JUDICIARY OF ENGLAND AND WALES

R -V- LIAM STACEY

SWANSEA CROWN COURT
ON APPEAL FROM THE MAGISTRATES' COURT

APPEAL JUDGMENT OF MR JUSTICE WYN WILLIAMS
SITTING WITH TWO MAGISTRATES

APPEAL NO: A20120033

30 MARCH 2012

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1. On 19 March 2012 the Appellant pleaded guilty at the Swansea Magistrates' Court to an offence contrary to section 31(1)(b) of the Public Order Act 1986. By his plea he admitted that he used threatening, abusive or insulting words with intent to cause harassment, alarm or distress to users of the Twitter Internet Messaging Service. He also accepted that his offence was racially aggravated.

2. Following his plea of guilty the case was adjourned for a Pre-Sentence Report.

3. At a sentencing hearing on 27 March District Judge Charles sentenced the Appellant to a term of 56 days' imprisonment. The Appellant now appeals to this Court against his sentence.

4. It is important to begin by explaining, fully, what it is that the Appellant did.

5. During the late afternoon of Saturday 17 March a football match was taking place between Bolton Wanderers and Tottenham Hotspur. 42 minutes into the game one of the Bolton Wanderers players, Fabrice Muamba collapsed on the pitch. Almost immediately it was appreciated that the player was gravely ill.

6. The Appellant was watching the game on television. Earlier that afternoon he had watched the rugby match between Wales and France and he had consumed a great deal to drink. His estimate is that he had consumed 15 cans of Carling lager. He has always maintained that he was drunk and we have no reason to think otherwise.

7. About 90 minutes after the Appellant had first seen Mr Muamba lying prostrate on the pitch he posted a message on Twitter to the following effect:-

> "LOL fuck Muamba he's dead"

LOL is accepted to mean laugh out loud.

As well as posting this message on his own account the Appellant linked the message to a site call Ha Ha. That meant that what he had written was capable of being read not just by those persons who followed the Appellant's Twitter account but by any other user of Twitter.

8. The Appellant's message provoked very strong responses. The first response was from a person who wrote:-

> "You my friend are a grade A cunt heartless bastard."

We are told and it is not disputed that this response came from a black man. The Appellant replied:-

> "I am not your friend, you wog cunt, go pick some cotton."

As we understand it this exchange was available to all persons using Twitter. Many further messages were posted aimed at the Appellant. The Appellant received messages which were extremely critical of him and written in abusive language. However, this did not cause him to desist. Over the course of the next hour or thereabouts he posted at least 8 messages which were extremely abusive and insulting. All the messages were available to be read by persons who could access Twitter. Two of these messages were expressly racial; not only were the messages expressly racial but were couched in terms which can only be regarded as extremely offensive. One read,

> "You are a silly cunt your mother's a wog and your dad is a rapist, bonjour you scruff northern cunt."

A second read

> "Go suck a nigger dick you fucking aids-ridden cunt."

9. There came a point in time when the Appellant began to realise the enormity of his behaviour. That occurred when one of his friends sent him a message urgently querying what he was doing. He then apologised online for what he had done.

10. The Appellant's behaviour provoked a number of complaints to the police. A complaint was made to the Northumbrian Police Force and we are told that other forces were also contacted by members of the public who were outraged by the Appellant's behaviour. The Appellant was traced quite quickly. At 10.18 on Sunday 18 March two police officers attended at his address in Swansea; they arrested him and cautioned him and he immediately admitted that he had posted racist comments on Twitter. He told the officers that he was drunk at the time, that he didn't mean it and that he was really sorry.

11. That afternoon the Defendant was interviewed under caution. He made no attempt to hide what he had done.

12. The Appellant is aged 21. He is a student studying biology at Swansea University. He has no previous convictions. However, it is of some relevance that on 9 April 2011 he was issued with a penalty notice. That penalty notice was issued in respect of engaging in threatening abusive or insulting behaviour and using words likely to

cause harassment, alarm or distress. This penalty notice came about because on 9 April 2011 there was a disturbance outside Wetherspoon's public house; the Appellant was detained by door staff. He engaged in a violent struggle and when police officers arrived he started swearing at them and making threats at them and despite their warnings he persisted.

13. An appeal to the Crown Court is an appeal by way of re-hearing. We have not been provided with a transcript of the sentencing remarks of the District Judge.

14. Mr Hobson, on behalf of the appellant, expressly acknowledges that the Appellant deserves significant punishment for the offence which he committed. Mr Hobson does not submit that a sentence of imprisonment was wrong in principle. He does submit, however, that such are the mitigating factors in this case that we can take a course of action which is alternative to an immediate sentence of imprisonment. Mr Hobson invites us to impose a stringent community order or a suspended sentence of imprisonment coupled with appropriate punitive requirements. We should record that Mr Hobson expressly accepts that if a sentence of immediate imprisonment is the appropriate sentence a term of 56 days was not too long.

15. The mitigating factors which are pressed upon us are these. First, this offence was completely out of character for the Appellant. We have been provided with a selection of measured and moderate character references which suggest that this is so. Second, the Appellant has no previous convictions. Third, he pleaded guilty at the first available opportunity having earlier admitted his offence to the police officers who interviewed him. Fourth, the case has attracted a great deal of publicity. The Appellant has been the subject of harsh comment in some quarters and he has become a figure of some notoriety. Mr Hobson submits that this is a significant punishment in itself. Fifth, the Appellant is genuinely remorseful. We accept that all these points have a degree of validity. It is not suggested that this offence can be excused in any way by the fact the Appellant had consumed a great deal of alcohol.

16. There are no applicable sentencing guidelines. We have been referred to no previous decided cases either in the Court of Appeal or at the Crown Court to assist in determining an appropriate sentence for this type of offence.

17. We have reached the clear conclusion that a sentence of immediate imprisonment was justified in this case. The words used by the Appellant were extremely offensive. We accept that the express racial content of the words were not aimed, specifically, at the stricken footballer but there can be no avoiding the conclusion that the Appellant's offence was committed in the context of the grave illness which had suddenly afflicted Mr Muamba.

18. It must also be emphasised that the Appellant has pleaded guilty to a crime of specific intent. He intended to use words which were offensive and he intended that the words should be racially offensive.

19. In our judgment, to repeat, a sentence of immediate imprisonment is justified in such circumstances even for a young man with no previous convictions and with the other personal mitigation available to this Appellant.

20. As we have said Mr Hobson does not submit that the length of the sentence was inappropriate if a sentence of imprisonment was otherwise justified.

21. Accordingly this appeal is dismissed.