Case No: HQ03X03360

Neutral Citation Number: [2005] EWHC 799 (QB)
IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 04/05/2005

Before :

THE HON. MR JUSTICE EADY

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Between :

Alin Turcu	**Claimant**
- and -	
News Group Newspapers Limited	**Defendant**

- -
- -

David Price (of David Price Solicitors and Advocates) for the Claimant
John Kelsey-Fry QC and Adam Wolanski (instructed by Farrer & Co) for the Defendant

Hearing dates: 5th to 18th April 2005

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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.

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THE HON. MR JUSTICE EADY

Mr Justice Eady :

The Claimant

1. The Claimant in these proceedings is seeking damages against News Group Newspapers Ltd, as publishers of *The News of the World*, in respect of articles appearing in the editions of that newspaper dated 3rd November 2002 and attributed largely to Mazher Mahmood. The Defendant is also sued in respect of follow up allegations made in *The Sun* on the following day. He issued his claim form under an assumed name (Alin Turcu), almost at the end of the one year limitation period, on 31st October 2003. He only revealed his true identity in early February of this year, about two months before trial, as Bogdan Stefan Maris. He was born in Romania on 26th July 1980 and is thus now aged 24. He appears to have borrowed the name Turcu from someone he knew in prison in Romania.

2. The Claimant's false identity is not the only respect in which this case is unusual. The Claimant has not taken part in the trial and has not even served a witness statement. Mr David Price, a solicitor advocate, has represented him on the basis of the instructions he received from his client, but without the advantage of his evidence to back up those instructions. Mr Maris is apparently residing somewhere in Romania. Indeed, Mr Price told me before the trial began that he had last had contact with his client shortly after the true identity was revealed and, at the commencement of the trial, he remained out of touch and thus was only able to proceed on the basis of past instructions. He did, however, indicate that telephone contact was resumed at some time during the first week of the trial – but still no witness statement was forthcoming.

3. The evidence adduced by the Defendant, which has not been challenged, is that the Claimant is a petty criminal with a list of criminal charges or convictions at least in Romania, Germany, Italy and England. According to the evidence of a senior police officer from Neamt in Romania, "he is known as a very intelligent criminal". He came to England in August 1999 using his assumed name of Turcu and made an application for political asylum on the basis of a statement, which has been produced in evidence, and which contains a largely concocted account of his life and circumstances. His application was rejected, but he was allowed exceptional leave to remain in this jurisdiction until 2004, purely because he had lied, apart from anything else, about his age. He was thought to be 16 years old, whereas in fact by that time he was 19. He had already been sentenced in Romania on three occasions to terms of imprisonment. Had his true identity and age been revealed, he would not have been allowed to remain in this country.

4. When he was arrested in 2002 he was found to be in possession of forged Greek and Italian identity documents bearing his photograph but false names. I can readily infer that the Claimant had those documents to facilitate the commission of crimes and to mislead the law enforcement authorities. He had been arrested in Italy only eight days before his arrival in England and that may possibly explain why he was seeking pastures new.

5. He eventually obtained employment in London on the basis that he was here legally, and thus he deceived his employers also. He applied to them on the basis that he was at the time facing a shoplifting charge and thought it would help to obtain a lenient sentence if he had employment. Had they known that he was here illegally, I am sure that he would not have been employed by them.

The conditional fee agreement

6. The Claimant now seeks a large award of damages, including aggravated and exemplary damages, against the proprietors of *The News of the World*, who were denied the opportunity not only of cross-examining him but also of even seeing evidence from him denying their published allegations, or to support the serious charges of dishonesty made on his behalf in the course of the trial. He is able to pursue his claim purely because Mr Price has been prepared to act on his behalf on the basis of a conditional fee agreement. This means, of course, that significant costs can be run up for the Defendant without any prospect of recovery if they are successful, since one of the matters on which Mr Price does apparently have instructions is that his client is without funds. On the other hand, if the Defendant is unsuccessful it may be ordered to pay, quite apart from any damages, the costs of the Claimant's solicitors including a substantial mark-up in respect of a success fee. The Defendant's position is thus wholly unenviable.

7. Faced with these circumstances, there must be a significant temptation for media defendants to pay up something, to be rid of litigation for purely commercial reasons, and without regard to the true merits of any pleaded defence. This is the so-called "chilling effect" or "ransom factor" inherent in the conditional fee system, which was discussed by the Court of Appeal in *Musa King v Telegraph Group Ltd* [2004] EMLR 429. This is a situation which could not have arisen in the past and is very much a modern development.

The parties' rights under the ECHR

8. Mr Price reminded me that, however unsavoury his client's character may be, and however much he has misled the authorities in this country, his employers, the Court, and indeed his own legal advisers, he nevertheless has rights, including under Article 6 of the European Convention on Human Rights and Fundamental Freedoms, to have access to the courts and, in particular, to protect his reputation under Article 8 of the Convention. He does indeed have such rights. This court, however, must be astute to ensure that its procedures are not being cynically abused and that the Defendant's rights (especially under Article 10) are also protected so far as its unenviable position permits.

9. The Defendant too has the right under Article 6 to a fair trial of the issues. At least in a criminal context, there is a line of authority to the effect that evidence against an accused should be produced in his presence and a proper opportunity given to challenge testimony by cross-examination: *Barbera v Spain* (1989) 11 EHRR 3600; *Kostovski v Netherlands* (1990) 12 EHRR 4344; *Van Mechelen v Netherlands* (1998) 25 EHRR 6477. The analogy is not, of course, complete but since this Defendant is accused of dishonesty, it is at least troubling that its accuser has not put in an appearance. To that

extent there would appear to be some derogation from the Defendant's Article 6 rights. The court is, however, well able to cope with that.

