Rex v Hamit Coskun

Judgement on appeal

Southwark Crown Court

Hearing on 9th and 10th October 2025

Introduction and law

1. This case is about the appeal of an individual appellant against his conviction of an offence under section 5 of the Public Order Act 1986 ("section 5"). It must turn on the facts of his particular case. There are, however, some important matters of principle which are central to our decision so we begin our judgement by setting them out. It would be presumptuous of us, sitting as a court of second instance, to purport to make new law and we do not do so: What follows are clear and well-established propositions in the law of England and Wales.

2. There is no offence of blasphemy in our law. Burning a Koran may be an act that many Muslims find desperately upsetting and offensive. The criminal law, however, is not a mechanism that seeks to avoid people being upset, even grievously upset. The right to freedom of expression, if it is a right worth having, must include the right to express views that offend, shock or disturb.

3. We live in a liberal democracy. One of the precious rights that affords us is to express our own views and read, hear and consider ideas without the state intervening to stop us doing so. The price we pay for that is having to allow others to exercise the same rights, even if that upsets, offends or shocks us.

4. The criminal courts *will* interfere to protect people. A person who acts so as to cause harassment, alarm or distress to another may commit an offence.

5. These propositions have been articulated in numerous decisions of the appellate Courts, both domestic and in the European Court of Human Rights (see, as examples, *Handyside v UK* 1 EHRR 737, *DPP* v *Redmond-Bate* [1999] Crim L R 998 and *Campaign Against Antisemitism v DPP* [2019] EWHC 9 (Admin)).

6. These rights, and that balance, are the bedrock of the English common law and the rights encapsulated in the European Convention of Human Rights ("the Convention"). Whether the Convention adds or merely enshrines the common law is a jurisprudential debate outside the bounds of this judgement but in general the two formulations of rights go hand in hand. The common law and Convention rights are, in the words of Michael Fordham QC as he then was, "*human rights law's belt and braces*".

7. It has long been recognised, both inside and outside the law, that there will be circumstances in which the right to free speech has to yield to the protection of human beings. Over 150 years ago John Stuart Mill wrote that an opinion that corn-dealers are starvers of the poor ought to be "*unmolested*" when simply circulated through the press, but may justly incur punishment when delivered orally to an excited mob assembled before the house of a corn-dealer.

8. Article 10 of the Convention states:

> 1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This Article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.
>
> 2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety,

for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.

9. One decision of the appellate courts we have considered is *Abdul v DPP* [2011] EWHC 247 (Admin). Protestors had greeted the return of a regiment from tours of duty in Afghanistan and Iraq with placards condemning those wars and by shouting they were "*murderers*", "*rapists*", and "*baby killers*", and that they would "*burn in hell*". As was anticipated, members of the public including the soldiers' friends and families were there to greet the returning troops. Those spectators grew "*distressed and angry*". The Regiment, in contrast, made clear to the trial judge that they were bothered "*not one jot*". The Divisional Court upheld the convictions of some of the protestors for offences under section 5, holding that in those circumstances the expression of the shocking and offensive *was* sufficient to attract the sanction of the criminal law. In explaining that decision Lord Justice Gross addressed the balance to be struck between section 5 and Article 10. His Lordship's summary of the law included (at paragraph 49):

   (1) The starting point is the importance of the right to freedom of expression.

   (2) In this regard, it must be recognised that legitimate protest can be offensive at least to some – and on occasions must be, if it is to have impact. Moreover, the right to freedom of expression would be unacceptably devalued if it did no more than protect those holding popular, mainstream views; it must plainly extend beyond that so that minority views can be freely expressed, even if distasteful.

   (3) The justification for interference with the right to freedom of expression must be convincingly established. Accordingly, while Article10 does not confer an unqualified right to freedom of expression, the restrictions contained in Article 10.2 are to be narrowly construed.

   (4) There is not and cannot be any universal test for resolving when speech goes beyond legitimate protest, so attracting the sanction of the criminal law. The

justification for invoking the criminal law is the threat to public order. Inevitably, the context of the particular occasion will be of the first importance.

(5) The relevance of the threat to public order should not be taken as meaning that the risk of violence by those reacting to the protest is, without more, determinative; sometimes it may be that protesters are to be protected. That said, in striking the right balance when determining whether speech is "threatening, abusive or insulting", the focus on minority rights should not result in overlooking the rights of the majority.

