

OFFICIAL INQUIRY FILES and DOCUMENTS

LEGAL SUMMARY PRIOR & LOWE

Archiving of the Madeleine Process

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4592 to 4649 Letter to the Attorney General regarding investigation details

TRANSLATIONS BY ASTRO

17- Processo 17 Pages 4592 to 4649

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I - Introduction

Before actually entering the appreciation of the present inquiry it is useful to take a summarised look at the enormous dimension of the inquiry which is constituted of 17 Volumes, with a global processing of approximately 4500 pages, 9 appendixes that are integrated by 55 Volumes, in which 12000 pages and other relevant pieces were gathered, analysed and treated; further 22 dossiers were constituted, with more than 5000 pages, concerning fanciful or senseless news, yet organised out of mere caution.

Therefore, this inquiry which demonstrates the pertinent commitment of the Polícia Judiciária (PJ) in the resolution of the disappearance of minor Madeleine McCann, demanded from it the performance or coordination of several diligences as described in the various files, namely: the preservation of the location of the fact (although it had already been rummaged by numerous people as we will discuss ahead); several collections and examinations on the existence of eventual traces; a circumstantial photographic report; the installation, in the first 24 hours of an extensive operational scheme, including the participation of several police and civil protection forces, in a total of over 130 elements; the reinforcement, in the next 24 hours of said operational scheme, with the mobilisation of over 300 members of police forces and public entities; the installation of control posts on roads and on the Southern terrestrial border with Spain; the use of sniffer dog teams; the use of exceptional search and rescue teams (aerial, terrestrial and maritime), alerts and diffusion all over the country and abroad. As a mere example, during the following weeks and on a permanent basis, two helicopters, four vessels and several all-road vehicles, apart from private air-planes and boats, were employed; in the same manner, the investigation operations were coordinated with the specific search operations, with hundreds of diligences performed, like the identification and the formal and informal hearing of citizens, door-to-door searches, in the impressive number of 443, at the residences and tourist resorts of Vila da Luz and its surroundings, the identification and search of vehicles, and searches on the terrain, in an area that started out covering 15 Km², and progressively grew to 30Km² (where special attention was paid to locations like wells, passages, tunnels, reservoirs and lakes).

During the following days, more than 700 persons who might possess some relevant information about the disappearance were formally and informally questioned, with the PJ using more than 100 officers from several departments of Portimao, Faro and Lisbon, who worked on a consecutive base of 24 hours per day to accomplish the task.

All the locations where there could be images that might be related to the case (like, for example, restaurants and petrol stations) were equally consulted, and the telephone lines of the permanent services of the Portimao and Faro departments were made available. A mobile police post was installed in Vila da Luz to collect information.

Apart from the already mentioned identifications and door-to-door house searches, the listing, contact and interview with known local suspects with previous connections to sexual criminality against minors, was performed.

The PJ was especially careful to promote regular meetings with the missing child's parents and also designated a Liaison Officer for the family, for permanent support and relationship, with the active following and cooperation of the Royal British Consulate in Portimao.

Shortly after the beginning of the investigation continuous relationships with the Leicestershire Constabulary, which, for the effect, sent several of its officers to Portugal, with the PJ equally sending officers to the United Kingdom, were established, and intense cooperation and understanding was registered between these entities, which were united in the common purpose of searching for the missing child, and for the truth.

In the inquiry it is clear that the PJ never dismissed any information or credible elements that might lead to the revelation of facts, with over 2000 formal and informal diligences carried out over the months, and the PJ having explored, nationally and internationally, all of the information with a higher or lower degree of credibility, with special relevance for tens of supposed sightings or trackings of the child, most of which were widely reported by the press.

As an example, cases of international cooperation can be mentioned, namely with Spain, the Netherlands and the United Kingdom, which led to the detention or identification of persons that tried to introduce misleading information about the hypothetical destiny or tracking of the child.

In summary, it is notorious that the PJ spared no efforts in the sense of making exceptional technical, human and financial means available to find the child and to discover the truth of facts, having been completely accompanied in this effort by the Leicestershire Constabulary, the police force that is located in the city of Leicester, where most of the people in the holiday group come from.

II - About the Inquiry

A - General Analysis

In the present process, the disappearance of the child of British nationality, Madeleine Beth McCann, daughter of Gerald Patrick McCann and Kate Marie Healy, aged three on the date (about to become four, as she was born on the 12th of May 2003), was investigated.

Concerning the time and the place, the facts have taken place on the 3rd of May of 2007, within the time span, according to testimonies, between 9.05 p.m. and 10 p.m., at the resort called "Ocean Club", located in Vila da Luz - Lagos, where the child's family, together with a group of seven persons, - with whom they kept a friendship that had started before this trip and which was based on professional relations and on other leisure trips -, were enjoying a holiday period, with the duration of one week, having arrived in Portugal on the 28th of April 2007, more precisely at the Airport of Faro, coming from the United Kingdom.

At check-in, they were placed in several apartments, all of them in block G5, next to each other, which was a demand, or, at least, a suggestion of the entire group, which was composed of the couple Gerald McCann, Kate Marie Healy and their children Sean, Amelie and Madeleine, (apartment 5A), David Anthony Payne, Fiona Elaine Payne, their children Lilly Payne and Scarlett Payne and mother-in-law Dianne Webster (apartment 5H - first floor), Russell James O'Brien, Jane Michelle Tanner and their children Ella O'Brien and Evie O'Brien (apartment 5D) and Matthew Oldfield, Rachael Mariamma Jean Mampilly and their daughter Grace Oldfield (apartment 5B), with the apartment that was occupied by the McCann family being the one that was most accessible and had the easiest visibility from the outside.

The behaviour of the group's members until the day of the event was shaped by the normality of a daily routine, which, as far as the McCann couple is concerned, consisted of getting up at around 7.30 a.m. and having breakfast in the apartment; at around 9/9.30 a.m. they left the apartment and left their children at the crèche where they remained until around 12.30 a.m. After lunch, at around 1.30 p.m., the children went to play by the pool and around 2.30 p.m. they left them at the crèche again, where they stayed until around 5 p.m., the time at which the children went for high tea at the bar, which was done in a group, independently of age, in a recreational area next to the "Tapas" restaurant; between 5 and 5.30 p.m., they returned to the apartment, where around 5.30 p.m. they bathed the children that went to bed at 7.30 p.m.

From the 2nd day of their stay onwards, the couple had dinner at the "Tapas" Restaurant, with the rest of the group, while all of the children stayed asleep alone in their apartments, with the surveillance initially being made by each couple, whose members took turns in checking the children, and as the days went by, each member who went to check his children would take the chance and check on the rest of the children, with the exception of the Payne couple, that possessed their own technological control system, through baby listening monitors, an issue that we will

discuss in more detail further ahead.

All of the group's members including the McCann couple were questioned several times, at length and in detail, in order to collect the greatest possible number of relevant details that could assist the investigation in discovering the truth of the facts.

From the analysis of the total of depositions that were made, the existence of important details that were not fully understood and integrated became evident; details that would need to be tested and tried on location, in order to establish the apparent failures to meet and lacks of synchrony, even divergences, in a suitable diligence, which was not possible to perform despite the commitment that was displayed by the Public Ministry and by the PJ to fulfil that purpose, as we will see in closer detail, further ahead.

Considering the participated facts, conjugated with the information that was offered, namely by the witnesses, and with the information that was made available through the development of the inquiry, the investigation equated the verification of several hypotheses: abduction, for the purpose of sexual exploration or others (i.e. posterior adoption, child traffic, organ traffic), without homicide; abduction, followed by homicide with (or without) concealment of a cadaver, hypotheses that were considered under the double sides of the abduction (if it existed) having occurred due to feelings of vengeance of the abductor(s) towards the parents (directed abduction) or simply taking advantage of the circumstance that the child was in a situation of actual vulnerability (opportunity abduction), accidental death, with posterior concealment of the cadaver and, underlying all of these possibilities, abandonment, substantiated as a crime under article 138 of the Penal Code. The possibility of theft, whose author would have been disturbed by the child Madeleine and who, in order to prevent her from disturbing him, neutralised her in a violent manner, and, afterwards, took her with him, dead or alive, in order to leave no trace that could eventually lead to his identification.

The systematisation and order that were given to the Inquiry should further be stressed, as it facilitates an easy approach in its consultation, despite its volume and the complexity of some of the issues; with attention to the synthesis that was made and that is visible namely in the index and in the listing of the persons that intervened in the process.

Therefore, we will follow, despite some isolated diversions, the division that was observed in the Final Report that was made by the Polícia Judiciária:

1. General diligences to locate the child, performed by the Polícia Judiciária, the Polícia Marítima [Maritime Police] and the G. N. R., and added to the inquiry's main body;
2. The suspicions about Robert Murat and his arguido status;
3. Sniffer dog searches and the consequent constitution as arguidos of the British child's parents, Gerald McCann and Kate Healy.

Concerning the appendixes and their contents, they will be analysed within the 3 main issues into which the investigation has been divided.

