Courts and Tribunals Judiciary

District Judge (Magistrates' Courts) John McGarva

IN THE WESTMINSTER MAGISTRATES' COURT

REX

V

HAMIT COSKUN

JUDGMENT
[including sentence remarks]

[1] The defendant faces 2 charges-

1. Hamit COSKUN, on 13 February 2025, in the vicinity of the Turkish Consulate at Rutland Gardens, London SW7, used disorderly behaviour within the hearing or sight of a person likely to be caused harassment, alarm or distress thereby, in that he set fire to a copy of the Qu'ran and held it aloft while he shouted, 'Fuck Islam' and 'Islam is religion of terrorism' and 'Qu'ran is burning', and at the time of doing so, and in doing so, he was motivated (wholly or partly) by hostility towards members of a religious group, namely followers of Islam, based on their membership of that group.

Contrary to section 31(1)(c) of the Crime and Disorder Act 1998 and section 5 of the Public Order Act 1986.

2. Hamit COSKUN, on 13 February 2025, in the vicinity of the Turkish Consulate at Rutland Gardens, London SW7, used disorderly behaviour within the hearing or sight of a person likely to be caused harassment, alarm or distress thereby, in that he set fire to a copy of the Qu'ran and held it aloft while he shouted, 'Fuck Islam' and 'Islam is religion of terrorism' and 'Qu'ran is burning'.

Contrary to section 5 of the Public Order Act 1986.

[2] The prosecution has the burden of proving the case and to do so they must make me sure of the defendant's guilt. The defendant does not have to prove his innocence, but he does have the benefit of a defence if he can raise evidence that his conduct was reasonable in which case the prosecution then has to make me sure he was not acting reasonably.

[3] The defendant is a man of previous good character, this is not a defence but is important in 2 respects, in his evidence he must be viewed as less likely to lie and he must also be viewed as having less propensity to commit the offence.

[4] The elements of the offence are set out in the charges. In this case the prosecution says the defendant acted in a disorderly way within the sight of someone likely to be caused harassment alarm or distress. There is no statutory definition of disorderly, it has its every day meaning, it does not have to involve violent conduct. The offence under section 5 no longer includes insulting behaviour. The mens- rea of the offence is set out in section 6[4] Public Order Act 1986-

A person is guilty of an offence under section 5 only if he intends his words or behaviour, or the writing, sign or other visible representation, to be threatening or abusive, or is aware that it may be threatening or abusive or (as the case may be) he intends his behaviour to be or is aware that it may be disorderly.

[5] Any citizen has rights under articles 9, 10 and 11 of the European Convention on Human rights, which are freedom of thought, religion and freedom of expression and assembly. The court must be satisfied that any interference with those rights is for a permitted purpose and is necessary and proportionate. The right of freedom of speech and the right to protest are key features of our democratic society. If the rights are engaged, I must carry out a proportionality assessment.

[6] The prosecution has been presented by agreed facts, so I have not heard any witnesses, however I have viewed 2 films of the incident, one which has audio. It is agreed that the defendant travelled from his home to London on 13th February 2025 and positioned himself outside the Turkish Consulate in Rutland Gardens London. Once there he set light to a copy of the Quran which he had purchased for that purpose. He held the burning book aloft and shouted, "*Islam is the religion of terrorists*" and "*The Quran is burning".* A man came out from an adjacent property and told him he was a "*fucking idiot*", The defendant responded fuck you repeatedly. The defendant repeatedly said, "*fuck Islam*" The man said he was going to kill the defendant; he went back inside and came out shortly after a launched a savage attack on the defendant with a knife and kicked and spat at the defendant. The defendant was also kicked by a passing delivery driver. The defendant only used the "f" word after he had been called a fucking idiot. After that he did use the word repeatedly.

[7] The police arrived shortly after and found the defendant was injured so he was taken to hospital. He was subsequently arrested and interviewed with the assistance of an interpreter and a solicitor. The police had noted at the scene that the defendant's command of English was limited. In his ruck sack was a t-shirt which had the words "*Islam is a terrorist ideology. The Quran should be banned*".