(6) Plainly, if there is no prima facie case that speech was "threatening, abusive or insulting" or that the other elements of the section 5 offence can be made good, then no question of prosecution will arise. However, even if there is otherwise a prima facie case for contending that an offence has been committed under section 5, it is still for the Prosecution to establish that a prosecution is a proportionate response, necessary for the preservation of public order. (We would add that in our view, in considering the section 5 offence, the necessary proportionality assessment will almost inevitably have been undertaken when the court looks at any suggestion that the impugned conduct was "reasonable". Chamberlain J expressed the same view in *Hicks v Commissioner of Police for the Metropolis* [2023] 2 Cr App R 12, at 48 basing that view on the judgement of Lord Reed in *In re Abortion Services (Safe Access Zones: Northern Ireland) Bill* [2022] UKSC 32, at 55).

10. In his concurring judgement in *Abdul* Mr Justice Davis (as he then was) observed (paragraph 58) that there were cases where the preservation of public order should be directed at those who react rather than those who express the views. His Lordship also drew attention (paragraph 61) to one aspect of the facts of that case, that the comments made were not just vigorously stated denunciations of the war, but included personally abusive comments directed specifically at members of the marching troops, causing upset to the families and well-wishers stood nearby.

11. The need to avoid the reaction of displeased others leading to a protest becoming unlawful was stressed in a judgement of the House of Lords, in the context of another minor public order offence. In *Cozens v Brutus* (1973) AC 854 at 862E Lord Reid said (at 862E):

> It would have been going much too far to prohibit all speech and conduct likely to occasion a breach of the peace because determined opponents may not shrink from organising or at least threatening a breach of the peace in order to silence a speaker whose views they detest

12. Section 5 of the Public Order Act states, as far as is relevant to this appeal:

> (1) A person is guilty of an offence if he—
>
> (a) uses threatening or abusive words or behaviour, or disorderly behaviour, ...within the hearing or sight of a person likely to be caused harassment, alarm or distress thereby.
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> (3) It is a defence for the accused to prove—
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> (a) 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, or
>
> (c) that his conduct was reasonable.

13. The mental element of the offence is contained in section 6 of the same Act. By way of section 6(4), so far as it relevant to this appeal, "*A person is guilty of an offence under section 5 only if he intends his behaviour to be or is aware that it may be disorderly*"

14. The provisions relevant to the racially or religiously aggravated form of the section 5 offence are contained in sections 28 and 31 of the Crime and Disorder Act 1998, those relevant to this appeal state:

> (1) An offence is racially or religiously 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 membership) of a racial or religious group or
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> (b) the offence is motivated (wholly or partly) by hostility towards members of a racial or religious group based on their membership of that group.
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> (3) It is immaterial for the purposes of paragraph (a) or (b) of subsection (1) above whether or not the offender's hostility is also based, to any extent, on any other factor not mentioned in that paragraph.
>
> (5) In this section "religious group" means a group of persons defined by reference to religious belief or lack of religious belief.

15. We note in passing that demonstrating hostility to a racial or religious group is not, by itself, an offence. It is only when an accused is found to have committed another offence that they are held to have committed a yet more serious crime by reason of their expressed prejudice.

16. The senior Courts have discussed the limits of the section 5 offence. In *Campaign Against Antisemitism v DPP* [2019] EWHC 9 (Admin) the Divisional Court observed (at 7) that in protest cases, "*section 5 of the 1986 Act has to be read in the context of Article 10*". In another Divisional Court decision, *R v DPP* [2006] EWHC 1375 (Admin) the Court observed that harassment, alarm and distress are all *"relatively strong words"*.

17. To similar effect, we should not "read down" the word "*likely*": It does not mean the conduct impugned could or might cause harassment, alarm or distress. For the offence to be committed there has to be a likelihood it will do so (*Parkin v Norman* (1983) QB 92).

18. Appellate courts have also observed that the characteristics of the person who is the candidate to be "*likely to be caused harassment, alarm or distress*" is a relevant factor. In *R v DPP*, for example, the Divisional Court declined to uphold a conviction where the appellant was an abusive, 4' 9" tall 12-year-old and his potentially harassed victim was a 17 stone, 6-foot-tall police officer.

19. What amounts to disorderly conduct and harassment alarm and distress are factual decisions for us to take. We have to approach those decisions on the basis of the normal use of normal words in the English language, though we do so keeping in mind the words of the Divisional Court to which have just alluded. We observe that here once more the surrounding circumstances are likely to be all important: Conduct that might be seen as disorderly in an intensive care unit might not be if performed on the terraces of a football ground.

20. Parliament amended the original terms of section 5 by removing "*insulting words or behaviour*" as a basis for the offence: That change clearly indicates that the merely insulting does not amount to the offence and in consequence we need to be careful to ensure we do not read down the other types of conduct so as to frustrate the legislature's intention.

