

## Libel Trial > McCann v Gonçalo Amaral - Day 1 Witness No 2

The session was delayed because a journalist (TVI) was caught recording the session on her cell phone, the fear, according to the judge, being that it interferes with the Court's own recording. It seems that although the phone was "active" it wasn't recording. In any event, this incident had to be reported and dictating to the clerk which all takes time. All this appeared to be very much of an aside since many cell phones were on in the court room (switching ones phone off completely seems to equate to an amputation).

The testimony as it happened...

(12.09.2013, 3pm) **Emma Loach** is a documentary film maker and gives evidence in English. The interpreter translates the lawyers' questions for EL and then translates her responses from English to Portuguese for the lawyers and the judge who, in fact, do understand to the extent that they sometimes helped the interpreter, an English lady.

EL first met the McCanns in 2008 in order to make the first documentary (*Madeleine, one year on*), since then their professional relationship has expanded to that of friendship and to the extent that she sees the family including the twins on a regular basis.

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

ID – Reminding the objective is to establish the effects, if any, the book had on Kate and Gerald McCann, she asks what EL has to say about the subject.

EL answers that the book had a devastating effect on the McCanns, says it was like falling into a black bottomless hole, because the people thought Madeleine was dead. In July 2008, according to the Attorney General (AG) Report, there was no evidence that Madeleine was dead and the AG agreed she could be alive. This was the scenario which was accepted before the book was published.

ID – Why did the McCanns let this book undermine the findings of the AG report? There were elements in the file which clearly indicated that Madeleine could still be alive.

EL doesn't seem to have understood the question (translated in English by the interpreter), because she answers as if the question concerned the public and not the McCanns.

She speaks of the style of the book – agreeable and easy to read – and the simplicity of the proposed answers.

*A lawyer objects that the issue isn't to appreciate the literary qualities of the book. Overruled.*

EL adds the fact that the author was the head of the investigation led the people to conclusions where there's no room for doubts. Only someone who knows very well the files is able to see the big failures of the book.

ID – The McCann couple didn't react immediately to the book, why?

EL explains their priority was looking for Madeleine, not to be concerned by the publication of this book. In the beginning they had no idea about its possible effects. But it became clear in the following months.

ID – Question missing, likely "To what is due the effect of the book?"

EL thinks that the "nice, easy conclusion" explains the success of the book. There were many interviews and articles about the book, it was a kind of media tsunami. This upset and harmed more

and more the McCanns. The documentary that claimed their daughter was dead and that they concealed the body created a lot of pain. It spread rapidly on the internet, with subtitles, millions of people watched it.

ID – How do you know that millions of people watched it?

EL knows that two million watched it in the UK, but doesn't know how many outside of the UK. She says before the book and the documentary, Kate and Gerald lived calmly, many people in the world were ready to help them, they were strong and stoic, they didn't allow themselves anxiety because they had to find Madeleine. Then the book was published and they fell into despair because the people whose help they needed thought Madeleine was dead. It became very difficult to be strong enough to go on looking for Madeleine.

ID – Did they lose the energy they had to search for their daughter?

EL answers they lost the hope but couldn't desist.

ID – What was the first preoccupation for this couple?

EL says it was the fact people believed Madeleine was dead.

ID – And in relation to the twins (after the publication)?

EL says they worried a lot for the present day and also for the future. The twins were about to go to school and they could hear rumours. It was important that they understand that everything was done to find their sister (*note: this is one of the main worries of Psychologist David Trickey, witness 4*)

ID – In which documentaries did you participate?

EL corrects that she is actually the documentary maker. One was broadcast in May 2008, *Madeleine McCann, one year on* (ITV) and the other in May 2009, *Madeleine was here* (Ch4). In the first one she didn't use the word "abduction" and the McCanns, as *arguidos*, couldn't speak. The documentary is about the McCann European campaign.

ID – They were broadcast in how many countries in the EU?

EL doesn't know.

ID – Are they based on the McCann couple's thesis (the abduction)?

EL answers that in the second documentary an investigator (*David Edgar, witness 3*) says there are many theories but they investigate it on the basis that it was an abduction.

## **2) Defence lawyers.**

### **a) TVI lawyers' questions.**

TVI – Was the 2009 documentary a reconstruction?

EL says the main characters didn't take part. Those who did were the private investigators.

TVI – But it was presented as a reconstruction? Didn't the McCanns collaborate?

*The Portuguese word was "reconstitution", and not "reconstruction". The difference is important: a reconstruction is a current practice in Common Law UK ; it's done in front of cameras with actors and the purpose is to jog people's memories. In the Romano Germanic System (Portugal, France, etc.), a "reconstitution" is only done by the police, with the real protagonists, without TV cameras and for internal use.*

EL says they were interviewed but weren't involved in the film making.