[8] The defendant was interviewed under caution and was assisted by an interpreter and represented by a lawyer. He told the police that he had decided to burn the Quran because he had studied it extensively and that it incited people to terrorism and encourages the beheading of non-believers. He gave an account about his background and his life in

Turkey which included time in prison for crimes he did not commit. He said he has been an atheist since he was 15 years old. He said he did not have a problem with Muslims, but he is unhappy that Islam is spread by violence. Prior to travelling to London, the defendant had put a post on his social media account saying he intended to burn a Quran at 1400 hours on Thursday [13]to protest the Islamist Government of Erdogan who has made Turkey a base for radical Islamists and is trying to establish a Sharia regime.

[9] At the conclusion of the prosecution case the defence made submissions that the prosecution was an abuse of the court process. The application was supported by a 20-page skeleton argument which I have read. This sets out a comprehensive review of the law. The defence submission in summary is that this decision to prosecute is a type 2 abuse of process- that is to say it is a manipulation of the process. The defence say that this prosecution is an attempt to bring back the law of blasphemy which was abolished in 2008 and to expand it to include Islam. Miss Thorne KC also relied on section 29[J] of the Public Order Act which says-

Nothing in this Part shall be read or given effect in a way which prohibits or restricts discussion, criticism or expressions of antipathy, dislike, ridicule, insult or abuse of particular religions or the beliefs or practices of their adherents, or of any other belief system or the beliefs or practices of its adherents, or proselytising or urging adherents of a different religion or belief system to cease practising their religion or belief system.

She says this confirms that it is not an offence to criticise any religion.

[10] The prosecution responded. Mr McGee reminded me that a stay for abuse is an exceptional remedy to be exercised with restraint and that decisions to prosecute should rarely be interfered with. He cited the case of **NG** which I referred the parties to. More than negligence or error is required to establish a type 2 abuse. He contended that section 29 J Public Order Act only applies to part 3A of the Act.

[11] I accept that the Magistrates' Court may regulate its own process and has the power to stay cases both where it would not be possible for the defendant to have a fair trial and

also where there has been a manipulation of the Court process which is an affront to the integrity of the Criminal Justice system [see **Mansfield v DPP**]. The burden of proving an abuse rests with the defendant and the standard of proof is the civil standard, that is on the balance of probabilities. A stay is an exceptional remedy to be exercised carefully.

A useful summary of the law was given by the Lady Chief Justice in R v **Ng** which was cited by the Court in the case of **DPP v Barton** [2024 EWHC 1350].

1. *These principles were recently affirmed and applied in R v Ng and others [2024] EWCA Crim 493 at paras 20 to 25. In that case Lady Carr of Walton-on-the-Hill LCJ emphasised that the power to stay criminal proceedings as an abuse of process is an important though exceptional remedy to be exercised with care and restraint. As she explained, a stay of proceedings is the exception, not the rule and is a measure of last resort. She further observed that within Category 2 abuse, fall cases where the police or prosecuting authorities have engaged in misconduct, and that such abuse is by its nature very rarely found (such cases will be "very exceptional"). The second limb does not arise unless the defendant charged with a criminal offence will receive a fair trial and something out of the ordinary must have occurred before a criminal court may refuse to try a defendant when that trial will be fair. There is a two-stage approach when considering Category 2 abuse. First, it must be determined whether and in what respect the prosecutorial authorities have been guilty of misconduct, such as very serious examples of malpractice and unlawfulness (as opposed to state incompetence or negligence). Secondly, it must be determined whether such misconduct justifies a stay on the ground of abuse of process. This requires an evaluation of the particular facts and circumstances of each case, weighing the public interest in ensuring that those charged with crimes should be tried, against the competing public interest in maintaining confidence in the criminal justice system.*