B - Detailed Analysis

[this section to be completed soon]

C - The suspicions about Robert Murat and his constitution as an arguido

Apart from the suspect being seen on the location of the occurrence and speaking about the event with the persons that were around there, namely journalists, his name was on the list of interpreters, and he made a commitment as such (Commitment Act on page 1577).

On the 6th of May 2007 the PJ received a fax from the Leicestershire Constabulary (page 307) in which this police transmits that a reporter from the Sunday Mirror, Lori Campbell, had communicated that certain behaviours of the suspect compromised him, namely by giving his name without any information about himself, by having conflicting relationships with several people and being worried when a photograph of him was taken for that newspaper, which led the English Police to request that he was relieved of interpreter duties.

The files further contain:

- On page 328 a report of an external diligence tells that, on the 4th of May 2007, the suspect offered his assistance to the GNR to help with anything that was needed, namely as an interpreter;
- That on the 6th of May 2007 the signatory of said report was approached by several journalists indicating the arguido with suspicious behaviours, in the sense of what was already explained concerning the fax;
- On page 461 an anonymous information, where a telephone call from a woman who tries to incriminate the suspect is reported, although no facts were presented;
- On page 957 there is a report about an external diligence that resulted from a trip to the location where, according to witness Jane Tanner, she saw, a short time before she knew that Madeleine had disappeared, a man carrying a child walking into the direction of the suspect's house, Casa Liliana;
- On page 960 the service information according to which the curiosity that the arguido showed in the investigation was found strange.

In order to be able to be heard about the suspicions that befell him, Robert Murat was made an arguido on the 14th of May 2007 [9], having declared that he has already served as an interpreter during process actions, that he has a daughter that was born in 2002 and lives in England where he visits her several times, having returned to Portugal on the 1st of May 2007 and that he rented a vehicle because his mother uses the VW at the stand that was put up in Luz to support Madeleine's family.

That on the 3rd of May 2007 he didn't leave home in the evening, having heard a siren at around 10.30 p.m. or shortly afterwards, a fact that he commented with his Mother, but didn't come outside

to investigate.

On Friday the 4th of May 2007 he was alerted by his Mother to the disappearance of a child in Praia da Luz, according to news on "Sky News", having then walked to the location of the disappearance, where he was introduced to the child's parents, offering his assistance.

That afterwards, with a GNR officer and a member of the resort staff, they entered several apartments, with the purpose of locating the child. That before this occasion, he didn't know the inside of the "Ocean Club".

He further clarified, because he was asked, that he was the main suspect among the journalists, therefore from that moment onwards he refused speaking to them, including in that refusal the mention of his full name, or allowing to be photographed.

He further clarified that he has nothing to do with the child's disappearance, and knows nothing about this case, explaining that he asked an English policeman about the manner in which the British police was able to trace a person in a given location and at a given time and if the police could trace him at home through his mobile phone, but he did this to prove his innocence.

On the other hand, rather unpleasant references were made to his personality, as was the case of a witness that has known him for many years [10].

It should be further referred that witnesses Rachel Mampilly, Russell James O'Brien and Fiona Elaine Payne mentioned that they saw arguido Robert Murat at the "Ocean Club" resort on the night that Madeleine disappeared.

During the confrontation that took place on the 11th of July 2007 [11], these witnesses, just like the arguido, maintained their previous positions.

Nevertheless, the positions are different regarding the witnesses that were heard, because while Sílvia Baptista [12] admits it is very possible that a person with the arguido's characteristics was helping to search for Madeleine on the night of the disappearance, other witnesses, Paul Wright, June Wright, Barend Weijdon and GNR officer José Baptista Roque [13], among other officers, mentioned that they didn't see the arguido on location that night.

Facing the suspicions that befell the arguido, considering what he seemed to transmit and the type of occurrence that was under investigation, whose real scope was not, like now, delimited, and in order to confirm them or to set them aside, taking into account that they were indispensable for the continuation of the investigation, searches were made at the arguido's house as well as at his mother's and telephone interceptions were carried out, both on the arguido and on those with whom he directly or indirectly interacted, namely with whom he met on an almost daily basis and with whom he kept telephone contact.

Searches were also performed at the location where he started to spend the night at, the Quinta Salsalito, which is a vast place of difficult control, therefore the search on this location might permit the collection of elements that are reputed to be of high interest for the investigation, but those searches had no effect whatsoever.

During the searches at Casa Liliana, two rain water cisterns near the pool were checked, the missing minor's trail was searched by the GNR's sniffer dog team, both inside and outside the residence, searches were equally performed inside three vehicles that were parked there, and the matching photographic report was carried out by members of the CSS (Crime Scene Sector), experts from the Criminal Police Lab, but nothing positive was attained.

From the forensics exams to Serghei Malinka's, Robert Murat's and Jenny Murat's computers [14], it could be concluded that the contents of the examined drives produced nothing that could compromise them as participants in any illicit activity, namely the one that was being investigated in the process.

From the interception of communications, the telephone contact record of arguido Robert Murat, his mother Jennifer Murat, witnesses Michaela Walazuch, Luís António and Sergey Malinka; records and maps of the telephone calls that were made from public telephone booths in Praia da Luz nothing flows that could have any indicative use.

From the analysis that was performed on every contact, from the 1st of November 2006 until the 19th of July 2007, by Robert, Michaela, Sergey, Jennifer and Luís António, results that Robert and Malinka, only contacted each other eight times [15], that there were no relations between Sergey and Luís António, nor between him and Robert, nor between either of them and the Murat residence, between the 30th of April and the 4th of May 2007 [16].

Searches were performed at the residence, and the subsoil was explored with a Geo-radar (GPR), - which consists of a radar antenna that transmits electromagnetic energy in the shape of an impulse within frequencies between 25 MHz and 1 GHz. Those impulses are partially reflected through sub-superficial geological structures, captured with a receiving antenna and marked as a time record of continuous bi-directional path which is presented as a pseudo-geological record section - e these technical searches neither found nor marked anything of interest to the files [17].

Searches were equally performed with the use of sniffer dog support, with the dog Eddie that detects cadaver odour, and it was verified that the dog signalled nothing [18]. The examination of the targets' vehicles (arguido and people who interacted with him), nothing was found.

Therefore, despite the suspicions that befell the arguido, - partly because they were induced, albeit involuntarily, by himself, namely the protagonism that he assumed both with the group of friends, which the McCann couple was part of, and with the journalists, showing his great curiosity in finding out what diligences had been performed and which were to be performed, and by objective elements and the fact that his residence is located in the direction which, according to Jane, was taken by the stranger who carried the child in his arms - and which therefore demanded his constitution as an arguido. It is nevertheless certain that through the collected evidence, said suspicions gradually emptied themselves, until the point where any connection of the arguido to the child's disappearance was set aside, which is why, at the end, the archiving of the process will be determined.

- [9] Notice on page 1169
- [10] Questioning report on page 1288
- [11] Confrontation report on pages 1957/1958
- [12] Questioning report on page 1290
- [13] Questioning report on pages 1338, 1328, 1330 and 1349
- [14] Forensics - Appendix-1, Vol. IV, V and VI
- [15] Analyses report, annex 87
- [16] Analyses report, annexes 82 to 86
- [17] Search and Apprehension report on page 2130-v
- [18] Dog Inspection report, page 2131

D - Dog searches and Constitution of Gerald McCann and Kate Healy as arguidos

In an attempt to advance towards the discovery of Madeleine's whereabouts, a Report was written by Mark Harrison, National Counsellor for searches at the level of all police agencies in the United Kingdom, concerning Missing Persons, Abduction and Homicides, with his role comprising the counselling in relation to those people.

Thus a request for help in counselling at the level of searches was made, with part of that help being made through the action of dogs that are trained to detect mortal victims (VRD), and dogs with advanced training in tracing very small samples of human remains, bodily fluids and blood, in any environment or terrain (EVRD).

From the searches with the dogs [19], whose video recordings are appended to the files, the following resulted:

1. The tracking dog named "Eddie" (dog that signals cadaver odour) "marked" (signalled) inside the couple's bedroom, in apartment 5A, in an area next to the wardrobe (cf. page 2054 and/or annex 88);
2. That same dog "marked", in the same apartment, an area near the living room window, which has direct access to the street, behind the sofa (cf. page 2054 and/or annex 88);
3. Still inside the apartment, the dog "marked" a garden area, in a square corner, vertically to the balcony (cf. page 2054 and/or annex 88);
4. In the "Vista do Mar" villa, the house that was rented by the McCanns after leaving the Ocean's Club, the dog "marked" the area of a wardrobe that contained inside the soft toy that belonged to Madeleine McCann (cf. page 2099 and/or annex 88);
5. In the examination of the clothes, which was carried out in a pavilion in Lagos, this dog signalled/"marked" pieces of clothing that belong to Kate Healy (cf. page 2101 and/or annex 88);
6. This dog signalled the lower outside area next to the driver's door of the Renault - 59-DA-27 - that was rented by the McCanns (cf. page 2187 and/or annex 88);
7. Finally it "marked" the key/card of that vehicle when it was hidden under a fire prevention sand box (cf. page 2187 and/or annex 88);
8. The tracking dog named "Keela" (dog that detects the presence of human blood), "marked" an area in the living room, in apartment 5A, which had already been "marked" by "Eddie" (cf. page 2054 and/or annex 88);
9. After the tiles which this dog had signalled during a first inspection, and which are mentioned under the previous item, were removed, the dog signalled the same area again (cf. page 2190 and/or annex 88);

10. It made another "marking" on the lower part of the left hand side curtain of the window that we have been referring to (cf. page 2190 and/or annex 88);
11. It "marked" the right lower lateral part of the inside of the boot of vehicle 59-DA-27 (cf. page 2187 and/or annex 88);
12. Further concerning the vehicle, "Keela" "marked" the storage compartment, on the driver's door, which held the vehicle's key/card (cf. page 2187 and/or annex 88);
13. This dog also marked the key/card when the same was hidden under the fire service sand box, inside the parking lot.