The narrow ambit of the dispute

10. There is no doubt that under his assumed name of Alin Turcu the Claimant was identified in the relevant newspaper articles, and not least through the publication of a photograph of his face. There is no doubt either that the allegations were seriously defamatory. In short, he was accused of being party to a conspiracy to kidnap the wife of a well known footballer. The primary issue in the trial, therefore, has been whether the Defendant is able, on the balance of probabilities, to prove that the defamatory sting of its allegations against the Claimant is substantially true. In the absence of the Claimant, it was agreed that the sensible course would be for the Defendant, having the burden of proof fairly and squarely upon its shoulders, to go first.

11. The words complained of are lengthy (occupying parts of the first seven pages of *The News of the World* for the date in question), and I need not set them out in this judgment. The general tenor can be gathered from the headings. On the front page on the Sunday there was published a large photograph of the armed police arriving the previous day to make the arrests. It was accompanied by the following headlines or stand firsts:

- "WORLD EXCLUSIVE: We stop £5m ransom gang".
- "POSH KIDNAP".
- "Moment *News of the World* saves Victoria and her sons from thugs".

On page 2:

- "DON'T EVEN BLINK".
- "Gun cops arrest five".

On page 3 more photographs and underneath:

- "IF BECKHAM DON'T PAY UP, SHE DIES"

On pages 4 and 5 there were more photographs including of all five members of the "gang". Across both pages was the headline (again):

- "If Beckham don't pay up, she dies".

On page 6 there is what purports to be an interview with Victoria Beckham under the heading:

- "I'm in total shock".

- "POSH THANKS US FOR HELP".

There is also a leader headed "Maz the amazing", paying tribute to Mr Mahmood's under cover role.

On page 7 alongside more photographs there is another such tribute:

- "COURAGE OF OUR HERO MAZHER".

On the Monday in *The Sun* there is the follow up story on the front page, about the Beckhams' increased security:

i) "BECKS CALLS IN AN ARMY".

- "Family's kidnap shield".

On pages 4 and 5 there is a heading across the two pages:

- "SECURITY BEEFED UP AFTER POSH KIDNAP PLOT".

There are more photographs of the "gang" and the description:

- "GANG WHO WANTED £5M".

It was accepted on the Defendant's behalf that "the allegations were serious, and prominently and sensationally presented" and that the kidnap plot was widely reported throughout the media.

12. I turn to the parties' respective contentions as to the natural and ordinary meaning to be gathered by reasonable readers from the allegations as published. The Claimant's meaning appears at paragraphs 5 and 8 of the particulars of claim:

> " … The Claimant, as a member of an international terror gang, was on the brink of violently kidnapping Victoria Beckham and her two sons and demanding a £5 million ransom on her life, and was prepared to kill her if David Beckham did not pay the ransom".

13. The *Lucas-Box* meaning the Defendant seeks to justify is to be found at paragraphs 6 and 10 of the amended defence:

> " … The Claimant was a member of a gang of dangerous criminals and, as part of the gang, had been involved in planning to kidnap Victoria Beckham".

The pleading also raises section 5 of the Defamation Act 1952 although Mr Kelsey-Fry QC in opening the case readily conceded that this was not going to be a significant factor.

14. The Defendant suggests that it has, on the balance of probabilities, to demonstrate essentially four propositions in order to bring home its case:

i) There was a dangerous criminal gang;

ii) The Claimant was a member of that gang;

iii) The gang was planning to kidnap Victoria Beckham; and

iv) The Claimant was involved in that planning.

Mr Price argues that the only reason for breaking down the defence into these four steps is that the Defendant cannot establish any direct involvement in such a plot on the Claimant's part. The only way he can be linked to it is by seeking to prove that he was a member of a "gang" which was planning the kidnap. What is more, he can only be shown to be a member on the basis of a low membership threshold. Thus, the four-step formula is a transparent device to extricate the pleader from his plight. I see the force of that submission and I propose to concentrate, therefore, on the evidence relating to the Claimant.

15. Primarily the Defendant relies upon the content of secretly recorded conversations between various members of the so-called "gang" as well as the demeanour of those recorded, as demonstrating that the participants, including the Claimant, were privy to such a conspiracy.

16. Mr Price submits that the court can, even without any account having been given by the Claimant in relation to those matters, come to the conclusion by way of inference that

the conversations were not what they seemed to be and that it was all a "put up job" by *The News of the World* and, in particular, by Mr Mazher Mahmood to whom the story is largely attributed and who has a special role at the newspaper as "Investigations Editor". Thus each side accuses the other of serious dishonesty, and the court would normally expect in such circumstances to resolve the dispute, at least in part, by reference to the conflicting evidence and the impression made by the relevant witnesses while in the witness box. Here that is not possible because the Claimant has, as I have said, chosen to give no evidence at all.

17. The case of the Defendant as to justification may be summarised as follows. It is pleaded that the Claimant was involved in discussing and planning the kidnap of Victoria Beckham in the course of certain meetings. First, there was a meeting with Mr Adrian Pasareanu and Mr Rivas at a bar in Brixton on 24th October 2002, during which the Claimant stated that he considered it best that the kidnap should be carried out at around Christmas or the New Year. He also said words to the effect that he would discuss with contacts the best means of dealing with the large amount of cash that would need to change hands.

