

**IN WESTMINSTER MAGISTRATES' COURT**

**THE QUEEN V VISCOUNT ST DAVIDS**

**JUDGMENT**

1. In this case as in all criminal cases the burden of proving the case rests on the prosecution. Before I convict the defendant of any of these charges I have to be sure that he is guilty of each one of them. I may convict him of one, two, three or none. The defendant does not have to prove anything. It is the Crown which has brought this case and the Crown has to prove each charge beyond reasonable doubt.
2. The charges arise out of three posts made by Lord St Davids on his Facebook account. The first Facebook post arises out of a television programme which featured Gina Miller a high profile remainder (to use a colloquial term) and Nigel Farage, a frequent leader of UKIP. Lord St Davids made the post on or about 7<sup>th</sup> November 2016. The second and third posts are earlier in time and were posted in September 2016. They arise out of a Daily Mail article which publicized a Mr Sube who had eight children and needed a larger house to accommodate them. There was a photograph of Mr Sube and his family alongside the article. He was said by the Daily Mail to be on benefits.
3. All three all offences are charged under the Communications Act 2003.
4. The post which led to the first charge reads as follows:

*“£5,000 for the first person to ‘accidentally’ run over this bloody troublesome first generation immigrant. This fucking boat jumper comes to our country, then believes she knows better than the people of our country, what is best for us. If this what we should expect from immigrants, send them back to their stinking jungles”.*
5. The second post was uploaded on 11<sup>th</sup> September 2016. Lord St Davids message read as follows:

*“Please will someone ‘smoke’ this ghastly insult to our country. Why should I pay tax to feed these monkeys. A return to Planet of the apes is not acceptable. Doubtless some horrid do gooder will take this post down. I’ll count the minutes.”*
6. Another post was uploaded by Lord St David's later the same day:

*I will open the bidding. £2000 in cash for the first person to carve Arnold Sube into pieces. Piece of shit.”*

7. Section 127 of the Communications Act 2003 requires me to consider the following:
8. Firstly, whether I can be sure the defendant sent the messages concerned.
9. That is not in issue, Lord St. Davids accepts he posted all three posts onto his Facebook account.
10. Secondly, whether the posts are of the proscribed character. In this case it is alleged they are menacing. Menacing is defined in the case of *Collins*: as whether as a question of fact, taking account of the context and all relevant circumstances, and applying the standards of a reasonable person in an open and just multiracial and multi-faith society, it was proved that a particular message was of a menacing character, ie would have created a sense of apprehension or fear in a person of reasonable fortitude who received or read it.
11. Lord St Davids says the messages were a joke. To gain attention. To provoke. As a bit of fun. As a conversation piece for his Facebook friends. He said they were not menacing. He said what he had written was a piece of political comment or satire.
12. He called three character witnesses who said that is the sort of man he is. He enjoys causing a stir. He holds his views passionately. He likes the attention (those are my words not his). His witness, Ms Kivel, made an interesting comment about the posts, she said the people who did not know Lord St Davids, might take offence whilst people who did, would not. Another witness, Mr Siddiqui, was asked if he felt menaced by the posts, he said if seen by genuine friends they were not offensive but if seen by people who didn't know Lord St Davids, that was different.
13. But what did the posts say? The post underlying charge 1 put a bounty on Ms Miller's head. Lord St Davids was making an offer to kill a woman who had never been a public figure until she followed her clearly strongly held views by pursuing an action through the courts. By mid-November various people had sent her the post and she was genuinely shocked. She felt violated, angry and upset by what she read. This latest threat was added to the others she had received and together the threats led to her employing security personnel to keep her and her family safe.

14. I have no doubt that the first post was menacing. Lord St Davids was offering money to have her killed. Any reasonable person reading that post would have felt a sense of apprehension at the very least or fear, as Ms Miller did, when they read it. It was a posting on Facebook. I do not accept that Lord St Davids did not understand that the post could be shared and not just seen by his friends. Any Facebook user shares and has shared any number of others' posts. There is nothing private about a Facebook post in these circumstances.
15. Lord St Davids made the point that if the post was really menacing, he would not have done this on his Facebook page but in another breath he said essentially this is the sort of thing he posted all the time. He argued that a reasonable man would know he did not mean the threat he made. He contended that the posts were just political discussion. A literary technique. Lord St Davids told the court the comments were uninhibited and spontaneous. If they had been he would have removed them within a few hours and felt a sense of shame.
16. The defendant argued that if one looks at the full context then no menace was intended. In reply I would say, look at the language he used to Ms Miller, "fucking boat jumper". That is not political debate. He says he was just expressing frustration but the language he used went much further than that. Lord St Davids said that the offers of a bounty were just tongue-in-cheek and that the officer PC Simpson accepted that. He went on to say that looking at the post as a whole he found it to be sinister. The problem is that as his own witnesses said, to someone who didn't know him, they would be offensive. To someone who didn't know him, they would perceive the offers of bounty as menacing.
17. Lord St Davids relied on the timing of the threats and the fact that the police did not arrest him in a speedy manner. The posting was on 7<sup>th</sup> November 2016. Mr Steeples his Facebook friend or acquaintance sent it to Ms Miller on 12<sup>th</sup> November. My understanding is that the post was also sent to PC Partridge on the same day (See page 6). In any event it was provided to the police on 24<sup>th</sup> November. On 26<sup>th</sup> November Ms Miller mentioned the threat as one of many in an article in the Daily Mail. On 27<sup>th</sup> and 28<sup>th</sup> November Ms Miller asked Mr Steeples to re-send the article and he did so. I gave no weight to the contention that she had mislaid the original post. On 28<sup>th</sup> November 2016 officers were investigating the allegations. I do not accept that there was a two month delay before it was looked into. An investigation was mounted not just into this threat but into a number of threats made against Ms Miller.
18. In relation to Mr Sube there was more of a delay. Although Mr Steeples knew about the posts and had sent them to Ms Miller the police investigation started later and the defendant was interviewed at a later time.