The viewing of these videos, whose contents is very impressive, becomes essential to understand the dogs' action and signalling, more than by any words.

These dogs, which had already been used on multiple occasions by the Scotland Yard and by the FBI with positive results, are evidence collection means and do not serve as evidence; any residue, even if invisible to the naked eye, which is collected using this type of dogs, has to be subject to forensics testing in a credentialed laboratory.

Martin Grime, the dogs' instructor himself [20], mentions in his report: "Whereas there may be no retrievable evidence for court purposes this may well assist intelligence gathering in Major Crime investigations"; or scientist Dr John Lowe [21] who refers that the FSS has no scientific support about the use of the dogs as a fundament for the collection of biological residues and that normally take the handler's word for certification, that asserts that the dogs are more sensitive than any chemical technique or other techniques that are normally used by crime scene sector experts.

In that sense, forensic examinations were performed in the areas and on the objects that were marked and signalled by the blood dog, especially in a credentialed British lab (Forensic Science Service - cf. Appendixes I and VII - FSS Final Report), and also, some of them, at the National Institute for Legal Medicine (cf. Appendix I), whose final results failed to corroborate the canine markings, that is to say that cellular material was collected, which was nevertheless not identified as belonging to a specific person, and it was not even possible to establish said material's quality (namely if it could be blood or another type of bodily fluid).

It should be stressed that the option towards that Laboratory was and remains obvious taking its prestige, its independence and its scientific reputation into account, although on an initial approach there seemed to be the possibility of compatibility between MADELEINE'S DNA profile and some of the collected residues (of which those that existed in the Renault Scenic vehicle that was rented by the McCann couple were in great quantity), taking the contents of the fax that is reproduced below exactly as it appears in the files, into account (pages 2620 and following)

* * *

From: "Prior Stuart" To: "Task Portugal" Sent: 04 September 2007 10:14

Subject: FW: Op Task - in Confidence

From: Lowe, Mr J R Sent: 03 September 2007 15:01 To: stuart prior

Subject: Op Task - in Confidence

Stuart,

Firstly, here are the last three results you are expecting

An incomplete DNA result was obtained from cellular material on the swab 3a. The swab contained very little information and showed low level indications of DNA from more than one person. However, all of the confirmed DNA components within this result match the corresponding components in the DNA profile of Madeline McCann. LCN DNA profiling is highly sensitive, it is not possible to attribute this DNA profile to a particular body fluid.

There is no evidence to support the view that Madeline McCann contributed DNA to the swab 3B

A complex LCN DNA result which appeared to have originated from at least three people was obtained from cellular material recovered from the luggage compartment section 286C 2007 CRL10 (2) area 2. Within the DNA profile of Madeline McCann there are 20 DNA components represented by 19 peaks on a chart. At one of the areas of DNA we routinely examine Madeline has inherited the same DNA component from both parents; this appears therefore as 1 peak rather than 2, hence 19 rather than 20. Of these 19 components 15 are present within the result from this item; there are 37 components in total. There are 37 components because there are at least 3 contributors; but there could be up to five contributors. In my opinion therefore this result is too complex for meaningful interpretation/conclusion.

Why?...Well, lets look at the question that is being asked "Is there DNA from Madeline on the swab?" It would be very simple to say "yes" simply because of the number of components within the result that are also in her reference sample.

What we need to consider, as scientists, is whether the match is genuine and legitimate; because Madeline has deposited DNA as a result of being in the car or whether Madeline merely appears to match the result by chance. The individual components in Madeline's profile are not unique to her, it is the specific combination of 19 components that makes her profile unique above all others. Elements of Madeline's profile are also present within the profiles of many of the scientists here in Birmingham, myself included. It's important to stress that 50% of Madeline's profile will be shared with each parent. It is not possible, in a mixture of more than two people, to determine or evaluate which specific DNA components pair with each other. Namely, we cannot separate the components out into 3 individual DNA profiles.

Therefore, we cannot answer the question: is the match genuine or is a chance match. The same applies to any result that is quoted as being too complex for meaningful inclusion/interpretation

- What questions will we never be able to answer with LCN DNA profiling?
- When was the DNA deposited?
- How was the DNA deposited?
- What body fluid(s) does the DNA originate from?
- Was a crime committed?

These, along with all other results, will be formalised in a final report. Please don't hesitate to contact me if you require any further assistance kind regards

John* * *

but whose compatibility, as can be concluded from the above mentioned final FSS report, was not confirmed after the performance of lengthy and complex tests.

Previously to these indications, is the circumstance that the Parents were the last known persons who had been with Madeleine, alive and traced, a circumstance that in itself made them subject to investigation.

On the other hand, there was information, which was not confirmed afterwards, that the McCanns, while focused on stating an abduction theory, had contacted the British media (Sky News), before calling the police authorities.

Confronted with these elements, namely the possibility of the existence of a cadaver in the apartment and in the vehicle that was used by the parents, founded suspicions of their involvement were raised.

As they were summoned to depose again, while there was no plausible explanation for those situations and as they were to be confronted with the dogs' findings and with the lab information, which were susceptible of rendering them responsible as authors of crimes (at least, of neglectful homicide and of concealment of a cadaver), they were, obligatorily and inexorably, made *arguidos*, in strict obedience to article 59 nr. 1 of the Penal Process Code; thus the disposition from nr. 4 of article 58 (presently 5) - its new redaction was not in force yet, taking into account that they were made *arguidos* on the 6th of September 2009 - and on the other hand they could benefit from *arguido* status, with all the rights and guarantees of defence that are inherent to it, despite the stigma that is associated with it, which is techno-juridically misadjusted. In effect, the constitution and questioning as *arguidos*, while used to confirm indications towards the committing of crimes, are also used, with equal strength and reason, to infirm indications and to eliminate suspects.

As judiciously stressed in the sentence dated 06.10.1990 by the then Judge of the Police Court of Lisbon. "The authority that directs the inquiry is not free to postpone the moment when a witness passes into *arguido* status (. . .) if diligences are being performed, which are destined to prove her imputation, that affect her personally (. . .)"

Colectânea de Jurisprudência, 1990, vol. IV. p.323 and following.

The constitution of Gerald and Kate McCann as *arguidos* at that moment is nothing more than the practical fulfilment of the right to defence of those *arguidos*, which is to say, to ensure their concrete rights to "co-determine or conform the process' final decision. Said rights assume consistency and effectiveness, according to the new Code, right after the moment of constitution as an *arguido*, and therefore, still during the inquiry and the instruction." - Professor Jorge de Figueiredo Dias, "Sobre os sujeitos processuais no novo Código de Processo Penal" Jornadas de Processo Penal, CEJ, Livraria Almedina, 1988, p 28.

Therefore, under the light of interpretation of the elements that constituted the process at that date, there is no doubt whatsoever concerning the legitimacy and legality of their constitution as *arguidos*, as it is also certain that any investigation has its own dynamics and the continuous flow of elements into the files may alter the situation, as it has, and no judgment or presumption of guilt can be extracted from such a process act.

[19] Cf. digital drives contained in Appendix III

[20] Page 2271

[21] Questioning file on page 3899

E - About the Interest of the Reconstitution

Taking into account that there were certain points in the arguidos' and witnesses' statements that revealed, apparently at least, contradiction or that lacked physical confirmation, it was decided to carry out the "reconstitution of the fact", a diligence that is consecrated in article 150 of the Penal Process Code in the sense of duly clarifying, on the very location of the facts, the following very important details, among others:

1. The physical, real and effective proximity between Jane Tanner, Gerald McCann and Jeremy Wilkins, at the moment when the first person walked by them, and which coincided with the sighting of the supposed suspect, carrying a child. It results, in our perspective, strange that neither Gerald McCann nor Jeremy Wilkins saw her, or the alleged abductor, despite the exiguity of the space and the peacefulness of the area;
2. The situation concerning the window to the bedroom where Madeleine slept, together with the twins, which was open, according to Kate. It seemed then necessary to clarify if there was a draught, since movement of the curtains and pressure under the bedroom door are mentioned, which, eventually, could be verified through the reconstitution;
3. The establishment of a timeline and of a line of effective checking on the minors that were left alone in the apartments, given that, if it is believed that such checking was as tight as the witnesses and the arguidos describe it, it would be, at least, very difficult to reunite conditions for the introduction of an abductor in the residence and the posterior exit of said abductor, with the child, namely through a window with scarce space. It is added that the supposed abductor could only pass, through that window, holding the minor in a different position (vertical) from the one that witness JANE TANNER saw (horizontal);
4. What happened during the time lapse between approximately 6.45/7 p.m. - the time at which MADELEINE was seen for the last time, in her apartment, by a different person (David Payne) from her parents or siblings - and the time at which the disappearance is reported by Kate Healy - at around 10 p.m.;
5. The obvious and well-known advantages of immediate appreciation of evidence, or in other words, the fulfilment of the principle of contiguity of evidence in order to form a conviction, as firm as possible, about what was seen by Jane Tanner and the other interposers, and, eventually, to dismiss once and for all any doubts that may subsist concerning the innocence of the missing [child's] parents.