Facts

21. The Defendant[1], Hamit Coskun, was raised in Turkey. In 2022 he sought asylum in the UK and has subsequently applied for refugee status. He speaks and

[1] Technically Mr Coskun is the Appellant and the Crown Prosecution Service the Respondent, but for ease of comprehension we have used the terms from the Court below and those the public will most readily understand.

understands a limited amount of English. It is uncontroversial to note that in recent years Turkey has moved from being a secular state to becoming more Islamic: To state this is on no way to express any view of the Court on those events. The Defendant disapproves and on 13th February 2025, he travelled from his home address to the Turkish Consulate at Rutland Gardens, London SW7 with a copy of the Koran. He arrived at approximately 2pm. His conduct there was captured in the video footage recorded by an observer at the scene and in CCTV.

22. Outside the Turkish Consulate the Defendant set fire to a copy of the Koran. He also shouted, "*Koran is burning*", "*Fuck Islam*" and "*Islam is the religion of terrorism*". The pavement on which the Defendant stood was sparsely populated and he did not initiate any interaction with any member of the public.

23. There was a reaction. A man, now known to be Moussa Kadri emerged from a nearby building, called the Defendant a "*fucking idiot*" and said he would "*fucking kill*" him. Kadri went back into a building and re-emerged moments later brandishing a knife. He chased the Defendant into the road, making slashing motions towards him with the knife. The Defendant fell to the ground and Kadri began kicking him and spat at him. As the Defendant lay on the road a second attacker, a passing delivery cyclist kicked and spat at the Defendant then cycled away.

24. The police arrived at approximately 2.25 pm. The Defendant told the officers, through a telephone interpreter, that he had had been exercising his democratic right to protest by setting fire to the Koran, and that a man had approached him and attacked him with a knife. The Defendant pointed out the first attacker, Moussa Kadri. In due course the Defendant and Kadri were both arrested. Kadri was later charged with assault and the possession of a knife and sentenced to a suspended term of imprisonment.

25. The Defendant was interviewed under caution and with the assistance of a Turkish interpreter and a solicitor. He answered most of the questions asked of him. To summarise:

(1) He was asked why he decided to burn the Koran and he said that the book is inciting people to opt for terrorism. As he believed that it is a terror book, he believed that it should be forbidden. He said he was an atheist since the age of 15. He was asked what his feelings were towards Muslims. He said, "*I don't have any problem or any prejudice against Muslim people so long as they don't use violence I don't have any problems with it. This is their human rights.... burning that Koran is my right..*"

(2) He was asked whether he was aware the location he was attending was the Turkish Consulate. He said, "*I took through the internet I made decision. I decided just to get the address and so on. Turkey and Qatar were two countries supporting radical Islamist, that's what I thought. There is a person who is in power at the moment who just turn our, my country into a base for radical Islamists. After I decided to burn it. I just found out about the address of it through internet....I had already written through the social media that I was going to burn Koran right outside this Consulate about a week ago....hundreds of people wrote to me asking me whether they want, I would like them to come as well. There was so many atheist and English people as well who their countries were included in those messages. In response I said 'I don't want anyone and no one should come there' and I went there and burnt it.*" He said he had been alone outside the Turkish Consulate but a journalist was there, apparently because he had advertised on social media that he was going to burn the Koran.

(3) He said he did not intend to incite racial hatred, "*I'm not racist at all. I was just trying to educate people about what sort of religion Islam is*". He expressed his view that there was no law against doing what he did. He believed his actions were peaceful.

26. There were further passages that the Prosecution rely upon as suggesting an animosity to Muslims as opposed to criticising the Islamic faith. At one stage, for

example, the Defendant spoke of Muslims carrying out rapes and of them coming to a country then breeding and then harming that country.

27. The Defendant later stood trial and was convicted of the racially aggravated form of the section 5 offence. An appeal to the Crown Court such as this is by way of rehearing. We therefore are not required to examine the decision of the Judge in the Magistrates' Court: That is a matter of basic procedure and implies no disrespect to the District Judge who heard the trial.