18. Secondly, on 25th October, the Claimant was present when a Mr Ahmed Qureshi (in fact an associate of Mr Mahmood) was introduced to the "gang" in Brixton. All those present discussed the terms on which it was proposed that Mr Qureshi would drive for the gang for the purposes of the kidnap.

19. Thirdly, there were further discussions at a restaurant in Wandsworth called the Atoca on 26th October. Again the Claimant was present and participating, particularly on the topic of how readily David Beckham might or might not be able to withdraw the very large sum of cash to be demanded.

20. There would thus appear to be a *prima facie* case against the Claimant. The evidence adduced by the Defendant discloses, apparently, that there was indeed a gang of criminals. There were undoubtedly real crimes committed by them and real crimes planned. The important questions are whether the discussions about kidnapping Victoria Beckham, and demanding a ransom, were somehow different in nature from the discussion about other crimes, in the sense that they were merely pretending to contemplate such a crime and going along with some form of deception; and secondly, if not, whether the three recorded conversations in which the Claimant was a participant are sufficient to demonstrate his involvement in such a plot.

The evidence of Mazher Mahmood

21. Mazher Mahmood was in the witness box for a considerable time, being cross-examined by Mr Price, and he explained his *modus operandi*. Much of his investigative work involves infiltrating criminal activity, sometimes doing so personally and sometimes with the assistance of other plausible characters. Almost inevitably, such persons will themselves have had in the past criminal backgrounds, since they would be less likely to arouse suspicion among those who are being investigated and infiltrated.

22. On about 1st October 2002 Mr Mahmood was contacted by an Albanian called Florim Gashi, who told him that he was aware of two men now living in England who had stolen an item of headgear which he described as a "crown" and which was for sale. At first, Mr Mahmood understood that the item had been stolen from a museum. Mr Gashi had contacted him because he thought that it might be a story of interest for coverage in *The News of the World*. He offered Mr Mahmood the opportunity to meet the criminals concerned under the pretence that he was an agent for a possible purchaser. Mr Mahmood agreed.

23. It later transpired that the item was a jewelled turban which had been stolen from Sotheby's. This was to be a significant factor in Mr Mahmood's later thinking, because he not unnaturally concluded that anyone who was capable of stealing a valuable item from Sotheby's, despite their well tried and effective security arrangements, was likely to be a serious criminal.

24. A meeting was arranged at the Tower Hotel, St Katharine's Dock, in London on 12th October 2002 at which Mr Mahmood would pose as the "middle man". When he attended the meeting he was wearing a covert camera concealed in his jacket. This was organised for him by Mr Conrad Brown, who gave evidence in the course of the trial, and was at that time working for *The News of the World* as a specialist technician. The whole meeting was covertly videotaped and the tape was provided to the police. It was at this meeting that Mr Mahmood first met members of the alleged "gang" who are central to the present litigation. They were Luli Azem Krifsha and Jay Sorin (from Albania and Romania respectively). They met at the bar and shortly afterwards Mr Mahmood went with Luli to inspect the turban. He explained to him that the auction price of the turban would be £400,000 but that he was prepared to sell it for one tenth of that price. The meeting ended when Mr Mahmood explained that he might be able to find a potential purchaser and left.

25. Following this meeting Mr Mahmood contacted the Sotheby's press office and inquired whether such a turban had been stolen from them. He also supplied stills from the undercover video footage. Meanwhile, he had decided that although he was going to assist the police in their inquiries in connection with the turban, he was not going to use the story for publication in *The News of the World*. He so informed Mr Gashi, who nonetheless apparently continued his infiltration of the gang and gained their confidence. He told Mr Mahmood that Luli and Sorin were also planning a kidnap and that the gang had access to firearms. He believed that the target of the kidnap at that stage was a Saudi prince living in London.

26. At this point, Mr Mahmood had every reason to believe that Luli and Sorin were indeed competent criminals and, because of the firearms, potentially dangerous. He suggested to Mr Gashi that he should find out more about the gang's intentions without, of course, becoming involved in any criminal activity. He thereafter kept in touch with him.

27. Mr Gashi came back to him and informed him of the identity of the Sheikh who was to be kidnapped and that he was then living in a hotel near Hyde Park. The members of the gang had apparently been following the prince in an attempt to work out a viable kidnap plot, but eventually they had decided that this was not feasible because of the

bodyguards protecting him. He then explained to Mr Mahmood that the gang had decided to move on to plan the kidnap of Victoria Beckham, which they apparently believed to be an easier option. Luli had told him that he had spoken with a female friend of his who had previously cut Victoria Beckham's hair and that she had supplied details of her regular movements. It is not clear whether the female friend was party to the plot or whether this information had simply been passed by way of gossip.

28. At last it seemed to Mr Mahmood that there was material which was of interest for a possible exposé in *The News of the World*. For this purpose he would require tape-recorded evidence demonstrating that there was indeed a genuine threat to Victoria Beckham.