In this sense, the legal procedures were followed, according to the norms and conventions that are in force, and the appearance of the witnesses was requested, inviting them to be present inclusively appealing to solidarity with the McCann couple, as it is certain that since the beginning they adhered to that process diligence.

Nevertheless, despite national authorities assuming all measures to render their trip to Portugal viable, for unknown motives, after the many doubts that they raised about the necessity and opportunity of their trip were clarified several times, they chose not to attend, which rendered the diligence inviable.

We believe that the main damage was caused to the McCann arguidos, who lost the possibility to prove what they have protested since they were constituted arguidos: their innocence towards the fateful event; the investigation was also disturbed, because said facts remain unclarified.

F - Communications analysis

The process has been appended with the daily maps of the mobile phones' registry by registrar/owner, a map of the intervals without communications of the couple's equipment between the 4th and the 13th of May, and maps of the localities where the antennas were activated, as well as the report of the analysis of the communications that were registered by the antennas that serve Praia da Luz, of the 3 service providers, made by the 9 members of the McCann family's group, concerning the days between the 2nd and the 4th of May (calls that were operated exclusively by the fixed network are not contemplated, because as they do not use the GSM system of mobile communications, those do not activate the antennas ("B.T.S.")).

During that period they maintained a communication traffic that can be accepted as normal for someone who is on holidays. Between the 4th and the 17th of May, the antennas with most traffic registered are the ones that serve the localities of Luz, Lagos, Portimao and others that are situated between Praia da Luz and Portimao; the daily activity of the mobile phones of each one of the 9 persons in the group was analysed, with every register since their arrival until their departure being treated, as well as about the time intervals when Madeleine's parents' mobile phones were without any contact between 00 hours of the 4th and 00 hours of the 14th of May.

It was important to determine if through the analysis of that data other investigation hypotheses appeared, leading to the discovery of what happened on the night of the 3rd of May, at apartment 5A, of the "Ocean's Club of Praia da Luz", but this also remained unsuccessful.

The fulfilling of the Rogatory Letters to the Justices of the United Kingdom failed to add anything relevant to what was already in the Process.

G - Appreciation and Juridical Frame

From the analysis of the elements that are part of the files, this first conclusion emerges immediately:

When the GNR officers arrived on location, several people had already touched the window and entered Madeleine's and her siblings' bedroom, and later on, when the PJ arrived at the apartment to collect traces, the space had already been rummaged through and contaminated due to the entrance of all of those people and to the fact that everything had been touched, thus rendering inviable, right away, the collection of important elements for the investigation.

In the drama of the moment, nobody - parents, friends of the parents, resort management and personnel - was cold and lucid enough to preserve the crime scene, preventing that rummaging and the consequent contamination of traces from happening, while it is common knowledge that it is any person's responsibility to preserve crime scenes - apart from a legal demand: article 171 number 2 of the Penal Process Code - thus avoiding that traces can be erased or altered, therefore the collectable evidence had already lost much of its indicative value. Hence the lack of evidential elements that were collected during that initial phase, so much so that the only latent fingerprints that were collected, with the number of elements that are necessary to perform a positive identification, were individualised as belonging to the missing child's mother and to a GNR officer (pages 885 and 1520), thus immediately rendering the collection of important data for the investigation inviable.

It was only when members of the Polícia Judiciária arrived, at around 0.10 a.m., following a request for their presence, that measures were taken to make the collection of residues and the preservation of the event's location possible.

It further results from the files that, despite the fact that the 'Ocean Club' resort's crèche offers a complimentary dining out service from 7.30 until 11.30 p.m., at an additional cost, apart from another babysitting service with no defined schedule [22], the members of this group of friends with children chose to do their own checking on the children during dinner. During a first phase, each couple took turns among them to check on their own children, and as the days went by, they started to ask one of the members that got up, to listen whether there was any noise in their apartment, as Jane Tanner mentioned during questioning on the 10th of May 2007 [23], with the exception of the David and Fiona Payne couple, who possessed an intercom system to watch over their children Lilly Payne and Scarlett Payne.

It is extracted from the files that the McCanns and their friends checked to verify if all was well with their children, as can be concluded from what the members of this group declared, and also derives from the testimony of Jerónimo Tomás Rodrigues Salceda, a waiter at the Tapas [24], who stated that he "noticed, because it was evident, that some of the group's members sometimes went outside of the restaurant to do something, which by and by he realised was to "check" on the children. Nevertheless, he was always convinced that those children were in a space that belonged

to the Luz Ocean Club. . ."

Nevertheless, it can also be concluded from the files that this surveillance with the periodicity that was mentioned above was not the one that is alleged in the files, which leaves unexplained why, on that night, the procedures were altered in the sense of reducing the checking intervals.

In effect, this group of friends was enjoying a short holiday period, therefore perfectly relaxed and it would be normal that, having dinner, inclusively with an entertainment service available [25], they were not very concerned with anything that might happen to their children during that dinner period.

It is so much so that Kate herself mentions that on Thursday morning, the 3rd, Madeleine questioned her about the reason why they didn't come to her room, given the fact that the twins had cried [26], as was also mentioned by Gerald.

Pamela Fenn, who resides on the residential block's first floor, above the apartment that was occupied by the McCann family, clarified that on the 1st of May 2007, two days before her disappearance, at around 10.30 p.m., she heard a child crying, which from the sound would be MADELEINE and that she cried for an hour and fifteen minutes, until her parents arrived, at around 11.57 p.m.

This shows that the parents were not persistently worried about their children [and] that they didn't check on them like they afterwards declared they did, rather neglecting their duty to guard those same children, although not in a temerarious, or gross, manner.

If said guard duty had been observed, in the possibility of this being an abduction, as was insistently mentioned and continues to be mentioned and is admissible to have happened, its occurrence might eventually have been rendered inviable.

It is further added that Kate, after noticing that the bedroom's window and shutters were open and Madeleine was missing, headed for the Tapas Restaurant asking for help, suggesting that an abduction had taken place, it is incomprehensible, or only comprehensible in a state of panic, that she once again abandoned, this time only the twins, while the Tapas was close enough to shout for help, - although Matthew Oldfield refers [27] that from the restaurant table there was very tenuous visibility, taking into account the distance at which they were from the apartments, and vision being hampered by a transparent linoleum that covered the area where the tables were located.

Finally, the fact that, despite all that confusion and all that noise, the twins continued to sleep, as mentioned by GNR Officer José Maria Baptista Roque, a member of the patrol that was first to arrive at the apartment "the children never woke up, remaining in a ventral decubitus position, not moving during the search and afterwards" [28], remains unexplained. Nevertheless, a Team from the Criminal Police Lab, on the 4th of May 2007, eliminated the existence of any product that could have been ministered to the missing child, in order to maintain her in a state of unconsciousness, as well as the presence of blood traces.

On the other hand, it also results that none of the parents was inside the apartment when Madeleine

disappeared and that their behaviour until the moment of the disappearance was perfectly normal, not manifesting any kind of preoccupation or any other similar feeling, contrary to what happened after that moment when the state of panic was notorious.

While it is an unavoidable fact that Madeleine disappeared from Apartment 5A of the 'Ocean Club', the manner and circumstances under which this happened are not - despite the numerous diligences made in that sense -, therefore the range of crimes that were indicated and referred to during the inquiry remains untouched.

It seems evident to us and because the files contain enough elements for such, that the crime of exposure or abandonment according to article 138 of the Penal Code can be eliminated from that range:

"1 - Whoever places another person's life in danger,

- a) By exposing her in a location where she is subject to a situation from which she, on her own, cannot defend herself against; or
- b) Abandoning her without defence, whenever the agent had the duty to guard her, to watch over her or to assist her;"

This legal type of crime is only fulfilled with intent, and this intent has to cover the creation of danger to the victim's life, as well as the absence of a capacity to defend herself, on the victim's behalf. In the case of the files and facing the elements that were collected it is evident that none of the arguidos Gerald or Kate acted with intent. The parents could not foresee that in the resort that they chose to spend a brief holiday, they could place the life of any of their children in danger, nor was that demanded from them: it was located in a peaceful area, where most of the residents are foreign citizens of the same nationality and without any known history of this type of criminality.

