



Case No: A20230050

CROWN COURT APPEALS

Southwark Crown Court
1 English Grounds, Southwark
London SE1 2HU

Date: 23/02/2024

Before:

MR JUSTICE BENNATHAN

And

Mrs M Bonsall JP

And

Mr C John JP

Between:

REX

- and -

ROBERT STEWART MP

Claimant

Defendant

Paul Jarvis (instructed by CPS London South) for the Claimant
Paul Cavin KC & Patrick Hill (instructed by Burton Copeland Solicitors) for the Defendant

Hearing dates: 23rd February 2024

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MR JUSTICE BENNATHAN

Mr Justice Bennathan:

Introduction

1. It has never been the law of England that people are not allowed to argue. It has always been the case that at times differing political views have been expressed in loud, angry terms. Both the common law and the rights enshrined in the European Convention on Human Rights make clear that the law needs to allow space for those angry arguments.
2. In 1976 in *Handyside v UK*, for example, the European Court of Human Rights stated that freedom of expression “*constitutes one of the essential foundations*” of a democratic society and applies “*not only to information or ideas that are favourably received or regarded as inoffensive or as a matter of indifference, but also to those that offend, shock or disturb*”.
3. In *Campaign Against Antisemitism v DPP* in 2019 the High Court stated that the law does not proscribe or restrict words and behaviour simply because they distress some people, or because they are provocative, distasteful, insulting or offensive.
4. None of these principles, however, mean that members of the public and indeed politicians are not entitled to the protection of the courts when a line is crossed, and the criminal law is broken. To proffer that protection in a way that also acknowledges freedom of expression, in a case such as this, the senior courts have made clear that:
 - (1) First, the word “likely” as in “likely to cause harassment alarm or distress” should not be read down to mean “might” or “could conceivably” [*Parken and Norman*, in the Divisional Court in 1982].
 - (2) Second, “harassment, alarm” and “distress” are relatively strong words as befits an element of an offence which carries imprisonment or a fine [*R v DPP*, in the Divisional Court in 2006]. We must approach this case with that in mind.

Facts

5. On 14 December 2022 Robert Stewart, a Member of Parliament, was queuing to enter a reception given by the Bahraini government at Lancaster House. There was an exchange of words that have led to the conviction that is now the subject of this appeal. The facts of what took place are almost agreed, so we take the liberty of dealing with

them shortly. Although technically the parties are the Appellant and the Respondent, we use the more normal terms of Prosecution and Defence.

6. Outside the venue for the event there was a protest. Those protesting argue that the Bahrain government is undemocratic, oppressive, and amongst its other misconduct, engages in torture of its political opponents. Amongst those protesting was Sayed Al-Wadaei who has himself told of being tortured and having to seek refuge in the United Kingdom. Mr Al-Wadaei, he told us, knew Mr Stewart as he has frequently protested about the conduct of Bahrain and the latter is supportive of the Bahrain government. Mr Stewart testified he had no memory of meeting Mr Al-Wadaei before, but conceded he may have encountered him when entering a Bahraini event at the Dorchester Hotel some years earlier. We would add, by way of comment, it is no part of this Court's job to choose who is in the right in their differing views on Bahrain.
7. As Mr Stewart walked away from the queue outside the venue there were the following exchanges, captured on film. The evidence, it seems to us, is that they were between Mr Al-Wadaei and a Mr Ali on the one side and Mr Stewart on the other.
 - Mr Al-Wadaei: Bob Stewart, for how much did you sell yourself to the Bahraini regime?
 - Mr Stewart: Get stuffed, Bahrain's a great place, end of.
 - Mr Al-Wadaei: You were paid by them recently.
 - Mr Stewart: Go away, I hate you, you make a lot of fuss, go back to Bahrain.
 - Mr Al-Wadaei: How dare you accept money from that dictatorship.
 - Mr Ali: 15 years on...Bahrain arrested my father who is 75 years old.
 - Mr Al-Wadaei: Bob Stewart, for how much did you sell yourself to the Bahraini regime?
 - Mr Stewart: I didn't now shut up you stupid man.
 - Mr Ali: You are stupid....
 - Mr Al-Wadaei: How much, did you accept any money from the Bahrain regime?
 - Mr Stewart: You're taking money off my country, go away.
8. We note from the film that the people milling around and near Mr Stewart do not seem alarmed or shocked by the exchanges. Mr Al-Wadaei's comments do not seem in any

way stifled or affected by Mr Stewart's replies. Indeed, from the film it appears that as Mr Stewart rounds the corner, Mr Al-Wadaei carries on making similar comments, asking about money received from the Bahraini state. Mr Al-Wadaei accepted, having been played the film, that he did indeed do so.