28. The Defendant chose not to give evidence before us. We asked his leading Counsel, Mr Owen KC, whether he had advised the Defendant about a possible adverse inference and he confirmed he had done so. This threw up an issue: Section 35 of the Criminal Justice and Public Order Act 1994 imported an adverse inference for a failure to testify "*at the **trial** of any person*" (emphasis added). This is not a trial, it is an appeal. It is an appeal by way of rehearing that replicates a trial, but an appeal nonetheless. Do the terms of section 35 permit an adverse inference from the Defendant choosing not to give evidence in the proceedings before us? We are grateful for the industry of Counsel for both sides who spent a significant part of yesterday researching this point. The arguments each way are:

    (1) A purposeful interpretation of section 35 should lead to the conclusion the adverse inference does apply. An appeal like this is by way of a rehearing (see section 79 of the Senior Courts Act 1981 which replicated section 9(6) of the Courts Act 1971). It would be absurd if a rehearing adopted different evidential rules, and could encourage appeals in cases where the accused's absence from the witness box was particularly significant. While there are no appellate cases directly on point, in *Yorke v DPP* [2003] EWHC 1586 (Admin) Owen J recited the decision of a judge in the Crown Court hearing an appeal, drawing an adverse inference, without demur. In *R v Hereford Magistrates Court ex p Rowlands* [1998] QB 110 Lord Bingham CJ (at 118), as he was then, spoke of an appeal to this court as a "*retrial*". It is fair to say that in neither case was the issue of the terms of section 35 being litigated or indeed even mentioned.

(2) The contrary arguments are the traditional need to construe criminal statutes restrictively, not least where the statute under consideration abrogated a long-standing common law right. Additionally, in section 34 of the same Act the failure to mention facts later relied on when questioned by police leads to an adverse inference "*in **any proceedings** against a person for an offence*" (emphasis added): the wider term deployed in section 34 could suggest that Parliament intended the section 35 inference to be narrower in its application.

29. We appreciate this is something of a distraction to the parties, neither of whom sought to litigate the issue in this appeal, but when points arise courts need to address them. Our tentative conclusion is that the section 35 adverse inference *does* apply to an appeal such as this, for the reasons we have set out already. Even if there is an adverse inference, however, in our view it could not bite on the issues of whether the impugned conduct was "*disorderly*" or whether it was "*likely to cause harassment, alarm or distress*", both being objective decisions for this Court to take.

Submissions

30. We are grateful to Counsel for the Prosecution, Mr McGhee, and Defence, Mr Owen KC and Ms Comyn, for their careful and learned submissions on the facts and the law. As we began this judgement by setting out some legal principles and will complete it by addressing the elements of the case and our conclusions, we take the liberty of merely summarising the competing arguments.

31. On behalf of the Defendant it is submitted:
    (1) His conduct does not reach the level required to amount to "*disorderly conduct*". The dictionary definitions we have been referred to include:
        - "*Opposed to or violating moral order, constituted authority, or recognized rule or method; not submissive to rule, lawless; unruly; tumultuous, riotous.*"
        - "*angry and violent*"

- "*involving a breakdown of peaceful behaviour*"
- "*unruly, righteous, disruptive, troublesome, lawfulness*"
- "*uncontrolled, unruly, violating public peace or order*"
- "*behaving in a noisy, rude or violent way in public*"

(2) His conduct may have upset at least one person but does not meet the legal test of "*likely to cause harassment, alarm or distress*"

(3) Given the political nature of his protest we should find his conduct "*reasonable*"

(4) His conduct may have been motivated by a hostility to Islam but we should recognise and honour the distinction the Defendant draws (at one stage in his interviews under caution) between a hostility to a faith and a hostility to adherents to that religion.

32. The Prosecution accept that there is no law that criminalises blasphemy but submit that the choice to burn the Koran, knowing full well how upsetting that act would be to any Muslim is, in combination with the shouted comments, an ample basis for us to find the offence proved in its aggravated form. The Prosecution submit, about Mr Kadri, that however deplorable and unlawful his behaviour, he does at least illustrate that people were indeed distressed by the Defendant's conduct. The Prosecution, very properly, invite us not to rely on Kadri's criminal conduct in reappearing armed with a knife and attacking the Defendant. Finally, Mr McGhee points to passages in the Defendant's interviews under caution as showing a general hostility towards Muslims and invites us to view his conduct outside the Consulate in the context of the views he expressed when later questioned: On that basis, it is submitted, there is the clearest evidence that the Defendant's conduct was motivated, at least partly, by hostility towards members of a religious group based on their membership of that group.

Discussion and decision

33. The questions we may have to answer in this appeal are:

(1) Has the Prosecution made us sure the Defendant used threatening or abusive words or behaviour, or disorderly behaviour? If the answer is "no", the Defendant's appeal must be allowed. If "yes" we need to consider the next question.

(2) Has the Prosecution made us sure the Defendant did so in the hearing or sight of a person likely to be caused harassment, alarm or distress thereby. If the answer is "no", the Defendant's appeal must be allowed. If "yes" we need to consider the next question.