- 19 Lord St Davids said in his closing submissions that Ms Miller was seeking notoriety and has exaggerated her reaction to his posts. I noted however that he agreed that she should not be called to give evidence to this court and she was released from her duty to give live evidence. He made it clear to the Crown that he accepted what she said in her statement. Despite this he has tried to go behind what was read to the court by agreement. Lord St Davids has represented himself and has, if I may say, done it in a perfectly competent way. He cannot be expected to know or understand the Criminal Procedure Rules. I do not accept that Ms Miller has made this complaint to seek notoriety, nor do I find exaggeration in her account.
- 20 Likewise Lord St Davids has said of Mr Steeples that he is a professional eavesdropper for journalistic and personal gain. He said he could not remember meeting Mr Steeples. No one has ever complained to him about his Facebook content. He says that Mr Steeples behaved surreptitiously. I accept that Mr Steeples was a Facebook friend of Lord St Davids and therefore the latter's posts will have just dropped down onto his own Facebook page. Mr Steeples did not have to eavesdrop. He wasn't surreptitious. It is of interest that Mr Steeples was a Facebook friend that Lord St Davids did not even know about and whose views were clearly nothing like Lord St Davids. It was because of Mr Steeples concern that the November post was sent on to Ms Miller.
- 21 Turning to the second charge, Lord St Davids asked someone to 'smoke', as he said, "this ghastly insult to the country". He explained to the court today that he meant by that smoking a wild animal out of its lair in a hunt. He made other comments which I will come back to and then he recognized that the post would be taken down. I do not find that a person of reasonable fortitude reading that would have felt a sense of apprehension at the least. That post does not pass the test for one of a menacing character. It is grossly offensive but that is not what you are charged with. I acquit you of that charge.
- 22 Finally the third post. Lord St Davids put a bounty on the head of Mr Sube. A family man who had never harmed him, whose worst offence in his view was that he is a recent immigrant and has a large family. Lord St Davids offered £2000 to the first person, as he put it, to carve Mr Sube into pieces. Lord St Davids then insulted him and called him a piece of shit. Again, I have no hesitation in finding that a person of reasonable fortitude would have felt a sense of apprehension at the very least. Your friends may not have found that menacing but someone who did not know your little jokes would have done.
- 23 It is ironic, I suppose, that you rely on Article 10 which gives you freedom to express yourself. This is a proportionate freedom and this does not allow you to send menacing posts in the way I find you have.

- 24 I find two of the three posts are menacing.
- 25 The next matter I have to be satisfied about is whether the messages were sent by the defined means. It is not in dispute that the posts were sent via a public electronic communications network, namely the internet.
- 26 I turn next to the mens rea. The second step for me is whether I can be sure the defendant committed the two offences either intending the posts to be of a menacing character or whether I can be sure he was aware when he posted the messages that they might create fear or apprehension in any reasonable member of the public who read them
- 27 If I am not sure of these two matters then the posts are not menacing within the meaning of the Act.
- 28 The defendant says the messages were sent as a joke. They were funny. He did not intend them to be viewed seriously. But there were not funny, not a joke, they were sent when Lord St Davids was infuriated. He was angry. They were not meant to be lighthearted comment. As part of his intention, he might well have wanted to provoke but I find the two posts were intended to cause apprehension, at least, amongst some of his Facebook acquaintances, not all of them, as some clearly share his views, and the ones he personally knew did not feel menaced by him. I find Lord St Davids intended them to be of a menacing character. He knew how easy it is for a post to be shared many times over. I have no doubt that the defendant intended the messages to be of menacing character and would have known they would be circulated widely.
- 29 I am sure he committed the two offences: charge 1 and charge 3.
- 30 Finally it is suggested by the Crown that these offences are racially aggravated in the sense that at the time the offences were committed Lord St Davids showed hostility to Ms Miller and Mr Sube based on their race or ethnic origin.
- 31 Lord St David's called three witnesses who said he was not a racist. Mrs Walker is black and Mr Siddiqui is Asian. All three said essentially that he sets out to shock and provoke but is a colourful character with passionately held views.

- 32 Lord St Davids called Ms Miller “this bloody troublesome first generation immigrant. This fucking boat jumper comes to our country, then believes she knows better than the people of our country, what is best for us. If this what we should expect from immigrants, send them back to their stinking jungles”. He tried to justify this to me today. Quite frankly I did not understand what he said. He was so clearly showing hostility to Ms Miller based on her race or ethnic origin that I find it ludicrous that he should say otherwise.
- 33 The grossly offensive things Lord St Davids said about Mr Sube are not accompanying a menacing post. The third charge although menacing is not aggravated by hostility to Mr Sube’s race or ethnic origin.
- 34 I convict Lord St Davids of charges 1 and 3. Charge 1 is racially aggravated as set out above.

Senior District Judge (Chief Magistrate) Emma Arbuthnot

11<sup>th</sup> July 2017