says he doesn't remember.

TVI - Before the publication of the book and the broadcast of the documentary, were there opinions and e-mails that weren't usual, normal, that were different?

MW says there were very scary internet chats and e-mails that speculated, but not only on the McCanns. He said that what changed is that the e-mails became more specific.

TVI - Is Gonçalo Amaral's theory widely known, is it known everywhere?

MW says it is.

TVI - Does almost everybody know his theory?

MW says a great number of people know it. Any person who knows about the McCanns know the theory of Gonçalo Amaral.

TVI - Just the people who are interested in the matter?

MW Yes, the documentary and the book are very well known everywhere in Portugal and in the UK.

TVI - One of the main preoccupations of the family was that, when the book was launched, they were preparing a campaign...

The Judge overrules.

TVI - They were collaborating in the realisation of another documentary, theirs. This documentary wasn't broadcast by TVI, in spite of the agreement between TVI and Channel 4.

MW says they decided it wasn't appropriate to broadcast their documentary on the same channel that would broadcast GA's documentary.

TVI - Who are "they"?

MW asks in what sense, then understands and says "Kate and Gerry".

TVI - Were these negotiations for the broadcasting of the Channel 4 documentary before the Amaral documentary was broadcast?

MW says he doesn't know.

The Judge asks whether, before the book was published, they were speculations on forums.

MW says they were many strange, bizarre speculations on who was involved, on the family, on supporters.

The Judge asks whether there was speculation on the cover up of death.

MW Some people, but very limited. Some e-mails would say that Kate was this and Gerry was that, and so on.

The Judge asks from where came the information that fuelled this speculation.

MW says that information was accepted because it's normal to suspect the family in cases like this. People e-mailed to (Madeleine's) website with this idea.

The Judge asks did these rumours have something to do with the *arguido* status?

MW sighs. He says that, as he was monitoring the e-mails, he observed an increase in speculation. But when the book was launched there was a huge increase of a specific nature.

The Judge – What did the people conclude from the *arguido* status?

MW stays silent. Then he says there were e-mails saying it confirmed what they suspected, but the e-mails with specific threats only occurred after the book was published.

AG's lawyer now criticises the translation offered by the interpreter, he says the answers don't correspond with the question.

The Judge asks can you explain why the *arguido* status didn't provoke many e-mails.

MW says it's very common and normal that the parents are the first suspects. He adds that being *arguidos* wasn't a preoccupation for the McCanns.

The Judge asks if he has any idea what led to them being made *arguidos*. Was it because the parents are the first suspects?

MW says "yes".

The Judge asks wasn't there something during the investigation that led to their constitution as *arguidos*.

MW Not particularly. He adds he wasn't involved in that matter.

The Judge states that two facts were established:

- 1) The British police dogs detected the scent of human blood and also that consistent with a cadaver bring present.*
- 2) These dogs detected the smell of human blood in the car rented by the McCanns.*

The Judge asks whether these facts are of general knowledge in the UK.

MW Yes, they were, in 2007.

The Judge asks whether it was only before the shelving.

MW says there was speculation at the time, but analyses after the release of the files showed there was no conclusive evidence one way or another.

The Judge agrees but asks whether it wasn't the dogs that led people to speculate.

MW – Yes, the media speculated a lot at that time because there was a big coverage. But when the book was published it was worse because the files form a very great number of pages and the book doesn't. Then few people read the files.

The Judge asks whether the witness is aware the investigation wasn't conclusive?

MW sighs, and then adds that anybody who reads the files is aware of that, but those who read the files are few.

The Judge observes that if nothing happened since then, this shows that there's still no conclusion.

If some conclusion had been made, wouldn't someone have been accused.

MW objects that the book was published immediately after the release of the files and was written by a PJ Inspector. Moreover he says GA's book can be read in a day.

The Judge asks if people believe more in the book than in the PJ?

MW – Oh yes, absolutely! There were more newspaper reports on the book than on the files.

TVI says that there were more documentaries than the GA one.

The Judge asks if the Channel 4 documentary had repercussions in the public opinion, in blogs, etc.?

MW We always had people who supported us.

The Judge asks whether this documentary changed the opinion of those who were convinced by GA's theory.

MW says "no". He says the Channel 4 documentary (*Emma Loach's one*) wasn't just to say that Madeleine should be looked for and she was alive. Channel 4 didn't conclude so. The point was to challenge the thesis of the book.

b) Guerra & Paz's lawyer's questions

GP - Do the British know the official investigation was inconclusive?

MW says the majority don't know.

The Judge observes that the witness keeps on saying that the conclusions of the Amaral book came on top of the Attorney General's Report. She wonders whether the people have knowledge that an official investigation exists. Are people aware that "we don't know what happened"?

MW – Some, yes. But most people think that Gonçalo Amaral's conclusions are true.

ID intervenes asking whether the witness has knowledge of everything contained within the AG Final Report.

The Judge interrupts and reminds that the witness had already indicated that he read the conclusions.

(Note: there seems to have been some confusion between the PJ and the AG final Reports)

The Judge – Did you read it all? Do you understand the arguments which led to the discarding of the dogs' results?

MW says he doesn't feel competent to answer. Why should he read it all if he knows the McCanns are innocent?

The Judge asks the witness if he remembers the reasons that lead to the discarding of the dogs' results.

MW thinks it had to do with Low Copy Number DNA. He says that without forensic corroboration the findings of the cadaver dog were only intelligence, they were not evidence of anything.

ID - asks if the average citizen is aware of this in the UK?

MW says the AG Final Report explains why the *arguido* status was lifted.

The Judge states that the Final Report is evidence in itself and obviously not a judgement.

ID - insists that the witness gives explanations.

The Judge asks if the UK public know the content of the technical descriptions that are in the Final Report.

MW says that anyone who is interested will find out.

ID asks whether the Ch4 documentary was promoted by the McCanns or was an initiative of Channel 4.

MW sighs. He doesn't know.

TVI - Why, if things are like this – if people base themselves only on the conclusions –, a review in the UK...

Without waiting for a reaction, the lawyer says he withdraws the question.

ID dictates that MW will deliver the documents he has, relating to the internet threats.

VC criticises the selective choice of documents, with biased criteria.

SO observes the documents must be elements of proof in the remit defined for the process. He thinks they have nothing to do with it. This forum 3A doesn't exist anymore and what is the legitimacy of the documents? He wonders also who were the authors of those blogs.

The Judge concludes saying the documents can be delivered to the plaintiffs, but are irrelevant for the Court. She says the Court cannot bring to the process documents given by the witness to corroborate their own testimony. The plaintiffs can have access to the documents and use them as necessary.

Therefore the Court doesn't have to notify the witness to deliver the documents. The Court also does not accept that a witness testifies with assistance from a document (she refers to the "memory help" paper on feelings).

Evidence ends.