It can be seen a case will only be stayed in exceptional circumstances and bad faith rather than negligence is required. There was a real problem with the original charge which referred to Islam as if it were a person when it is not. I do not find that this prosecution is an attempt to bring back and expand blasphemy law. The facts of this case require consideration and a decision needs to be made as to whether the defendant's conduct was simply him exercising his right to protest and freedom of speech or whether his behaviour crossed a line into criminal conduct. The trial process will ensure that that decision is made with integrity. The court will need to consider proportionality, and this will involve consideration of the defendant's article 9 and 10 rights. Criticism of Islam is not what the defendant is charged with, he is charged with disorderly behaviour. Section 29 J of the Public Order Act 1986 only applies to offences created by part 3 A of that Act and the defendant has not been charged with such an offence. That said it is clearly not an offence to criticise a religion. In this case the Court needs to decide whether this was just a criticism of religion or whether it was more. The defendant has the benefit of a defence if he can raise evidence that his conduct was reasonable in which case the prosecution will be required to make me sure it was not. The defendant has not established an abuse of process on the balance of probabilities, and I therefore decline to stay the proceedings.

[12] The defence then contended that there was no case to answer. They relied on both limbs of Galbraith to say-

[a] there is no or insufficient evidence for a court properly directed to find the defendant acted in a disorderly manner.

[b]there is no or insufficient evidence to show the defendant was motivated by hostility to a particular group.

[c]there is no or insufficient evidence that he was aware his actions would be or maybe disorderly.

[d] a conviction would not be a proportionate interference with his convention rights.

Miss Thorne set out her argument in writing and Mr McGee provided a written response.

[13] I have determined there is a case to answer. I did not give reasons at the time because I am the fact finder in this case. The short answer to the four submissions, is that it is a question of fact for the court. There is material which could entitle the court to conclude the defendant's behaviour was disorderly. There is material which could lead the court to the view his conduct was motivated by hostility to Muslims, rather than Islam in general in his interview with the police. There is evidence he knew his decision to burn the Quran would be provocative. Proportionality is a protection he has the benefit of and the exercise could be in favour of a conviction.

[14] The defendant gave evidence. He told me at length about growing up in Turkey. His father was Kurdish and his mother Armenian. His mother's family had been victims of the Armenian genocide in 1915. He is an atheist and wants to live in a secular society. He is unhappy with President Erdogan's regime in Turkey and believes it is steering Turkey towards a non-secular future governed by Sharia law. He believes the Quran contains passages used by terrorists to justify jihad. He says he has no quarrel with Muslims but that he wants to criticise the institution of Islam something which is his right in a free and democratic society. He accepts he made social media posts with the help of google translate. Those posts made it clear that he wanted to protest about the Turkish Government. He says that at the scene before the audio starts on the film footage, he said that he was there to protest about the Turkish Government. The defendant did confirm that he had burned another Quran at home and posted it on social media he had had received some comments, some positive but some negative. Someone had threatened to come round and kill him, and they accompanied the message with a video showing beheadings. He was asked about a section in his interview where he was asked whether he considered he was a terrorist and where amongst other things he said 99 % of thosem rapists are Muslim.

[15] He was not a helpful witness. He repeatedly avoided the question, preferring to answer the question he had wanted to be asked rather than the one which was asked. I did warn him that I was assessing his evidence, and it was something I would take into

account in gauging his truthfulness, I did that to be fair and to try and get the best evidence from him. He repeatedly said that his argument is with the institution of Islam and not individual Muslims. In assessing him I do have to be conscious that his English is limited. In his evidence he talked about Islam being the religion of terror whereas on tape he can be heard to say Islam is the religion of terrorism.

[16] The distinction the defendant draws between Islam and its followers is important. I need to decide whether it is sustainable. A study of his interview with the police shows that it is hard to separate his views about the religion in general from his views about its followers. In his interview he said "*I do not have any problem or prejudice against Muslim people so long as they do not use violence…This is their human rights…I am just against thinking of these people, religious trying to spread religion. The base of this religion is this. There is a thinking. That thinking is just inciting people to use violence. It's causing people to just destroy anyone who does not believe or think in the same way as they do. That's what I am against*". Later on when asked what he meant by terrorist in the video he says "*Through the instructions of order of Quran really. Those who do not believe of Muslim people, Atheist, Christian. Terrorists are people who just follow rules of the Quran book to destroy anyone who do not believe in their own, their way. That's the ideology of Islam. They initially just invade, then they keep getting more and more of themselves. A woman gives a child, breeds children, as many as they can for example other countries and could not wait and when they got bigger, they just destroy the others. They corrupt other properties or anything that they own and use their children as slaves. I mean that's the way that Islam is designed, nothing else. I mean can you imagine a book is allowing paedophiles to do what they are doing* ".

