

IN THE WESTMINSTER MAGISTRATES' COURT

THE QUEEN

V

VISCOUNT ST DAVIDS

Sentencing Comments

1. Two days ago I convicted you of sending two menacing posts under section 127(1)(a) of the Communications Act 2003. The first one read 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”.

2. This was posted above a photograph of a debate between Mr Farage, the then leader of UKIP and Mrs Gina Miller who was challenging the Government's approach to Brexit through the courts. At the time of the posting on 7th November 2016 she had won the case in the High Court and it was on its way to the Supreme Court. Her argument was that the decision on Brexit and the invoking of Article 50 should be affirmed in Parliament. In the event she won her challenge and a democratic vote took place.
3. At one point in evidence to this court you justified your post by telling me that as she was a public figure, she was, in my words not yours, fair game. Why public figures deserve this warped behaviour is beyond me.
4. You claimed in evidence the threat and the foul abuse were political debate, a bit of fun, a joke, political satire, hyperbole used as a literary technique which was accepted by people who knew you. Indeed you called one black witness and one Asian witness who confirmed that they were not threatened or insulted by your post because they knew you personally and they said that is the way you are.
5. You told me the post was intended for your friends. The trouble with Facebook is it is not private. One click and the post is shared, potentially all around the world. Any Facebook user knows this.
6. Unsurprisingly due to the obvious menace and language used, Mrs Miller felt frightened. She had already been receiving a number of threats from people like you, people no doubt who should have known better but who somehow thought it was appropriate to abuse this businesswoman.
7. In her words she felt violated, angry and upset by what she described as a post which was grossly offensive and racist. She felt menaced and your threat of a reward for her

killing was one of the main reasons she employed personal security to protect her. I found the post menacing and contrary to section 127 of the Communications Act.

8. The second post you uploaded on 11th September 2016. It followed a racist rant in which you called a black family “monkeys” and suggested the father of the family was a “ghastly insult to our country”. You posted the following:

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

9. I found that post menacing but I have no evidence that the family found out about your threatening post and therefore an aggravating feature is absent. Furthermore that post was not accompanied by racist abuse.

Defence case

10. What was your position in this case?
11. Your case was that no one could have felt threatened by this post and that that was not your intention. You had uploaded them in anger. If you did so, you had plenty of time in which to remove them but they remained before you finally deleted them when you realized that they may get you into trouble.
12. Your problem was that the first post shocked one of your Facebook friends who also knew Mrs Miller and he sent the post to her.
13. You tried on Tuesday afternoon, but failed, to justify the racist abuse by saying Mrs Miller and Mr Sube and his family deserved this language as they were immigrants.
14. You told me proudly in evidence that your family motto is Love of Country and that that is your motivation but it seems to me on the evidence I have seen that you are not motivated by love of country but by your hatred of anybody who has different views to yours and to any who have recently arrived in this country. You show this hatred by publicly directing abusive threats at others which is a criminal offence in this multi- racial society we are lucky enough to live in.
15. Now, two days after I told you you were facing a prison sentence, you tell Probation that you accept the posts were menacing and you now feel sincere remorse for your behaviour. You have had an epiphany in the last two days. You now recognize how offensive your language was and recognize the racially aggravated nature of the first post. This is a sudden conversion after many months when you have expressed racist views as I can see from the bad character evidence (some of which I excluded in the trial).
16. You accept now, your posts were a self-indulgent release of anger. I accept you have an alcohol dependency. At the time you believed your behaviour was an example of freedom of speech.
17. I have heard from Miss Felix, read statements from your character witnesses and take into account what I read in the Pre-sentence report and the evidence I have read. You have medical issues and are recently bankrupt. You have positive sides to your character. You are a founder member of the National Centre of Trauma which is for

the treatment of veterans who suffer Complex Post Traumatic Stress Disorder. You have been an integral part of the team coordinating this venture.

Sentencing guidelines and appropriate starting point

18. The maximum sentence for sending a menacing message is a level 5 fine and/or six months' imprisonment. There are nationally set sentencing guidelines which I am obliged to follow with an appropriate starting point for the sentence.
19. I have to start by determining the offence category:
20. Factors in this case which indicate to me higher culpability are the targeting of a vulnerable victim. Mrs Miller was an ordinary businesswoman temporarily in the public eye who held strong views and was being abused by other trolls. She had to employ security to protect her. The other factor was that the offence was motivated by hostility to her race.
21. Mr Sube was a vulnerable victim, in the sense of having none of the potential support that someone like Mrs Miller can call on. Newly arrived in this country he would be less able to get help for himself, his wife and children.
22. The factor indicating greater harm is the substantial distress and fear you caused to Mrs Miller. Fortunately for you there is no evidence that Mr Sube was made aware of the post.
23. I find that both offences fall into category 1 in the guideline. The guideline tells me that the starting point is 9 weeks custody and the range of sentence I must impose is between a high level community order and 15 weeks custody.

Preliminary View

24. The aggravating features and greater harm caused in this case take the first offence to the higher end of the range. In particular the extreme racial abuse and the distress caused to Mrs Miller.
25. The second offence was not accompanied by racist language and I have no evidence that Mr Sube was made aware of the post. That puts the second offence towards the lower end of the range.
26. I next turn to any statutory aggravating circumstances. I find there are none.
27. Factors reducing seriousness are that you have no relevant convictions. You have been in prison before in Germany but for an entirely unconnected matter. Since two days ago you now feel remorse. I accept you do feel remorse in relation to the menace. In so far as the racial abuse is concerned, it must be said I do not consider your remorse can be felt very deeply and I give you very limited credit for that. I have seen racist posts uploaded by you in August 2016 as well as the September and November 2016 ones. It is clear from the evidence that your views about immigrants are deeply held.

28. I take into account you have a very young daughter and wife who undoubtedly will suffer from their separation from you. I have read your wife's letter and she will have a difficult time whilst you are in custody.
29. As part of the sentencing decision I have to consider the totality principle and ensure the sentence is just and proportionate.

Sentence

30. The sentence on Count 1 will be 12 weeks' immediate imprisonment. It would have been 8 weeks but for the uplift for the racially aggravating feature
31. The sentence on Charge 2 will be 4 weeks'. This will be concurrent to the 12 weeks imposed on Charge 1. A total of 12 weeks is proportionate in the circumstances.
32. The offences are too serious to warrant any lesser sentence.
33. The total will be 12 weeks. You will serve half of the sentence before being released. You will then be subject to post sentence supervision for a year from the date of release. During that period you will comply with any instructions given to you by your supervisor.

Restraining order

34. I make a restraining order in the terms drafted to protect Mrs Gina Miller, Mr Sube and Mr Steeples. It will last for five years from today.

Compensation

35. There is a duty to consider compensation and for the serious type of harm £1000 is suggested. I suspect that does not even begin to meet the cost of security for Mrs Miller. Bearing in mind your limited means I order £500 compensation to Mrs Miller. You will pay that within six months. If it is not paid I make a collection order and no doubt the bailiffs will attend your home and ensure payment is made.

Surcharge

36. I impose a surcharge of £115.

Costs

37. I order you pay £250 towards the costs. I have reduced this because of the order that you pay compensation. That must take priority.

Senior District Judge (Chief Magistrate) Emma Arbuthnot

13th July 2017