TVI – Did you know that TVI wanted also to broadcast the Ch4 documentary?

**EL** says she didn't know.

TVI – Do you know that the McCann couple participated in other programs?

**EL** says she knows.

TVI – Do you know they were in Oprah Winfrey Show?

**EL** says she knows.

TVI – Do you know that the Oprah shows audience is much more important?

**EL** says she doesn't know the numbers; they're not available on the web.

TVI – Do you know that Oprah productions are much more watched than any other?

**EL** admits they are but adds they have no future on the web.

ID – What are the worries about the twins and what's done to protect them from the internet?

**EL** says the twins aren't allowed to surf on the Internet; there are no discussions about the book in front of them, though Madeleine issue is discussed a lot.

TCI – Have they seen your documentaries?

**EL** thinks they didn't.

#### **b) Valentim de Carvalho (DVD production/distribution) lawyer's questions**

VC : Who wanted to make the documentary?

**EL** says she suggested it to ITV, the idea was hers.

VC – What is the difference between the crime files and the book?

**EL** says the book is easier to read.

VC – Do you know the case well? Do you remember the failures?

**EL** says she did know the process but forgot about it, forgot the details.

VC – In what manner has the book changed the prevailing situation?

**EL** criticizes the method used to launch the book. It had no benefit in the search for Madeleine.

VC – Do you know the final Report?

**EL** says she does.

VC – Is there a difference...

*The judge says that comparing is the job of the court.*

**EL** doesn't remember a passage (of the final Report) in particular but considers the final Report disagrees with GA's thesis. She says the book wasn't written in the Report's language but as an account, the conclusion of which being totally different to that of the Report.

#### **c) Guerra & Paz's lawyer's questions**

GP – I understand that, from 2010, you and the McCanns met once every three months. Do you know when the book was published? Do you know how the McCanns had access to the book? Did they speak about it in general?

**EL** says they spoke of the conclusion in particular.

**GP** – Do you know if the book was published in the UK?

**EL** says she saw it in bookshops.

**GP** – And on the internet?

**EL** doesn't know. She ignored who introduced this book and if it was legal.

**GP** – About the effect, when did you speak to the McCanns about the book?

**EL** answers "in January"

**GP** – Did you see then that they were hurt?

**EL** answers yes.

**GP** – When the twins went to school, did they hear about Madeleine's disappearance? Do they speak of it at home? Do the parents fear the internet?

**EL** says they speak of Madeleine at home.

**GP** – Have the twins any idea that other theses circulate in the UK? Is their access restriction due to the book or to these other theses?

**EL** says that before the book was published nobody thought that Madeleine could have died in the apartment.

**GP** – How do you know about the audience of 2 millions? Have you a special access to these data?

**EL** answers no.

#### **d) Santos Oliveira (GA lawyer) questions**

**SO** – You said that three days after the AG report was published everything went down. What, the investigation?

**EL** says no. She was referring to the McCanns.

**SO** – Did you refer to the book hampering the search for their daughter?

**EL** says yes, sometimes. She witnessed Kate incapable of doing anything. She knows the files extremely well; she studied them after they were specially translated for them.

**SO** – How do you know that the police weren't looking for Madeleine?

**EL** says she was present, having visited the McCanns two days after the publication of the book.

**SO** – Do you know the date on which this action started? Do you know why they reacted so late?

**EL** says she never was involved in such discussion.

#### **The judge (Maria Emília de Melo e Castro) is now asking**

**MC** – How did the book hamper the investigation?

**EL** says that if everybody thought Madeleine had died then nobody would look for her. If people thought the parents were involved, they wouldn't help.

**MC** – But when the book was published the McCanns were no longer *arguidos*.

**EL** says the public, according to the US, is very important to find missing children.

**MC** – If some people suspect, from where is their conviction formed?

**EL** says it is mainly through the internet. GA's book is the first thing that appears on internet. The

people don't know these allegations aren't true according to the criminal investigation.

MC – People don't know?

EL hesitates, she says the majority don't.

MC – Are the McCanns ashamed of what is said in the book?

EL answers yes.

MC – Why ?

EL says the public believes they had covered up and then asked for money to search for Madeleine.

MC – The fact they are innocent didn't suppress this feeling?

EL says the fact they are innocent necessitates they must find Madeleine. They were more ashamed to be *arguidos* than because of what the book says.

MC – In which way is it different?

EL doesn't answer, she is obviously upset. The judge says she may leave. Previous witness Mrs Susan Hubbard gets up immediately and follows EL out of the court room.

Continues...