[17] Having considered the evidence I find that the defendant has a deep-seated hatred of Islam and its followers. That is based on his experiences in Turkey and the experiences of his family. It is not possible to separate his views about the religion from his views about its followers.

[18] In this case the prosecution has to make me sure that the defendant was acting in a disorderly way. Making criticism of Islam or the Quran is not necessarily disorderly. Burning a religious book although offensive to some is not necessarily disorderly. In this case the defendant positioned himself outside the Turkish embassy a place where he must have known there would be Muslims. The burning of the Quran was carried out in a very visible way, it being held up and him saying the "*Quran is burning*", that is by its nature provocative. What made his conduct disorderly was the timing and location of the conduct and that all this was accompanied by abusive language. There was no need for him to use the "F" word and direct it towards Islam. His conduct was not violent or threatening but it was disorderly. He was repeatedly swearing both to the world in general and to the man who confronted him particularly. That the conduct was disorderly is no better illustrated than by the fact that it led to serious public disorder involving him being assaulted by 2 different people [neither of whom appear to have any justification for the nature of their response]. It was suggested on behalf of the defendant that the conduct was not disorderly because none of the language was aimed at a particular person but the religion in general, that he was not stopping anyone go about their business and he was not obstructing anyone. The combination of the timing and location of the conduct, the burning of the book accompanied by abusive comments about Islam do satisfy me so that I am sure that his conduct was disorderly. His behaviour was provocative and taunting g, standing holding a burning Quran and saying loudly Quran is burning is clearly aimed at provoking others.

[19] The prosecution must also prove the conduct was in the presence of someone likely to be caused harm or distress. This is clearly the case here; a man took exception to him burning his holy book and a passing delivery rider kicked him when he was on the floor. There were likely to be Muslims in the location who would suffer harassment alarm or distress.

[20] The offences contrary to section 5 Public Order Act 1986 require the prosecution to prove to the criminal standard that the defendant had the necessary intent. This is defined

in section 6[4] of the Act which is set out above. He must intend his conduct to be or be aware his conduct would be threatening, abusive or disorderly. I am sure that he intended his conduct to be disorderly and was aware it would be. Although he announced he would carry out his protest on social media he knew that burning of the Quran would be provocative. I can be sure about this for a number of reasons. Firstly, when he was interviewed, he stated that he was motivated by the murder of a man who burned the Quran in Sweden, so he knew such actions had provoked an extreme response elsewhere. Secondly, he had posted his own burning of the Quran on social media and received negative comments including threats on his own life. He accompanied the burning of the Quran with abusive language. It would have been easy for him to make his criticism of Islam in neutral language without the abuse.

[21] For the defendant to be guilty of charge 1 the prosecution must make me sure that the defendant was motivated at least in part by hostility toward members of a particular religious group. The defendant in his evidence has claimed his criticism is of the religion of Islam in general not its followers. I do not accept that. He believes Islam is an ideology which encourages its followers to violence, paedophilia, and a disregard for the rights of non-believers. In his mind the defendant does not distinguish between the 2. It was telling that when interviewed by the police he claimed 99 % of rapists were Muslim. I do accept that the choice of location was in part because he wanted to protest what he perceives as the Islamification of Turkey, but he was also motivated by a hatred of Muslims and knew some would be at the location. I am sure that his motivation was in part due to hostility towards Muslims.

[22] The defendant has raised evidence that his actions were a protest and that he was exercising his rights under the European Convention on Human Rights. The prosecution must make me sure he was not acting reasonably. The defendant's actions in burning the Quran where he did were highly provocative. His actions were accompanied by bad language in some cases directed towards the religion and which were motivated at least

in part by a hatred of the followers of that religion. I am sure that in these circumstances his conduct what not reasonable.