9. The aftermath of those exchanges was the prosecution of Mr Stewart, and on 3 November 2023 at Westminster Magistrates Court he was convicted of the racially aggravated form of an offence against section 5 of the Public Order Act 1986. The appeal we have heard is by way of a rehearing.
10. In addition to evidence of the agreed exchanges between the two men, we heard evidence called by the Prosecution from Mr Al-Wadaei, Mr Moosa Mohammed and Detective Sergeant Daniel Parker. By way of defence evidence, we heard from Mr Stewart and a number of witnesses who gave evidence of Mr Stewart's good character.
11. Mr Al-Wadaei told us a little of his history. He was born and raised in Bahrain. He had been involved in protests in Bahrain that led to his being imprisoned and tortured by the Bahraini state. Those events led him to flee to the UK where he has sought refuge. In England he has worked tirelessly to draw attention to what he says is the misconduct and abuse of human rights by the Bahraini government. He happily accepted that on occasions he was prepared to join in disruptive demonstrations, once throwing himself on the King of Bahrain's car in protest at the monarch being hosted at Downing Street. As part of his work and researches he had become aware of Mr Stewart. In his view Mr Stewart was someone who had accepted the lavish hospitality of the Bahraini state and allowed that to colour his publicly expressed views. He had once previously confronted Mr Stewart when he, Mr Stewart, was entering the Dorchester Hotel to attend a Bahraini government reception. On that occasion Mr Al-Wadaei raised the plight of prisoners in Bahrain but, he said, Mr Stewart was dismissive of his concerns.
12. On 14 December 2022 Mr Al-Wadaei attended outside the reception to protest. He did not know Mr Stewart would be there, but it occasioned him no surprise when he was. He agreed he shouted the comments on the agreed transcript. His told us the comments about receiving money related to accepting lavish hospitality, not taking bribes. He was asked what he made of Mr Stewart's replies and his answer, which we accept as a

completely honest attempt to describe his feelings, was that at the time there was too much going on but later [perhaps the same day or soon thereafter] when he watched the film of the exchanges he became upset as he felt the various references to him as a foreigner [“go back to Bahrain” and “You’re taking money off my country, go away”] were dehumanising and racist. It was that view of those comments that led him to take this matter up with both the Metropolitan Police and the Conservative Party. In passing we would observe that such a reaction was unsurprising, especially in the context of a torture victim being told to go back to where he had been tortured. We also note that Mr Stewart later gave at least a partial apology for his words on that day, and we think he was right to do so.

13. Mr Moosa Mohammed gave evidence that he had taken the footage that we have discussed at length. Detective Sergeant Parker spoke of interviewing Mr Stewart who gave a prepared statement. Mr Parker also produced an agreed note Mr Stewart’s public comment, via the BBC, in which he expressed a degree of contrition for his words that day, though it stopped very short of any sort of apology to Mr Al-Wadaei. In essence Mr Stewart said that he felt he was being accused of corruption and was so affronted that he spoke unwisely but had no intention to cause harassment alarm or distress and had no racial ill will towards Bahrain or any Bahraini.
14. Mr Stewart gave evidence. He told us about his distinguished military career, in which he had on occasions acted decisively to save Muslim lives in Bosnia. He spoke about his long affection for the countries of the Middle East, especially Bahrain. After becoming an MP in 2010 he joined the All-Party Group on Bahrain and at some stage thereafter became its deputy chair. He would characterise his stance on Bahrain as being that of a critical but supportive friend. He told us that on visits to Bahrain he would meet with opposition parties, at least those not banned, and would urge the government or even the King to change policies by, for example, abolishing the death penalty. He accepted he would be flown and accommodated at Bahraini expense but made clear he had declared all such payments on the appropriate register at Parliament.
15. Mr Stewart told us about the exchanges with Mr Al-Wadaei and, to an extent, the other few protestors. In essence Mr Stewart told us he was so affronted by the attack on his honour and integrity that he spoke, if not in anger, then in upset. None of his comments,

he told us, should be understood as racist or even to suggest that foreigners are not welcome in the United Kingdom. They were confined to fierce rebuttals of the allegations he was facing, even if he could [and should] have chosen his words more carefully or still better, he said, have remained quiet.