29. At about this time Mr Mahmood was contacted by DI Ian Horrocks of the Kidnap and Specialist Investigations Unit of the Metropolitan Police Service, based at New Scotland Yard. In that role he has responsibility for the investigation of life threatening crimes, such as kidnap, extortion, blackmail and other serious matters. He wanted to meet Mr Mahmood in order to see whether the turban that he had been offered by Luli was indeed the one which had been stolen from Sotheby's. Mr Mahmood was willing to help and he met Mr Horrocks and two of his colleagues who visited him at *The News of the World* office. This clearly impressed Mr Mahmood because he told me that in his long career in investigating criminality he had never before been visited by a detective inspector, a detective sergeant *and* a detective constable. It seemed to him obvious that the criminals he had met were to be taken seriously. He told the police at this meeting that more recently he had received information that they were carrying out other criminal activity which he was investigating. Meanwhile, he agreed to assist the police in attempting to track down an employee of Sotheby's who they thought was responsible for, or involved with, the theft of the turban.

30. Mr Gashi in due course told Mr Mahmood that the gang were now looking to him to act as a driver for the purposes of carrying out the kidnap of Victoria Beckham. To this, Mr Mahmood suggested that they could possibly introduce a second undercover researcher, and particularly if Mr Gashi was able to vouch for his standing. He had in mind a distant relative of his called Mr Qureshi with whom he had worked before. He was also informed by Mr Gashi that the gang were planning to steal wages from Sotheby's and that they had obtained information about the movements of the head of security who was in the habit of going alone to collect the cash from a nearby bank. Mr Gashi had been asked to act as a lookout for this purpose. Mr Mahmood's reaction was to warn Mr Gashi that he should in no way assist the gang in carrying out any such robbery and that he should inform the police.

31. On 23rd October 2002 Mr Gashi explained that certain members of the gang, namely Sorin, a man called Adrian (Pasareanu) and the Claimant in these libel proceedings, had gone to the bank intending to carry out the robbery but that he (Mr Gashi) had persuaded them to postpone it. Arrangements were thereafter made to equip Mr Gashi with recording equipment so that he could tape a planned meeting between himself and members of the gang on the following day. The recording was duly made and it was the first occasion on which the Claimant's participation was recorded. (It now seems to be accepted that at the material time the Claimant had been in Paris and had taken no part in the 23rd October surveillance.)

32. Another of Luli's activities which came to Mr Mahmood's attention at this time was the manufacture of fake documents. In order to check this Mr Mahmood gave Mr Gashi a photograph of himself and some false information in order to see whether he could obtain a fake driving licence from Luli. Mr Gashi told him that the price would be £250. It was Mr Mahmood's intention to hand over any such fake driving licence to the police, if he obtained it, and within a matter of days the licence (in the name of Khan) was produced. Mr Mahmood provided Mr Gashi with the money to pay for this, for which he claimed expenses from the Defendant, and handed the fake document as planned to the police.

33. Mr Mahmood arranged with Mr Gashi for Mr Qureshi to be introduced to the gang on 25th October 2002 and he too was equipped with a covert recording device. He was not to participate in any criminal activity but his task was to infiltrate the gang and obtain as much undercover footage as possible of their conversations. The 25th October meeting was the second occasion on which the Claimant was recorded.

34. The third occasion involving the Claimant occurred on 26th October 2002. This was at a restaurant and those present included Joe Rivas, Luli, Sorin, the Claimant and Adrian Pasareanu. It was recorded by Mr Gashi who was sitting beside the Claimant.

35. There were other meetings which were not attended by the Claimant but of which recordings were obtained. For example, on 28th October a meeting was arranged for Mr Qureshi to meet Adrian Pasareanu, apparently for the purpose of discussing Mr Qureshi's role as driver in the kidnap plot. It was at this meeting that Mr Pasareanu produced what appeared to be a gun, which he described as his "best friend".

36. On 29th October Mr Mahmood accompanied Mr Conrad Brown in his surveillance van to Sawbridgeworth in Hertfordshire where the Beckhams' house was located. This was because Mr Gashi had told him that the gang was going to see the house as part of their planning for the kidnap. In due course, they were able to photograph Mr Gashi and Sorin, together with two other men called "Peter" and "John", crossing the road and inspecting the gatehouse at the entrance to the Beckhams' property very briefly and then moving on. Later that day there was another meeting in London between Mr Gashi and members of the gang which was recorded. The Claimant was not present.

37. In the light of the information he had gathered, Mr Mahmood met DI Horrocks and DC Hulme on 30th October at a hotel in London, together with Mr Qureshi, when the police were provided with more information about the gang's activities and were told in particular that one of the members had a firearm. The officers were also told that Mr Mahmood was investigating a conspiracy to kidnap someone, but he did not disclose the identity of the kidnap target at this stage. This was because the editor wished to keep that matter secret for as long as possible and thus not spoil the story she was planning to publish. The police were also informed about the plan to steal wages from Sotheby's.

38. On 31st October 2002 Mr Mahmood and Mr Brown went to Croydon and sat outside Sorin's home in Mr Brown's surveillance van. Mr Gashi and Mr Qureshi went inside

and had a discussion with Sorin which appeared also to relate to the planned kidnapping.

The arrests on 2nd November 2002

39. Arrangements were made with the police for an arrest to take place at the Ibis Docklands Hotel on Saturday 2nd November. The gang were to be lured there on the basis that they would bring the stolen turban and other items to the car park of the hotel in order to meet Mr Mahmood (still posing as an intermediary, as he had on 12th October). On that morning there was a meeting with the police officers to discuss tactics at about 8.15 and it was only then that it was revealed by Mr Mahmood that the kidnap plot involved Victoria Beckham. Mr Brown also provided extracts from the recorded video material.