(3) Has the Prosecution made us sure the Defendant intended his behaviour to be, or was aware that it may be, disorderly. If the answer is "no", the Defendant's appeal must be allowed. If "yes" we need to consider the next question.

(4) Has the Defendant persuaded us it is more likely than not 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, *or* that his conduct was reasonable. If the answer is "yes", we must allow the appeal. If "no" we need to consider the final question.

(5) Are we sure the Defendant demonstrated towards the victim of the offence hostility based on the victim's membership or presumed (by the Defendant) membership of a racial or religious group or that the offence is motivated (wholly or partly) by hostility towards members of a racial or religious group based on their membership of that group. If the answer is "yes" we must convict the Defendant of the racially aggravated form of the offence. If the answer is "no" we must convict the Defendant of the simple section 5 offence.

34. We start by considering whether we are sure the conduct was disorderly *and* whether we are sure it was likely to cause harassment, alarm or distress. We consider these two aspects together as there is overlap when we look at the precise factual context in which they arose. In doing so, we apply all the legal matters we have set out already in this judgement: This was clearly political

speech or conduct, insulting conduct is not sufficient, and we should be careful not to read down the words we are considering. For reasons we have already articulated, the Prosecution are not assisted on this aspect of the case by an adverse inference from the Defendant choosing not to testify, assuming as we do that the relevant statutory provision is engaged by an appeal.

35. First, the Defendant's conduct was not aimed at a person. While such a generalised protest might amount to an offence under section 5, it is less likely to do so than one where the conduct or words are directed at a person or people.

36. Second, the location was outside the Turkish Consulate. The offices of foreign nations, be they embassies or consulates, are recognised locations for political protests against the policies of those countries. Such buildings can be anticipated to be secure, with systems in place to survey and protect the premises. This is significant. A protest outside someone's home or a place of worship might well create an anticipation that those who witness it may feel vulnerable and, very easily, become harassed, alarmed or distressed. A protest outside a secure and recognised location for such activities, less so.

37. Third, the Defendant was by himself. There were one or two other people around, but the only person involved in the protesting activity was him. As a matter of common sense, on many occasions a crowd may be intimidating far more easily than one man by himself.

38. Fourth, it was daylight. Any passerby could clearly see that the Defendant was stood by himself, empty handed save for the book he then set alight.

39. Fifth, his protest was of short duration, perhaps two or three minutes. The longer a potentially distressing protest occurs, the greater the likelihood that someone who would be harassed or alarmed or distressed would come across it.

40. Sixth, the reaction of people who were present is not determinative. The section 5 offence criminalises the effect of conduct that is likely, not that which actually transpires. Yet the reactions of those who witness the event in real time can be relevant in that it allows a Court, who inevitably view the events at a distance, some insight into the sound, feel and appearance of the impugned conduct. For a moment we leave aside the criminal conduct of Kadri and the delivery rider. In our view it is significant that in the three minutes or so of film that we have watched, a number of people wander by. As things develop, two or three people stop to watch. There is no sense that any of the passers-by or spectators feel sufficiently alarmed to hurry away or even cross the road. They see a man, by himself, on a fairly empty pavement, who shouts and sets fire to a book. At the risk of repetition, their casual reactions to the Defendant's conduct are not determinative, but they are telling.

41. Seventh, in our view the actions of Kadri and the delivery cyclist do not assist the Prosecution's cause for a number of reasons. We are concerned with the likely not the actual. Both men may very well have felt insulted but that is no longer a basis for the section 5 offence. Kadri may well have grown very angry, as his threats to kill then procuring of a knife before attacking the Defendant would tend to suggest, but being angry is not the same as being harassed, alarmed or distressed. Further, as articulated in *Abdul* and *Cozens v Brutus*, the Courts should be wary of allowing the criminal reaction of one person to make a criminal of another for exercising their right to free speech.

42. It follows from our consideration of the evidence that the Prosecution have not succeeded in making us sure either that the Defendant's conduct can properly be found to be disorderly, or that it was within the hearing or sight of a person likely to be caused harassment, alarm or distress thereby. We therefore do not need to consider the later issues upon which we have been addressed, and we must allow this appeal. In the Court below the alternative charge, of section 5 in its unaggravated form, was adjourned sine die. Mr McGhee, very properly, reassured the Court and the defence that if we allowed this appeal there was no prospect of

that charge being revived, and we would add that to do so would in our view be an obvious abuse of process in any event.

Mr Justice Bennathan

Ms T Guest JP

Mr D Graves JP

10 October 2025