16. Mr Stewart was cross examined and asked a few questions by the Court. We choose a short selection:

- (1) He was asked why say “Go back to Bahrain” unless you are choosing to seize on Mr Al-Wadaei’s foreignness and telling him to leave “your” country. Mr Stewart said he meant that Mr Al-Wadaei should go and protest in Bahrain where he would be safe to do so. This might not be the most natural meaning of that phrase, but that was Mr Stewart’s account.
- (2) The Court asked Mr Stewart whether, had he known Mr Al-Wadaei had been tortured in Bahrain, he would still have told him to go back there. After some hesitation Mr Stewart answered, “probably not”.
- (3) Mr Jarvis, for the Prosecution, asked Mr Stewart about the phrase, “You’re taking money off **my** country. Go away” [with emphasis added by Mr Jarvis to the word “my”]. What was that, asked Mr Jarvis, if not telling Mr Al-Wadaei he was a foreigner scrounging on the British state? Mr Stewart’s explanation was that he meant that Mr Al-Wadaei was doubtless taking advantage of the many benefits of life in England, in the same way he, Mr Stewart, did, giving the examples of the National Health Service, transport and the school system. It is difficult to see how that benign explanation sits with the context, a comment addressed to a man who has incurred Mr Stewart’s profound displeasure and a comment, what is more, followed immediately by the words, “Go away”.
- (4) The Court pursued that answer and Mr Stewart accepted that, to one listening, that last comment by him might be understood differently.

17. The character evidence began with the evidence of an eminent retired Judge and active Peer, Baroness Butler-Sloss. She spoke of Mr Stewart as a man who had never showed any sign of racism and who, for a former soldier, was surprisingly emotional. She spoke of seeing him get upset when his honour is questioned. We then heard three other witnesses’ evidence read:

- (1) Dr Suzana Louth: She met Mr Stewart in Bosnia in the conflict. He was appreciative of the work of his interpreters [who were local and thus, obviously, foreigners]. He is kind and caring and driven by empathy and compassion.
- (2) Frank Shivers: He wrote of Mr Stewart as honest and caring and one who had, during his time in Northern Ireland, acquired the respect of the local population.
- (3) Adam Holloway MP: He has known Mr Stewart since about 1992 when they met in Bosnia. Through his force of personality and extraordinary leadership he was able to save many thousands of lives. He is a man of rare quality, honesty, integrity, and a sense of justice.

Law

18. An offence under section 5 of the Public Order Act 1986 can be committed in various forms. For the sake of simplicity in this judgment, we set out the version said to have been committed by Mr Stewart:

A person is guilty of an offence if he uses abusive words within the hearing or sight of a person likely to be caused harassment, alarm, or distress thereby.

It is a defence for the accused to prove that he had no reason to believe that there was any person within hearing or sight who was likely to be caused harassment, alarm, or distress.

19. Under the normal legal principles, the Prosecution would have to make us sure of the first part of what we have just quoted, whereas the defence would need to persuade us on the balance of probabilities of the second.

20. The mental element of the section 5 offence is set out in section 6 of the same Act and, isolating the elements that apply to the alleged conduct in this case, is:

A person is guilty of an offence under section 5 only if he intends his words to be threatening or abusive or is aware [they] may be threatening or abusive.

21. The provisions that define the racially aggravated form of this offence are contained in section 28 of the Crime and Disorder Act 1988:

An offence is racially aggravated if—

- (a) at the time of committing the offence, or immediately before or after doing so, the offender demonstrates towards the victim of the offence hostility based on the victim's membership (or presumed (by the offender) membership) of a racial group; or
- (b) the offence is motivated (wholly or partly) by hostility towards members of a racial group based on their membership of that group.

22. In our introductory remarks we have already touched upon the interplay between the offence under appeal and the right to freedom of speech.

23. We express our gratitude to all Counsel in the case, Mr Jarvis, Mr Cavin KC and Mr Hills, for their focused and eloquent submissions of both law and fact. They have all been very helpful to us in our task today.