40. Three of the gang members eventually appeared in the hotel car park at about 12.40 pm. The Claimant was not present. Nor was Adrian Pasareanu. Those who appeared were Luli, Sorin and Joe Rivas. After Mr Mahmood had been introduced to Rivas, Luli took him to the boot of one of the cars and showed him three plastic bags which were said to contain, respectively, the stolen turban, a painting and antique books. The police then came into the car park in a white van and armed officers leapt out and effected the arrest of those present. Subsequently the Claimant and Adrian Pasareanu were also arrested.

The Crown offers no evidence

41. Eventually all five members of the gang were charged with conspiracy to kidnap Victoria Beckham and, additionally, Adrian Pasareanu, Joe Rivas and the Claimant were charged with conspiracy to rob the Sotheby's payroll guard. On 2nd June 2003, well before the trial was due to take place, the prosecution abandoned these charges and offered no evidence. I have seen the remarks of counsel for the Crown on that occasion, from which it is clear that one of the main reasons for this course of action was lack of faith in Mr Gashi, who was so central to the evidence. It was not thought that he could be relied upon as a witness of truth. In the light of information which had recently come to light the conclusion was drawn that there was no longer a realistic prospect of

repay the debt. I am not prepared to accept this scenario as the most probable explanation without its being supported in the witness box and properly tested. But Pasareanu was not willing to give evidence.

82. This was the occasion on which Pasareanu went on to show Qureshi a handgun which he identified as a "Mauser - very good, very safe, very powerful". He offers also to supply a similar weapon to Qureshi when the job is carried out "just in case". Meanwhile, he confirms that Qureshi should go ahead and arrange for a van to be obtained for use in the kidnap. This would appear to be pressing the notion of "idle pub banter" beyond its natural meaning. Mr Price submitted that the whole performance was phoney and, in particular, that I should be able to see that from Pasareanu's smirk. I agree that one's impression on viewing the tape, which I did several times, is that it seems rather "stagey". I am therefore asked on the basis of that impression to conclude, in effect, that Pasareanu was taking part in an elaborate hoax. Whenever one addresses the civil burden of proof, however, and especially on the basis of only partial evidence, it is necessary to remember the words of Lord Nicholls in *Re H (Minors)* [1996] AC 563, 586:

> "The more improbable the event, the stronger must be the evidence that it did occur before, on the balance of probability, its occurrence will be established."

Bearing that principle in mind, it seems to me that the hoax explanation is highly improbable and would require correspondingly persuasive evidence to support it.

83. On 29th October the visit to the Beckhams' house took place, to which I have already referred. It is fair to say that there was a somewhat casual atmosphere, and no attempt was made to hide or be discreet. It was reminiscent of a coach party alighting at a stately home. All four visitors (Gashi, Sorin, "Peter" and "John") were walking along the road together and paused at the entrance to the Beckhams' establishment, where there was no doubt some risk that they could be captured by CCTV cameras. There was no stealth and no obvious detailed surveillance. One has to ask, on the other hand, what they were there for. Mr Price suggests that, again, this was an attempt by those four men to humour Gashi - for reasons which I was unable to fully understand. So far as Sorin is concerned, it is said that he needed to keep Gashi sweet because he was dependent on him for information on the Streatham robbery, and because he had his eye on Gashi's Mazda. I believe it is far-fetched to use these as explanations for Sorin's trip to Sawbridgeworth. The mysterious "John" and "Peter" were never identified by the police. Little is known about them except that Sorin trusted them as suitable to work with on criminal activities. I see no reason at all to think that they had some reason for humouring Gashi. It is not an inference I am prepared to conjure out of thin air.

84. Further recorded conversations took place on the same day back in London. The participants were Gashi, Luli and Rivas. It seems that Luli's brother ("Titi") was also present (described in the transcript as Person 1). There is no doubt that the subject of the proposed Beckham kidnap was raised, along with other planned or actual criminal activities. I agree it was curious that nothing was said to Luli about the visit to the Beckhams' home which had taken place that very day. Mr Price argues that this shows that Luli knew nothing about it and that Sorin had been off on a frolic of his own.

85. Various crimes were discussed, for example the Streatham robbery proposed by Gashi. Gashi seems to be encouraging a degree of Albanian solidarity for this job and he denigrates Pasareanu and Sorin variously as "cunts", "kids" and "Romanians". He adds, "You know them Romanians. Romanians - the bad Roma. … They fight with each other … Fuck their mothers". Another Albanian speaker, either Luli or Titi, catches the mood and expresses his agreement: "They cheat on each other. They'll do the same to you. Fuck them both". Mr Price, not unreasonably, argues that this dialogue hardly supports the idea of a cohesive gang or harmonious teamwork.

86. There is also discussion of the possibility of kidnapping the Saudi prince which Luli describes as "not that easy". Gashi inquires if Luli would use the spray to disable the victim and Luli apparently assents, although it is difficult to make out exactly what he is saying. Gashi then asks him "What about the fucking bitch Victoria? Is it going to act the same … the spray?" To which Luli replies, "The same, the same".

87. Gashi returns to the subject and asks "What about Victoria?" Luli responds, "For Victoria need to be everything ready, don't forget need everything … the place, the house, the car and when everything is ready, then you will say are you ready or not?"