The parents didn't even represent the realisation of the fact, they trusted that everything would go well, as it had gone on the previous evenings, thus not equating, nor was it demanded from them, the possibility of the occurrence of an abduction of any of the children that were in their respective apartments.

Reinforcing what was said is also the fact that despite leaving their daughter alone with her siblings in the apartment during more or less dilated moments, it is certain that in any case they checked on them. Without any pretension or compensatory effect, we must also recognise that the parents already expiate a heavy penalty - the disappearance of Madeleine - due to their lack of caution in the surveillance and protection of their children.

Concerning the other indicated crimes, they are no more than that and despite our perception that, due to its high degree of probability, the occurrence of a homicide cannot be discarded, such cannot be more than a mere supposition, due to the lack of sustaining elements in the files.

The non involvement of the arguidos parents of Madeleine in any penally relevant action seems to result from the objective circumstances of them not being inside the apartment when she disappeared, from the normal behaviour that they adopted until said disappearance and afterwards, as can be amply concluded from the witness statements, from the telephone communications

analysis and also from the forensics' conclusions, namely the Reports from the FSS and from the National Institute for Legal Medicine.

To this can be added that, in reality, none of the indications that led to their constitution as arguidos was later confirmed or consolidated. If not, let us see: the information concerning a previous alert of the media before the polices was not confirmed, the traces that were marked by the dogs were not ratified in laboratory, and the initial indications from the above transcribed email, better clarified at a later date, ended up being revealed as innocuous.

Even if, hypothetically, one could admit that Gerald and Kate McCann might be responsible over the child's death, it would still have to be explained how, where through, when, with what means, with the help of whom and where to they freed themselves of her body within the restricted time frame that would have been available to them to do so. Their daily routine, until the 3rd of May, had been circumscribed to the narrow borders of the 'Ocean Club' resort and to the beach that lies next to it, unknowing the surrounding terrain and, apart from the English friends that were with them on holiday there, they had no known friends or contacts in Portugal.

[22] Questioning File on pages 221 and 226

[23] Questioning File on pages 922 and 923

[24] Questioning File on page 236

[25] Witness NAJOUA CHEKAYA (page 798) mentioned that she was asked by the Ocean Club to perform a "quiz" at the Tapas restaurant twice a week (Tuesdays and Sundays)

[26] Questioning File on page 59

[27] Questioning File on page 914

[28] Questioning File on page 3883

In a final synthesis, based on facts, it seems to us that the following can be asserted:

- On the 3rd of May 2007, at around 10 p.m., at the Ocean Club, in Praia da Luz, Kate Healy - like her, her husband Gerald and their friends, while dining at the Tapas, did with a periodicity that has not been rigorously established - headed for apartment G5A, in order to check on her three children, who had been left there, asleep;
- She'd barely entered the apartment when she noticed that her daughter Kate had disappeared, not being in her bed nor in any other location inside the residence and that the bedroom's window and shutters were open;
- Then, Kate Healy ran to the restaurant, immediately alerting Gerald McCann and the other friends;
- Following that alert, the entire apartment was searched and rummaged by an indeterminate number of people, thus resulting in the contamination of traces, with irreversible and undetermined damage in terms of the acquisition of evidence;
- Immediately, intense and extensive terrestrial, maritime and aerial searches were launched, which lasted for several days, involving hundreds of people and equipment and means, as sophisticated and advanced as presently available;
- Several hundred people were heard, formally and informally, whose hearing was anticipated as being of interest for the clarification of the matter, thousands of pieces of information and suggestions were analysed, and tens of sightings and locations that seemed plausible were checked. Telephone interceptions were performed and the traffic data from thousands of telephone conversations was analysed and crossed, and many thousands of diligences of the most diverse nature were developed;
- The obliging cooperation and commitment of Police forces from many Countries, with a very special mention for the British police entities, was counted upon;
- Tests and analyses were performed in two of the most prestigious and credentialed institutions for this effect - the National Institute for Legal Medicine and the British lab Forensic Science Service -, whose final results did not positively value the collected residues, or corroborated the canine markings;
- Despite all of this, it was not possible to obtain any piece of evidence that would allow for a medium man, under the light of the criteria of logics, of normality and of the general rules of experience, to formulate any lucid, sensate, serious and honest conclusion about the circumstances under which the child was removed from the apartment (whether dead or alive, whether killed in a neglectful homicide or an intended homicide, whether the victim of a targeted abduction or an opportunistic abduction), nor even to produce a consistent prognosis about her destiny and inclusively - the most dramatic - to establish whether she is still alive or if she is dead, as seems more likely.

But therefore we do not possess any minimally solid and rigorous foundation in order to be able to

state, with the safety that is requested, which was or were the exact and precise crime(s) that was or were practised on the person of the minor Madeleine McCann - apart from the supposed but dismissed crime of exposure or abandonment - or to hold anyone responsible over its authorship.

Finally, it should be underlined that this case, unfortunately, is not a police novel, an appropriate scenario for a "crime" that is tailored for the success of the investigative work of a Sherlock Holmes or a Hercule Poirot, guided by the illusion that the forces of law and justice always manage to re-establish the altered order, returning to society the peace and the tranquillity that were only accidentally disturbed.

The disappearance of Madeleine McCann is rather an implacable and intricate case of real life, which lies closer to the lucid narrative by Friedrich Duerrenmatt, - "The Pledge. Requiem for the police novel" - because reality and everyday life owe little or no obedience, most of the times, to logic.

Life's events do not conform to stereotyped novel-like schemes, it is rather the case that its outcome is often the product of chance or conditioned by accidental and unpredictable factors, and therefore, hard to envision.

The investigators are well aware of the fact that their work is not exempt of imperfection; they have worked with an enormous error margin, and what they have achieved is very little in terms of conclusive results, especially concerning the fate of the unfortunate child. Nevertheless, they always knew that action was necessary and in reality they acted intensively and with commitment, even at the risk of erring.

Nevertheless, anyone who feels unsatisfied about the epilogue of the investigations, will have the possibility to react against it, having the possibility of eventually changing that epilogue, by prompting diligences based on new evidence, as long as that person has the legitimacy to request them and the requested diligences are serious, pertinent and consequent. They may do so in three ways: by requesting the reopening of the inquiry, under article 279, number 1 of the Penal Process Code; by appealing hierarchically against this dispatch under number 2 of article 278, or in another case, under number 2 of article 279 of the Penal Process Code, or by requesting the opening of the instruction under article 287, number 1, item b, of the Penal Process Code.

Finally, it should be noted that an archiving decision may be a fair decision, although of the possible justice, and, especially, to underline heavily that the archiving of the present files does not equal a definite and irreversible closing of the process. This process, as long as the prescription deadline for the possibly committed crimes does reach its term, and if new evidence that justifies it, appears, can always be reopened, officiously or through the request of an assistant, again ordinate to a final decision of accusation or non accusation.

Therefore, after all seen, analysed and duly pondered, with all that is left exposed, it is determined:

- a) The archiving of the Process concerning arguido Robert James Queriol Eveleigh Murat, because there are no indications of the practise of any crime under the dispositions of article 277 number 1 of the Penal Process Code;

- b) The archiving of the Process concerning Arguidos Gerald Patrick McCann and Kate Marie Healy, because there are no indications of the practise of any crime under the dispositions of article 277 number 1 of the Penal Process Code.

Article 277 number 3 of the Penal Process Code is to be fulfilled.

Under article 214 number 1 item a) of the Penal Process Code, the coercion measures that have been imposed on the arguidos are declared extinct.

Portimão, 21.07.08

The Republic's Prosecutor

(José de Magalhaes e Menezes)

The Joint General Prosecutor

(signature)

(Joao Melchior Gomes)

Processos Vol XVII Pages 4599 to 4622

With thanks to Ines

(Part B of the Archiving Dispatch)

III – Concrete Analysis

Returning to the facts, the process files originated in the report drawn up by the PJ on folio 2, telling of the disappearance of a three year old British girl. The event was communicated by the GNR to the PJ at 00.10 on the 4th May 2007.

According to the GNR, the disappearance would have occurred at about 22.40 (it was later checked that the detection and subsequent alarm effectively happened between 22.00 and 22.10) on 3rd May 2007, in one of the apartments of the Ocean Club resort, situated in Praia da Luz – Lagos, where the British family, composed of a couple and three young children were staying.

The apartment is comprised of two bedrooms, a kitchen, living room and bathroom with easy access to public roads, whether from the front or the back, where there is a small balcony and sliding doors and, at the time of the disappearance, the children were alone in the apartment. However, during dinner, the couple went to the apartment twice, during one of these visits, the mother Kate, discovered that her oldest daughter was not there and alerted the other members of the group to this fact.

Upon being contacted, the PJ's intervention was immediate, they went to the scene (folios 02 onwards) where they undertook various inquiries aiming to establish the facts, a photographic report was made at the site (folios 12 – 23) as well releasing information about the disappearance, with the photograph and description of the girl, to the authorities as well as to the press, after obtaining authorisation from the Public Ministry (folios 32 – 33b and 459), a fingerprint inspection, which only enabled the collection of finger prints of those persons who had legitimate access to the apartment. The apartment was also examined by the Scientific Police Laboratory, which collected numerous traces and carried out continuous examinations, which did not lead to the full clarification of the events.