[23] Where the defendant establishes to the civil standard that his article 9, 10 and 11 rights are engaged then the Court is required to conduct a proportionality assessment. In this case I have found dual motivation for the defendant's acts, that he was protesting against the Government in Turkey and that he has a hatred of Muslims. In these circumstances the defendant's convention rights are engaged and I must carry out a proportionality assessment.

[24] The first question I must consider is whether the defendant was exercising his rights under articles 9, 10 and 11. Those are his rights to freedom of thought, conscience and religion, his right to freedom of expression and freedom of assembly. I have concluded that he was in part exercising those rights.

[25] I must then go on to consider whether there is any public interference with that right. There is public interference with those rights.

[26]I must then go on to consider whether that interference is prescribed by law. The interference is prescribed by the Public Order act 1986.

[27] I must then decide whether the interference is for a legitimate aim. The aim of the Public Order Act is to prevent public disorder and to control public assemblies. Article 9 is subject to a qualification in so far as it is necessary in the interests of public safety and the protection of public order, article 10 is qualified in so far as it is necessary to promote public safety and prevention of public disorder or crime. Article 11 has a similar qualification. The aim of maintaining public order is clearly legitimate.

[28] Finally is the interference necessary to achieve that legitimate aim. This involves consideration of whether the aim is sufficiently important to justify interference with a fundamental right, is there a rational connection between the means chosen and the aim in view, are their less restrictive means available to achieve the aim and finally is there a fair balance between the rights of the individual and the general interests of the community including the rights of others. The interference is clearly necessary in this

situation to prevent public disorder. The consequences of the defendant's provocative behaviour were that serious public disorder did break out. The effect of criminalising his behaviour is not to punish him for their criminal acts and would not be an encouragement to others to respond in a similar way, the aim is to prevent it happening in the first place. The defendant's conduct was highly provocative, he set fire to Quran at a location where he knew there would be Muslims and he knew similar conduct had provoked an extreme response both elsewhere and on his own social media. He accompanied his actions with a defiant statement that the "Quran is burning" and "Islam is the religion of terrorism" and his behaviour escalated once he had been challenged with his repeatedly using the "f" word. The act of making this conduct an offence strikes the correct balance between the need to maintain good public order and allowing citizens to hold their own religious views where they want to express those views. the Public Order Act does recognise the right of an individual to criticise religion in general and those criticisms could have easily been made in a less provocative way.

[29] I therefore do find so that I am sure that a criminal conviction is a proportionate response to the defendant's conduct. I am sure that the defendant acted in a disorderly way by burning the Quran very obviously in front of the Turkish consulate where there were people who were likely to be caused harassment alarm or distress and accompanying his provocative act with bad language. I am sure that he was motivated at least in part by a hatred of Muslims. I therefore find the defendant guilty of charge 1. As charge 2 is based on the same facts I will adjourn it sine die without an adjudication in case the defendant wishes to appeal to the Crown Court.

[30] Having convicted the defendant it is necessary for me to sentence him. The maximum fine is a fine of £2500. There is a sentencing guideline for this offence. The case comes within category A 1 because a significant disorder was caused, and significant distress was caused. It is made more serious by the fact this was a planned event. On the other hand, the defendant has no previous convictions and has been subject to restrictive bail conditions for some time. Because I have found the offence religiously aggravated, I must

uplift the sentence to reflect that and explain what the sentence would have been without that feature. For an A1 offence the start point is a band c fine based on 150 % weekly income. Because of the racial element I will increase the sentence to a band d fine based on 200 % weekly income. I must assume a weekly income of £120 so the fine is £240, for the non-aggravated version it would have been £180. I must apply a statutory surcharge of 40 % which comes to £96. Because of the defendant's lack of means the prosecution did not apply for a contribution to their costs. I make a collection order and payment is to be at £20 per month first payment within 28 days.

DISTRICT JUDGE [MAGISTRATES' COURT] JOHN MCGARVA

WESTMINSTER MAGISTRATES' COURT

2nd June 2025

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