88. A little later Gashi refers to the fact that Luli has two guns and asks, "Why don't you lend me one?" Luli replies, "I am saying I will give it to you tomorrow, what do I want it for?" Gashi then asks whether it is in his (Luli's) house, to which he replies that he keeps it in the house of an Italian person he knows, because he does not want to have weapons discovered at his home. He adds, "Don't forget, can get five to six years". This may explain why no weapons were actually found after the arrests.

89. After this meeting Gashi gives Rivas a lift in his car, and during the conversation Rivas refers to the fact that he and Luli have had difficulty collecting drugs money. Rivas also indicates that he would be a willing participant in any attempt to kidnap the Saudi prince or Victoria Beckham. Rivas expresses concern about the prince's bodyguards. He says, " … They look very good … very sharp – not fat old gits. … You have to fuck'em up. Make sure they don't move". As to the proposed Beckham kidnapping, he expresses the view that "Victoria's is no problem". He said, " I'm happy to survey it and check … about a month. Make sure where she goes and how she goes, then bang … definitely, he'll definitely pay … ten million easy". Rivas suggests that, if she happens to have the baby when she is caught, the baby should be kidnapped as well. "Ten million for her, five million for the baby, fifteen million altogether and we do a deal".

90. On 31st October there was a meeting at Sorin's home at Waddon Road in Croydon. Enormous glasses of vodka are drunk but there is little by way of constructive conversation. Gashi has apparently taken the opportunity to introduce Qureshi to Sorin. There is discussion as to Qureshi's role as a driver in the proposed Beckham plot. He is told that he will need a van big enough to accommodate Victoria Beckham and " … you and two other guys". Moreover, this is the conversation in which Sorin says that if the ransom is not paid, " … then the bitch she's going to die of course". There is further talk about the use of a knock-out spray. Sorin explains to Qureshi that he will be told everything he needs to know two or three days in advance of the kidnap.

What do the tapes actually prove?

91. In the light of these conversations, it is submitted on behalf of the Defendant that the four necessary elements have been sufficiently established:

i) There was a gang of criminals led by Luli, and they were dangerous - not only in the light of the crimes they were planning to commit but also because of the availability of firearms.

ii) The Claimant was a member of the gang in the sense that he was trusted to be present during discussions and also as a potential participant.

iii) There was clearly a plan to kidnap Victoria Beckham, however desultory some of the discussions may have been. They had apparently recruited a driver (Qureshi) and agreed his fee of €15,000. He had been given instructions to arrange a van. Various members of the gang had attended the Beckhams' home, a visit that can only sensibly be construed as part of the preparation and surveillance.

iv) The Claimant was clearly involved, although it is not suggested he was actually engaged in "surveillance" as the published articles alleged; nor that he did anything positive towards bringing the kidnap plan to fruition or, for that matter, any other of the crimes discussed.

92. In all the circumstances, the Defendant submits that the sting of the libel is made out. The case demonstrated by the recorded conversations calls out for rebuttal, and none has been forthcoming. This trial is in form and substance quite different from a public inquiry in which it is sought exhaustively to establish the full facts by an investigative process. It is simply the culmination of conventional adversarial litigation. It has been inevitably somewhat one-sided. Sometimes a fair trial requires no more than that the court should establish whether the relevant burdens of proof have been discharged in the light of the evidence the parties have chosen to adduce: see e.g. *Air Canada v Secretary of State for Trade* [1983] 2 AC 394, 438, *per* Lord Wilberforce. That is all I can do in this case.

93. It is clear that real crimes were regularly being discussed. Indeed, they seemed to talk of little else. The conversations covered kidnap, robbery, burglary, forgery, importation of drugs, possession of firearms, cheque card and cash card fraud, and the theft and handling of motor vehicles on a significant scale. There is no reliable way to determine that the Beckham discussions are to be distinguished from the others as *not* being real. It is far from obvious that they were "banter" or "light hearted". If the hoax explanation were ever to be accepted, the circumstances would need to be explained fully in the witness box and the evidence tested in cross-examination. That has not happened and the only available protagonist did not wish to give evidence for fear of incriminating himself. I cannot confidently attach much, if any, weight to self-serving statements he made during police interviews or to members of Mr Price's staff. He said that the

kidnap was set up by Gashi and he did not take it seriously. One hesitates to quote Miss Rice-Davies, but it is difficult to see what else he could say. On the evidence before this court, therefore, the balance of probabilities lies firmly in favour of the Defendant.

94. Nevertheless, although it is impossible to establish the full picture for lack of evidence, the available material suggests that the roles of the participants are not quite as black and white as the Defendant contends. For example, I cannot accept that there was a "gang" in any formal sense, like a club of which the members can be definitively listed. I believe that there was a group of loose associates who were prepared to take part in any criminal activity that suited them and they would, from time to time, work in concert on the basis of "horses for courses". It is necessary to bear in mind that there was, for example, considerable antipathy between Sorin and Pasareanu. Sorin did not rate Pasareanu as a criminal associate because he thought he lacked "bottle", and the latter did not care for the fact that his sister was living with Sorin. He also commented at the meeting of 24th October that Sorin was inclined to do or say things "because of too much coke". He said "I don't want to do business with him". The Claimant was a petty criminal who at least gave the impression that he was prepared to take part in more serious activities if given the opportunity and sufficient incentive. Yet there is no evidence that anyone rated him as an effective operator or paid any particular heed to his contributions. Mr Price submits that a kidnap would be out of his league.