In order to gather information, the following day a mobile GNR post was placed in front of the apartment block, with the aim of receiving, dealing and channelling the collection of information related to the disappearance, all of them investigated by this police force in a methodical and detailed manner, some included in the inquiry and others organised in annexes in order to be able to visualise what had been done.

In addition to this information gathered at the mobile post, hundreds of other pieces of information from the public and the authorities were received via email or telephone and were dealt with in the same manner. During this night and the following dawn, intensive searches were made by PJ officers, GNR soldiers with sniffer dogs and by members of the public organised in groups, as well as by the parents, groups of friends and employees of the resort.

At 02.00 in the morning following the disappearance two sniffer dogs arrived in Praia da Luz and continued searching until the morning, covering the entire perimeter of the Ocean Club resort, urban area, waste ground and the closest homes, all the possible sites where the girl might be having been searched, the search later being extended to the beach area, the PJ duty officer also requested the

GNR to issue an order for all officers who were on patrol to be alert and identify cars and persons that were circulating at that time.

At 08.00 the GNR Search and Rescue sniffer dog team came into action, searches were begun from the resort in the direction of the beach, covering a 2 km area; in Praia da Luz 300m radius searches were made as well searches of abandoned houses, wells and waste land, the radius subsequently being expanded to 600m including the verges of the EN 125 motorway.

Subsequently an attempt was made to reconstruct the route taken by Madeleine by giving the dogs a blanket/towel used by her, but the results were not significant, given that the dogs are more trained for use in rural areas rather than urban or populated areas, the existence of more odours in the air making it impossible for the tracker dog to identify/locate the “target smell”.

Searches were also carried out in two camping parks in Espiche and in Praia da Luz to inspect the bungalows whose occupants had left on the day of the disappearance; the searches were extended to line searches with the help of Portimao GNR soldiers over a larger area, searches having been made of all the vehicles parked in the Praia da Luz car parks. Subsequently, the searches were extended to the villages of Barao de S. Joao, Burgau, Bensafrim and Salema.

A few days later 6 members of the Algarve canine team also participated in the searches.

On the following day, SNBPC helicopter searches were made, covering the entire area between the coast line and the EN 125, in sweeps, from N/S direction to try to find the girl, under the hypothetical possibility that she could have left the resort on foot, got lost and could be walking in the area.

The searches continued during the following days, over a 15 km radius, from Praia da Luz, specifically between the 4th and 10th May 2007, being carried out, amongst others, by GNR searchers and dogs, local people, GNR officers as well as personnel from BT, the Municipal Civil Protection Services, PSP, Lagos voluntary firemen and the Portuguese Red Cross.

The Maritime Police also collaborated actively in the searches, on the 4th May covering the coastline between Burgau and Porto de Mos, on the 5th May the coastline between Meia Praia and Praia da Luz, on 6th May between the west quay of Praia do Alvor and Sagres, on 7th May between Lagos and Burgau, on 8th May between Meia Praia and Zavial and on 9th May again the west quay of Praia do Alvor and Sagres.

On the 8th and 9th May 2007 the Maritime Police all the vessels moored in the Portimao marina with crews on board, this was a total of 31 vessels, also in the Rio Marina in Mexilhoeira da Carregacao and in the Albufeira Marina. Security camera images were also viewed from the Portimao Norte da Marina bay.

As the Lagos Marina does not have a security camera system, information was requested about the state and movements of various vessels in the Marina (report on folios 3867/3885 Vol XV) and in order to find out if Madeleine had been seen, various Marina users were contacted (Joaquim Rio, from the Pescamar vessel, Bruce Cook from the Shearwater yacht and others), as well as fishermen, Marina employees and tourists who stated that they had not seen any indications that anyone had

any information that could lead to the discovery of her whereabouts.

In spite of the dimension of the operations, the titanic efforts, time and means applied, including those of various security forces, the localisation of the child resulted to be fruitless.

The British media was alerted to the disappearance, allegedly at about 02.00 on the morning of 4th May the BBC being informed, Sky news having opened its 07.00 news report on the 4th May with news of this case. Between 04.30 and 05.30 a phone call was made to the PJ by a British media channel requesting confirmation of the disappearance.

As shown by the inquiries made to Rachel Mampilly by means of the Letter of Request, it was she who at 02.00 telephoned the wife of a friend who was a BBC correspondent to say that Madeleine had disappeared and asking if there was any way of this appearing in the news.

The media was mobilised in an unprecedented way, accompanying all the police work step by step, conjecturing and elaborating scenarios, some true and others of a fantasising nature.

It should be mentioned in passing that this case illustrates in an exuberant and paradigmatic way, the long known risks and disadvantages that arise from “trial by newspapers”, which are not “fair trials”, the “verdicts” of which lead, at times, to distort directly or indirectly, the course of the investigation and have an effect of detracting attention and even assume, in certain sectors, aspects of a global media orgy and anticipated blame of the those involved in the case as arguidos, with disrespect for the persons’ dignity, including that of the missing girl herself.

As Professor Jorge de Figueiredo Dias commented in “Penal Process Law!, Volume 1, Coimbra Editora, 1974 p.227 and following “This represents a violation of the most basic principles in our penal law, by substituting the legal trial by court, the due process of law, by an absolutely illegal and unconstitutional trial by newspaper. And it is a sociologically proven fact that the excess of publicity of the penal process can even contribute to the creation of an informal system of “penal justice without judgement” where it is clear, irreparable damage is done to the presumption of innocence of the arguido and their fundamental guarantees.”

Within the factual context we could be facing an abduction situation, although all possibilities have always been open, as they continue to be. This abduction hypothesis was investigated exhaustively, all information leading to this and other possibilities having been examined fully. No ransom request was made, nor were there any sufficiently consistent indications to substantiate this supposed abduction.

Within the scope of the inquiries made along this line of investigation, two situations were clarified, with the collaboration of the Spanish and Dutch authorities, leading to the arrest of three individuals, whom had tried to extort money from the family, in exchange for false information about the girl, based on fraudulent artifice. This information, previously mentioned on folio 3 of this dispatch, can be found in the two Letters of Request joined to the files.

The PJ proceeded to interview 112 employees of the Ocean Club resort and Mark Warner company, specifically 15 Child care workers and 2 tennis instructors, as well as 28 informal interviews with employees from this company (fls 848 and 856) whose accounts did not report anything of

relevance.

Inquiries were made in 443 homes in Praia da Luz, in those that were occupied their respective occupants were identified and questioned about any information they might have related to the disappearance of Madeleine McCann or to any strange situation or attitude noticed during the days preceding the event, in the case of being affirmative, witness statements were taken, in order to be formally investigated (fls 198), although no useful result was obtained.

Witnesses were heard who told of incidents involving children, that could not be connected to Madeleine McCann, in particular a Polish couple, on holiday in Portugal, seen to be taking photos of a child with a clear resemblance to the British girl, but again nothing relevant was found in relation to these suspicions (fls 213 to 216).

Photo fit pictures were drawn up, according to the indications of witnesses, who reported situations they described as being strange, specifically of individuals were seen in the proximity of the apartment during the day, but no link to Madeleine could be established.

Images from service stations along the main Algarve roads were visualised, with a negative result. Photos from images recorded at the Lagos A22 service station were shown to the parents, Gerald and Kate, but were not found to be useful (fls 129/133).

Later that night, a request was made to Silvia Baptista, the Maintenance Director, to provide a list of the guests staying at the resort and those who left on 03-05-2007 as well as the identity of the employees of the crèches where the children played during the day.

Fls 12 to 23 contain a photographic report of the site where the events took place, compiled on that night as well as a sketch of the apartment.

On the morning of the 4th, already amongst strong media coverage, the questioning of the whole group was begun (fls 34- 83), questionings that would be repeated later.

Fls 86 – 118 contain a report relating to the identity of the nannies (Catriona Baker and Stacey Portz) and the resort employees, as the two nannies were those responsible for the children of the McCann couple they were also questioned informally, nothing unusual was reported by them, however they questioned formally later on.

During the following days, with the participation of more than 100 PJ investigators, the enormous amount of diverse news about the disappearance was explored, numerous inquiries being carried out.

With the multiplication of supposed sightings and locations, Apenso V was opened to systemise the reports indicating the alleged presence of the girl in various locations around the world as well as the hundreds of inquiries made to confirm them. This annex is composed of 14 volumes.

The disappearance of the British girl, under the circumstances mentioned previously, implied the involvement of the most diverse entities, especially the intervention of the PJ, which was joined by other police authorities. In parallel, this disappearance drew the unprecedented attention of the national and international media, with particular emphasis in the UK during the following days in

their peak hour news bulletins, with live reporting from Praia da Luz, as well as programmes specially dedicated to the issue.

Meanwhile, the girl's parents dedicated themselves to making the most diverse contacts and appeals, divulging images of Madeleine, whilst the British authorities opened a permanent and specialised contact line in order to gather information regarding the disappearance, in addition to information from Interpol and other police partners.