Discussion

24. There are numerous questions we would need to answer in this appeal dealing with all the elements of the offence and, if we got that far, the aggravated form of the offence. For reasons that will become apparent, we focus our attention on the first two aspects:

- Question 1: Are we sure Mr Stewart was abusive?
- Question 2: Are we sure Mr Stewart's words would be likely to cause harassment, alarm or distress?

Question 1

25. In *Hicks v DPP*, a decision of the Divisional Court in 2023, the Court considered the meaning of "abuse" in the section with which we are concerned. The Court made clear that the right to freedom of speech meant the word should not be given too mild a meaning: The merely insulting, for example, would not be sufficient. The tone in which the words were spoken could be relevant but tone by itself could not convert the non-abusive to the abusive. It is an objective test, that is to say it is not what the speaker meant, or the listener felt, though the views of either can be relevant. Ultimately, whether the words used are abusive is a question of fact for the Court to resolve.

26. We are sure the words spoken by Mr Stewart do reach the level of severity to amount to abuse, even making proper allowance for the Article 10 rights or the common law equivalent. In the short passage rehearsed already, Mr Stewart said “get stuffed”, “I hate you”, “Go back to Bahrain”, “shut up you stupid man”, and “you’re taking money off my country, go away”. Putting those words together with his manner, which was aggressive and dismissive, his outpouring was clearly abuse. That conclusion is reinforced by Mr Al-Wadaei’s view, upon replaying the exchanges, that the comments were racist. As we have already said, his view is not determinative, but neither is it irrelevant. We note that Mr Stewart, in answers to the Court, more or less admitted his final comment could be perceived as racist.

Question 2

27. For reasons already addressed, the word “likely” and the test of “harassment alarm or distress” should not be diluted. The situation that led to the brief verbal exchanges at the heart of this case was a conversation, if that is not too mild a word, started by Mr Al-Wadaei. All Mr Stewart’s responses were clearly addressed to Mr Al-Wadaei. In our judgment it follows that the only candidate for being caused harassment alarm or distress was Mr Al-Wadaei. Of course, in another case on other facts, it is perfectly possible for answers aimed at one person to cause harassment alarm or distress to someone else, but not here.

28. The words used by Mr Al-Wadaei were direct and at least accused Mr Stewart of having his judgment swayed by the hospitality of the Bahraini government, on another perfectly reasonable interpretation he was accusing Mr Stewart of exchanging his conscience for cash. Mr Al-Wadaei has spoken of why he said what he said, but our focus here is on what an observer would make of all this, not what was in fact his actual intent. We pause to add the comment that in protesting in favour of human rights and freedoms in Bahrain Mr Al-Wadaei was carrying out a perfectly proper exercise of his right to protest, and that type of protest has a long and honourable tradition in English political life, but his words set the context for Mr Stewart’s replies.

29. Would a reasonable observer think that the person who started this exchange in what were obviously robust terms would be likely to be caused harassment alarm or distress by the replies he then received? In order for the Prosecution to get past this hurdle, they would have had to make us sure the answer is “yes”, but we are driven to the answer being “no”. If our view needed any reinforcement the fact that even after Mr Stewart’s abusive comments, Mr Al-Wadaei carried on addressing him in similar terms and seemingly at the same pitch, scarcely suggesting to any observer that he had been very profoundly upset [or more accurately caused harassment, alarm or distress]. It follows that we are not sure that Mr Stewart’s words amount to the offence under section 5 of the Public Order Act 1986, and therefore the other questions we might have had to address no longer arise.
30. Our conclusion is offered powerful support by what we accept was the careful and honest answer given by Mr Al-Wadaei about the effect of Mr Stewart’s comments on him: The effect of his answer was that he was not much bothered at the time but later, on repeated re-viewing, felt the answers were racist, which upset him. The feelings of the person against whom the abusive comments are aimed is not determinative, but it is relevant. A state of “upset” is not sufficient, for the reasons we have already set out, to amount to “harassment, alarm or distress”.

Conclusion

31. For these reasons we allow this appeal and quash Mr Stewart’s conviction.
32. We are told there is a defence application for costs. With the agreement of all parties and of Mrs Bonsall JP and Mr John JP, this issue will be resolved on the papers by Mr Justice Bennathan. The Defence should submit their application within 21 days of today’s date, and the Prosecution should lodge any reply within 14 days thereafter.