95. He was not a major player with a "surveillance" role, as the articles portrayed him. Mr Mahmood could not remember why he was described as in charge of "surveillance" and he had no records to support the allegation. Mr Price put to him that his client, or "Ali" as he was named in the article, was only attributed a significant role in the Beckham kidnap because there happened to be a good photograph of him available to give colour to the articles. For all I know, that may be correct. Mr Mahmood had no better explanation to offer. In the absence of any supporting material, it is reasonable to conclude that the "surveillance" role was simply a *News of the World* invention (just as the assertion that the "gang" had been watching the Beckhams' home in Cheshire seems to have been a *Sun* invention).

96. The fact remains, however, that the Claimant was quite prepared to take part in conversations about criminal activities (including the Beckham kidnap) and it is inconceivable that he would have been allowed to participate unless he was a trusted associate. They were all prepared to take part in whatever crimes they thought they could get away with. The question is whether the Claimant's role, as it emerges from the limited evidence available, supports the defamatory allegations in the articles or whether his contribution would merely serve to reduce the amount of compensation he should recover.

The Claimant's character evidence

97. There were three witnesses Mr Price was able to call whose evidence went primarily to the Claimant's character, although he relied upon it also on the defence of justification. He argued that the impression of the Claimant emerging from those witnesses was hardly consistent with the behaviour attributed to him by the Defendant, whether in its published articles or in these proceedings. Moreover, he argues, the very fact that he

was holding down a job for the first time in his life, and was well regarded by his employers, would make it much less likely that he would put it all at risk by criminal activity.

98. There is no doubt that the three gentlemen concerned are eminently respectable. They were Messrs Charles Firth and David Calderhead, both directors of Glen Cawdor Limited, the company which had employed the Claimant from August 2001, and Mr Illtyd Harrington who has been a justice of the peace since 1968 and a former chairman of the Greater London Council. He met the Claimant through the Glen Cawdor connection. He thought him "a pleasant sort of chap" who was "competent and courteous". That really sums up the character evidence as a whole. He undoubtedly presented as an engaging and likeable young man with a "bubbly personality".

99. It seems that the Claimant came in off the street seeking employment and was taken on. He was able to provide papers confirming his right to be in this country although, as I have already explained, that was on the basis of the false information he had supplied about himself. There is no doubt that Mr Firth and Mr Calderhead thought well of him and that they showed him kindness and offered support in various ways; for example, helping him to find accommodation and paying his wages and rent while he was in prison. They even paid for him to have driving lessons. Unfortunately, I have to recognise that they were to an extent duped by the Claimant. He even persuaded them to support the entry to this country of Adrian Pasareanu and a letter was written by Mr Firth to the British Embassy in Romania to facilitate his permission to come here. He understood that he was helping a Romanian doctor to come here to continue his medical studies. Needless to say, he was unaware of his possession of forged identification documents. With the benefit of hindsight, of course, one can see that the entry to Britain of the gun-toting Dr Pasareanu was something of a mixed blessing, but that was not appreciated by Mr Firth at the time.

100. Another matter to which their evidence was directed was the impact of the articles on the Claimant's feelings and self-esteem. I have little doubt that it hit him hard. It would be surprising if it were otherwise. I can readily accept also that he was subdued and depressed after being in prison. But I cannot attach much weight to their evidence of his denials of involvement. They certainly believed him, but he had misled them more than once.

101. I need to bear in mind that Mr Calderwood was sent on a wild goose chase in Romania and obtained a document from a priest which he supplied to the Claimant's former solicitors, Pullig & Co, to assist them to prove that he was Alin Turcu. That was a waste of time, since we now know that he was not.

102. I can attach very little weight in the circumstances to the evidence of those three witnesses, since the Claimant seems to have taken advantage of their good nature. They were unaware of the true picture which has been exposed in the course of this trial.

Should the defence of justification succeed?

103. My own conclusion is quite clear. The Claimant was willing to participate in criminal activities and to make a contribution, in particular, to the discussions about the proposed Beckham kidnap. I believe that most reasonable onlookers would think that sufficient to support the sting of the libel. The allegations against the Claimant are therefore substantially, if not wholly, accurate.

104. There may be a good deal of sloppiness and inaccuracy in what was published. There was no plot to kidnap the Beckham children as such. Gashi managed to extract comments to the effect that they would be kidnapped if they happened to be with their mother – but that was as far as it went. Nor could the gang be said to be "on the brink" of the kidnap. Nor was there any evidence that the Beckhams' Cheshire home was being kept under surveillance. The Claimant was not allotted a surveillance role; nor had he done or said anything to support the allegation – at least anything which the *News of the World* journalists knew about. There was nothing to justify the assertion that he was in charge of surveillance. The only conclusion I can draw is that it was a bit of creativity on the part of Mr Mahmood or one of the sub-editors.

105. Nevertheless, the Claimant's willingness to participate in apparently genuine discussions about kidnapping Victoria Beckham, the timing of the operation, and the feasibility of obtaining several million pounds at short notice is said to be enough to establish that the sting of the libel is substantially true. It becomes important in such a case to isolate the essential core of the libel and not to be distracted by inaccuracies around the edge – however extensive.

106. I do not believe that section 5 of the Defamation Act 1952 has any relevance to the case, since there are not two or more distinct charges. It is just that, as so often, the newspaper has published a story which it cannot wholly substantiate; the question is whether it has managed despite that to prove enough of the defamatory sting.