This activity (divulgence), as well as the informative aspects coming from the media, aimed to obtain, within the shortest possible period of time, information that would help the investigation in two ways: finding Madeleine alive and the compilation of material concerning the concrete circumstances of her disappearance.

The public's desire to collaborate meant that by means of the most diverse sources and varying means, focussed mainly upon communications directly sent to the police, the PJ received the most varied information.

From 04-05-2007 onwards, initially with a disproportionate rhythm, the PJ was sent thousands of reports of sightings and locations covering the whole of Portugal and multiple locations abroad, from neighbouring Spain to faraway Indonesia and Singapore, the missing girl having been "recognised" in the most varied locations, in multiple situations and company, in such a way that one the same day she was supposedly sighted in locations at a distance of 4.000 km apart.

Some of the information was lacking in any credibility because of the circumstances involved, the remaining information requiring systematisation and due follow-up.

There is a remaining diffused "stain" of sightings and locations (some gaining media coverage, such as those in Belgium and Morocco) that contained scarce, vague, contradictory, incompatible or incongruent elements that merited a treatment whereby, in the future, linked to more solid elements, they could be touched on and resuscitated, and which are also contained in the files.

Those that due to their geography and spatial-time relevance, could be credible were duly explored and included in the main body of the files and respective annex.

These include the deployment on 04-05-2007 to the Lagos GALP service station on the A22, East – west direction for the collection of information. A photograph of the missing girl was shown to all employees present, however no recognition was made; images were made available from the security cameras installed at the site, those recorded between 21.00 on 3rd May and 12.00 on 4th May were analysed. From the images, it was possible to observe the entrance of a couple accompanied by a girl with similar appearance, these photos were collected and printed for analysis. In the West – East direction service station the girl's photo was also shown, with negative results, the same occurring at the Loulé Galp service station.

Following a communication made to the Lagos PSP reporting that in Odiaxere at about 17.00 a woman was seen pushing a pram containing a girl who could apparently be Madeleine, a woman with a corresponding description was found, but when checked she was identified as Maria Isabel C., who was accompanying her niece.

Subsequently and taking into consideration that within the scope of the inquiry 93/05 – 4 JAPTM, an English individual had been investigated for child abuse, it was established that the individual in question no longer resides in Portugal.

Denise Beryl Ashton was interviewed, who on 3rd May reported that two men were collecting money for an orphanage, which did not seem to be true, giving the following description of them: slim complexion, about 180 cm in height, short brown straight hair. He did not have a beard, moustache, earrings or piercings, but was wearing large brown framed glasses. The second individual, who did not speak, was male, Caucasian, aged 40, a bit younger than the first, slim build, she cannot specify his height, short blond hair with dark streaks, straight and brushed forwards.

Meanwhile, the PJ received a communication that on 4th May a Renault vehicle with number plate AQ-23-81 entered the Repsol service station in Vale Paraíso – Albufeira, driven by a Caucasian individual, medium build, aged about 50/60. This individual was closely accompanied by a small girl, light complexion, blond, aged about 3 or 4 years, but after consulting various data bases it was established that there was nothing relevant to report.

Derek Flack appeared before the PJ, an English citizen on holiday in Praia da Luz, staying close to the resort, to report that on the 2nd or 3rd May he noticed an individual (about 1.70 in height, aged 25/35, dark, appearing to be Portuguese, with stubble, dark short hair and wearing a yellow T-shirt) who was standing at the corner of the path looking towards the apartment from which Madeleine disappeared. He added that close to the place where the individual was standing, on the other side of the street, there was a white parked van in which was a person who was later identified as having arrived in Portugal almost five years ago and who lived near Praia da Luz. Since the beginning of April 2007 he had taken up residence within his van. When confronted with the fact that his presence had been noted frequently near to the Ocean Club resort, he admitted that since the disappearance of Madeleine he had gone there regularly to ask British journalists for news about the girl's whereabouts. He added that the reason for his preoccupation stemmed from her being a British girl and being of a "very tender age". Recent investigation of his lifestyle shows that he had nothing to do with the disappearance.

Nuno Manuel Lourenco de Jesus was questioned, he stated that at Praia da Mareta in Sagres, whilst his children played in the sand about 40/50 m away, he noticed the presence of a man equipped with a small camera, taking pictures of his children in a veiled and hidden manner. He saw that the man took more photos of two boys, the sons of a couple who were beside him. He describes the "photographer" as being male, Caucasian, with a Latin look, dark brown hair covering his neck and with a pony tail on top. Aged between 35/40, medium build, about 170 – 175 cm in height. As regards the woman, he can only say that she had short hair, the man was dressed in immaculate white, the woman was shorter than the man. It was not possible to visualise the photographs. It was established that the vehicle he drove was hired on 28-04-2007 in Faro, at the airport by a Polish citizen, who was identified. It was later established that this couple did not have anything to do with the disappearance of Madeleine.

Lance Richard Purser was interviewed, he lives in the Praia da Luz area and recalls having seen, two weeks earlier, an individual aged about 35/40, slim, about 1.70, who would normally wear dark clothes, denim shirt and jeans, dark hair, straight and messy which reached his neck, however it was not long hair. He had a rustic appearance, dark skin, as if aged by the sun, and dark eyes. He says that he saw this individual more than once along the road leading to Praia da Luz, as well as close to a pharmacy in Rua Helena do Nascimento Baptista in Praia da Luz. Each time he saw him the man was alone, he did not notice any vehicles or companions. A photo fit was drawn up based upon this description.

Informal questioning was made of an individual suspected of child abuse and of a guest at the Marsol Hotel, nothing of interest was found.

Inquiries were made to locate and determine the current whereabouts and life style of individuals known to the PJ for the practice of sexual crimes, involving children or adolescents, no link to the disappearance was found.

A British man with strange behaviour and raised suspicions of possibly practising acts of paedophilia and exhibitionism aged between 40 and 50 was reported. This individual would walk around with a long lens camera and appeared to have a special fixation for children. Nothing of relevance was found during the inquiries made.

A bag containing a stone was collected from a cliff in Ponta da Piedade, which was probably left by a fisherman, but not of interest to the investigation.

It was known that on the night of the events being investigated, between 20.15 and 20.30, in the area of the Largo do Chafariz video club a white male, tall, with a beard, aged about 30, of stocky build, whom had never been seen in Praia da Luz previously, was spotted walking around. This was found to be a German citizen who said that at the time of the events he was at home alone, he works in civil construction and had nothing to do with the facts being investigated. When his house was visited, nothing was found of interest to the case.

Following an anonymous phone call stating that the girl was in the house of a Dutch couple in Monte Judeu, inquiries were made at the site, the house having been located and the couple approached, who voluntarily identified themselves. Informally, the couple said that on the night of the events they had been at home, in the company of their daughters aged 14 and 16, who go to local schools. They have lived in Portugal for several years and nothing was found during the visit to their home.

Fls 524 to 531 contain various information communicated to the PJ about sightings of Madeleine in different sites, which were revealed not to be true.

They also contain sightings in S. Pedro da Cova, Gondomar, Senhor da Pedra in Miramar, Vila Nova de Gaia on 07-05-2007, which were found not to be true.

Tasmin Milburn Silence was questioned, who began by saying that she lived in the apartment where the girl was staying when she disappeared, she said that on 30th April at about 08.00 when she was walking to the bus stop, a trip she makes on each school day, she noticed the presence of a male

individual, behind Madeleine's apartment, standing on a path leading to the apartments and apparently looking at the balcony. This happened when she was walking down the road, on the left, the man was standing in front of the balcony, the distance that separated them being the width of the road. At this moment she saw the individual more closely, as she crossed, losing sight of him afterwards. She saw him again on 2nd May. She began to walk up the road on the left hand side, seeing the individual at that moment, standing in front of the Ocean Club reception, this time looking more clearly at Madeleine's apartment, she believes, at the two side windows of the house and part of the balcony. She directly observed the individual, from a distance corresponding to the width of the road. She describes him as: Caucasian, clear complexion, about 1.80 tall, slim build, aged 30/35, with short fair, shaven hair about 1 cm long. He had a big forehead. Nose of a normal size, sharp and pointed. Big ears but flat against his head. A mouth with fine lips, a prominent chin in what she noted to be a sharp face.

She said that she would be able to recognise this individual in person and from photographs and make a photofit. When shown photographs of individuals with coinciding physical and criminological features to the details she had described, the result was negative.

Inquiries were made that led to the identification of an English individual, with a criminal background, namely in crimes of a sexual nature, and who was the target of various inquiries without incriminatory results. Inquiries of the same kind were made with regard to other individuals, without yielding any results of interest to the investigation, as can be found in Apenso VI.

A situation was investigated relating to two individuals, Neil B. and Rajinder B., especially as regards the former, whose information was crossed with Tasmin Silence's witness account, the photofit showing that this was not the same individual. In spite of the inquiries made, including by means of the Letter of Request, nothing was found to link him to the disappearance of the British girl.