107. The only person who actually suggested a willingness to kill Victoria Beckham (thus possibly justifying the epithet "murderous" in the *News of the World*) was Jay Sorin. It was not said, so far as I am aware, in the presence of the Claimant; nor did he have any record of violence. It is true that he was discussing an attack on the Sotheby's wages courier, but there is nothing directly to link him to the description "murderous". On the other hand, on 24th October, he described himself as Sorin's "best friend here" and said that they had stuck together for a long time – although apparently no longer. This would no doubt fall to be classified as what Mr Price called "being unwise in his choice of friends", but I consider it goes well beyond that. He variously described Sorin as "particularly stupid", a "figure of fun", "short of money and unemployed". I believe that this downplays him too much. Sorin may have been the strong silent type but, whenever he could be persuaded to say a few words, they were generally fairly unpleasant and demonstrated that he is most likely a dangerous and potentially violent criminal.

108. The fact that the Claimant was, on his own admission, a long term associate and "best

friend" of Sorin, and that he was prepared to discuss planned crimes in his presence, to my mind confirms that the sting of the libel has been established. It is necessary to remember what has been said more than once in the European Court of Human Rights to the effect that journalists, in the exercise of their rights to freedom of expression, need to be permitted a degree of exaggeration even in the context of factual assertions (not only when making comments or voicing their opinions): See e.g. *Bladet Tromsø & Stensaas v Norway* (1999) 29 EHRR 125 at [58]-[59]; *Reynolds v Times Newspapers Ltd* [2002] 2AC 127, 204.

109. As was suggested in *Branson v Bower (No. 1)* [2001] EMLR 800 at [8] and in *Berezovsky v Forbes Inc* [2001] EWCA Civ 1251 at [9], English law is generally able to accommodate the policy factors underlying the Article 10 jurisprudence by means of established common law principles; for example that a defamatory allegation need only be proved, on a balance of probabilities, to be *substantially* true. The court should not be too literal in its approach or insist upon proof of every detail where it is not essential to the sting of the article. So too the demands of a defence of justification are sometimes mitigated by the terms of section 5 of the Defamation Act 1952 (although not of relevance here).

110. Each case obviously depends on its own unique circumstances and the application of these considerations of public policy will to a large extent be a matter of impression. Here, Mr Price contends that the gap between what was published about his client and the facts established at trial is simply "unbridgeable". He reminded me also of the words of Simon Brown LJ in *Grobbelaar v News Group Newspapers* [2002] All ER 437 at [40]: "If the newspapers choose to publish exposés of this character, unambiguously asserting the criminal guilt of those they investigate, they must do so at their own financial risk". True no doubt, but it does not assist when one comes to decide on the particular facts.

111. In deciding whether any given libel is substantially true, the court will have well in mind the requirement to allow for exaggeration, at the margins, and have regard in that context also to proportionality. In other words, one needs to consider whether the sting of a libel has been established having regard to its overall gravity and the relative significance of any elements of inaccuracy or exaggeration. Provided these criteria are applied, and the defence would otherwise succeed, it is no part of the court's function to penalise a defendant for sloppy journalism – still less for tastelessness of style. I must set all that to one side, including what Mr Price described as the "orgy of self-congratulation", and focus only on substance.

112. Here I have come to the conclusion that the sting of this libel, broadly reflected in the Defendant's *Lucas-Box* meaning, has been substantially made out through the evidence of Mr Mahmood and the content of the recorded conversations. In case I am wrong about that, however, I should briefly address the question of damages. Because of all the factors raised in mitigation, but particularly because of the Claimant's own conduct and observations in the course of the discussions, it seems to me that it would be quite unseemly for him to recover substantial damages. I would therefore, if that stage had been reached, have made only a nominal award.

Did Mazher Mahmood target "vulnerable asylum seekers"?

113. There was an attack on Mr Mahmood's character, suggesting that he knew that the story was false and that he had picked on vulnerable asylum seekers, who would not be able to sue the newspaper, just to sell more newspapers. The object of this exercise was largely to aggravate the award of damages and to set up a case for exemplary damages. This got nowhere at all. Mr Mahmood may be hard-bitten and cynical, but I found no support for the proposition that he had made the whole thing up. Indeed, I have seen recorded exchanges between him and Gashi which make it clear that he believed the plot to be genuine. Nor do I accept, having heard his explanation, that he misled the police about Gashi's role in the undercover investigation. He did not pretend, dishonestly, that Gashi had received no money. He told them, as he told me, that Gashi was not motivated by purely financial considerations. I accept that money was not discussed before he agreed to take part and, what is more, that he could have asked for much more than he ultimately received. There was a certain amount of embellishment of the story or "hype", but I have no reason to think Mr Mahmood did not believe it to be true in its essentials. It is important not to confuse "hype" with substance.

114. As for "vulnerable asylum seekers", I have no reason to suppose that Mr Mahmood knew, at the time he used Gashi and Qureshi to infiltrate the "gang", anything about the status of the Claimant or that he and Sorin had no lawful right to be here. His evidence was that he only learned that the Claimant was a "bogus asylum seeker" shortly before this trial. Moreover, most investigative journalists by 2002 would be only too well aware of the willingness of some solicitors to support impecunious claimants in libel proceedings by means of conditional fee agreements. The days had by then gone when one could assume that any particular individual could be characterised as a "soft target".

The final outcome

115. In the result, the claim is dismissed and there will be judgment for the Defendant.