Martin Smith was questioned, who said that at the beginning of the Travessa da Escola Primária he saw an individual carrying a child, walking in the opposite direction, at a normal pace, when he passed this individual it must have been about 22.00, being totally unaware that a child had disappeared. Later he states that when he saw Gerald McCann on the news, leaving by plane, he appeared to him to be the individual whom he had seen on the night of 3rd May in Praia da Luz.

This witness was heard again by the Drogheda Irish police on 23-01-08, having been shown a video clip of Gerald McCann's departure by plane carrying one of the twins. This witness maintains his belief that judging by the posture, there seemed to be a probability of 60-80% that the person seen by him at about 21.55 at the previously mentioned place, was Madeleine's father. At this time, Gerald's presence at the restaurant was confirmed by his friends and has not been denied by restaurant employees.

The sighting in Mem Martins on 11-06-2007 is also mentioned and was found not to be truthful.

Hoos Hendrik, owner of an animal crematorium, appeared before the PJ, to clarify that he had nothing to do with the disappearance, contrary to insinuations that had been made.

Fls 3447 contains information provided by the Spanish agency Método 3, that in Vale Barrigas, Sao Bartolomeu de Messines – IC – km 71 7.4 a witness saw a woman hand a blanket wrapped bundle to a man over a 160 cm high metal fence. The woman seen next to the car was similar to Michaela Walczuch: however, from an analysis of mobile phone activity and the activation of antennas, it can be seen that on 4th May 2007, between 15.00 and 17.00, Robert Murat, Michaela Walczuch, Sergey Malinka and Luis Antonio were in the zones of Lagos, Porto de Mós, Penha, Alvor and Praia da Luz, all of these sites being located at a distance of more than 65 km from the place the witness refers to.

Gerald McCann was seen on 07-05-2007 at 14.26 in the centre of Lagos speaking on his mobile phone, asking that no harm should come to Maddie, when it is certain that on the 7th he activated antennas in Praia da Luz and at 14.16 he activated antennas in the centre of Praia da Luz.

Based upon the report containing information, statements and photofits of a possible suspect who could be involved in the disappearance of the girl, which the British police delivered to the PJ on the basis of Gail Cooper's description, the PJ contacted Joaquim José J. M. (Quim Zé) with the aim of locating his whereabouts, concluding that there were no physical similarities with his face nor hair.

Based upon the same report, the PJ was informed that an individual named Augusto looked similar to the photofit, which was dismissed by an acquaintance of his who saw the photofit.

A.K.B. who had been reported to the police, was located and it was found that, in spite of there being some similarities, he was not the same individual as the one referred to in the photofit, as well as taking into account that an analysis of his mobile revealed that he had not activated any antenna in Praia da Luz.

A search was made of the home of M.R.A., who was suspected of crimes of a sexual nature in an ongoing investigation, but nothing relating to the disappearance of Madeleine was found. It was established that the disappearance of Madeleine was not connected in any way with the death of the small Spanish girl Mari Luz Cortés, the only common denominators being the relative geographical proximity and that they were female children of approximately the same age.

Based upon the statement made by the witness Michael Wright in the Letters of Request about the fact that "a George" had seen a couple carrying a child on 04-05-2007, it was established that the situation had already been clarified in May 2007.

Information was also clarified regarding an unknown individual with suspicious behaviour during the days preceding the disappearance, next to a phone booth close to the Golfinho restaurant, no relation being found between the numbers contained in the listings of calls made from that public phone and Madeleine's disappearance.

Equally, it should be emphasised that the arrival of an enormous quantity of news of a fantasising nature and lacking any credibility which obliged the investigation to carry out constant and considerable efforts for their clarification, which assumed even more importance as it was known that time was pressing in the fundamental concern of finding the missing girl.

The result of these inquiries is contained in the files and annexes, thousands of man hours having been spent in drawing them up. The PJ also proceeded to question the parents of the missing girl and the group of friends (fls 34 and following) already referred to on fls 5 of this dispatch:

1. Gerald Patrick McCann – apartment 5 A
2. Kate Marie Healy – apartment 5 A
3. David Anthony Payne – apartment 5 H
4. Fiona Elaine Payne – apartment 5 H
5. Dianne Webster – apartment 5 H
6. Russel James O'Brien – apartment 5 D
7. Jane Michelle Tanner – apartment 5 D
8. Matthew David Oldfield – apartment 5 B
9. Rachael Mariamma Jean Mampilly – apartment 5 B

In summary, of the witness accounts gathered, it is important to highlight the statements made by Gerald, Jane Tanner and David Oldfield.

On 3rd May, the daily routine went as usual, the McCanns having headed for the apartment at 17.30/18.00, accompanied by their children. After this period and until 19.00 they bathed the children, fed them again with light foods, played with them a bit and put them to bed, the parents stating that at about 19.30 the three children were asleep. Gerald remained at the tennis courts until 19.00.

Afterwards the parents had some drinks, got ready for dinner, leaving at about 20.30 in the direction of the Tapas restaurant (a walk of just over one minute). Upon leaving, as usual, they left by the balcony door, which, not locked from the outside, remained pushed to, as this was the shortest route to the restaurant and consequent return, whether to check on the children or whether for their final return.

The checking of the children by that route, was a daily practice, made, allegedly, in intervals of half an hour, which, as shown by the files and which will be taken up further on, was in truth extended to periods superior to one hour.

The McCann couple were the first to arrive at the restaurant, having entered into conversation with a couple who were not part of their group, but also British, their surname was Carpenter. As time passed, the others arrived.

At about 21.00 Matthew and Russel went to check on the children, having first listened at the window, from the outside, of Madeleine's bedroom, located at the facade of the apartment block, on the ground floor. Upon his return, Matthew did not report anything unusual. Russel stayed in his apartment as his daughter was ill.

At 21.05, given that Matthew had not entered to check on the children, Gerald McCann went to the

apartment. He left through the secondary reception, walked up the road for about twenty to thirty metres and entered via the metal gate, next to the apartment, leading to the garden/patio. He entered the apartment via the sliding doors, which, as mentioned previously, were not locked. He crossed the living room and went to the children's bedroom, noticing that the bedroom door was wider open than usual, as he had left it more pushed to. He presumed that Madeleine had got up due to some physiological need. He entered the bedroom and checked that all three children were sleeping calmly. He went to the WC and left via the same route.

Upon coming out of the gate, he met Jeremy Wilkins, an acquaintance of his from tennis sessions, also British, who was taking his son for a walk in his push chair and who was also on holiday at the Ocean Club. He spoke to him for a few moments, before returning to the Tapas at about 21.15.

At 21.10, given her husband's absence, Jane Tanner went to check on the state of her daughter. She left by the reception and walked up the road that passes the entrance to the apartment block. She was not seen by Gerald McCann, nor by Jeremy Wilkins, although she did see them. Gerald had his back to her, however Wilkins was facing the place where Tanner passed.

At the precise moment when she passed the two of them, she noticed, at the top of the road, an individual walking, with a prostrate child across his arms, the child was barefoot and wearing pyjamas, walking in the opposite sense to the entrance to the apartments. She thought it was a father with his child.

She only told of this situation after the disappearance had been discovered and she had associated the two, saying that it was Madeleine, as she was wearing identical pyjamas. A photofit was made, without including facial features, a description of the individual and his clothes was given to the media, in case anyone could clarify who the individual was (fls 1592) – no response was obtained.

At about 21.35, half an hour later, Kate wanted to go and check on the children, Matthew volunteered to undertake this act, as he was also going to his apartment, with the same purpose. He took the usual route and entered the McCann's via the sliding doors, which were open/pushed to.

When he was in the middle of the living room, where there was some light, he saw the twins in their respective cots, as the door was open, however, he did not enter the children's bedroom and therefore could not see if Madeleine was asleep in her bed.

Upon his return, he said that all was well. When questioned, he said that he thought that the children's bedroom was lighter than could be expected if the windows were closed and lights turned off. He could not clarify the state of the window nor why there was light.

Half an hour later (22.00), according to their reports, Kate Healy went to the apartment to check on the children. She entered via the sliding doors, which she closed upon entering, and saw that the children's bedroom door was slightly wider open than they had left it when they went to dinner. Upon closing the bedroom door, she felt a current of air, which led her to inspect the bedroom more carefully, and she noticed that her daughter Madeleine, had disappeared. The bedroom window was wide open, the shutters were raised and the curtains were drawn open. The bed was practically untouched, her daughter's soft toy at the head.

In a state of alert and panic, she searched the whole apartment, not managing to find the girl, which led her to go, already quite upset, to the Tapas restaurant, saying that her daughter had been taken, a clear allusion to an abduction, justified by the fact that the window was open. During this interval, the twins remained alone in the bedroom, asleep. They did not wake during the night, in spite of the number of people present and inevitable associated noise.

The PJ specialist team, which went to the site to collect evidence, excluded the existence of any product that could have been administered to the missing girl in order to maintain her in a state of unconsciousness nor the presence of blood traces.

Having been informed of the disappearance, the whole of the group went to the McCann's apartment, accompanied by Ocean Club employees, who once again searched the apartment and adjacent area, without any results.

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